

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, SS.

Adjudicatory Case No. 2008-017
(RM-08-376)

In the Matter of)
)
)

Gary M. Brockington, M.D.)
_____)

FINAL DECISION AND ORDER

This matter initially came before the Board for final disposition on the basis of the Administrative Magistrate's Recommended Decision (Recommended Decision), dated October 5, 2011, the Board's Partial Final Decision as to Findings of Fact and Conclusions of Law Only Partial Decision), dated June 6, 2012, and the Parties' initial Memoranda on Disposition. On November 20, 2012, the Board issued a Final Decision and Order (Final Decision) revoking the license of Dr. Gary M. Brockington (Respondent), effective December 11, 2012. Pursuant to 243 CMR 1.05(3)(b), a revocation is effective for at least five years unless the Board orders otherwise. The Board did not order otherwise.

The Respondent appealed the Board's Final Decision to a Single Justice of the Supreme Judicial Court. In her Memorandum and Order, Justice Botsford vacated the November 20, 2012 Final Decision based upon her determination that the sanction imposed was arbitrary and an abuse of the Board's discretion. Justice Botsford remanded the matter to the Board for further proceedings in consideration of the Memorandum and Order.

After having heard from the Parties, and in full consideration of the Partial Final Decision, which is attached hereto and incorporated by reference, and full consideration, too, of Justice Botsford's Memorandum and Order, as well as the Parties' more recent Memoranda on Disposition, the Board imposes the following sanction:

Sanction

The record demonstrates that the Respondent engaged in misconduct in the practice of medicine and engaged in conduct that undermines the public confidence in the integrity of the medical profession. Therefore, it is proper for the Board to impose sanction. See *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982); *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979).

The Board considers physician-patient boundary violations grave. In matters where boundary crossing have involved sexual intercourse, the Board has generally imposed license revocation as the sanction. See *In the Matter of Mai-Trang Nguyen, M.D.*, Board of Medicine, Adjudicatory No. 2006-06 (Consent Order, December 20, 2006); and *In the Matter of Donald Marion, M.D.*, Board of Medicine, Adjudicatory Case No. 05-45-XX (Consent Order, October 19, 2005).

In this case, the Respondent moved into the home of a patient in May of 2006, after a mid-April office visit involving a discussion of the patient's symptoms of anxiety and depression and at which the Respondent recommended counseling. The Respondent socialized with the patient, her husband and children and intervened in a fight when he felt the patient's spouse had struck her and would do so again.

During a two week time period in June, the Respondent engaged in a sexual relationship with Patient A concurrent with the physician-patient relationship. The Respondent moved out of Patient A's home by at least July 4, 2006.

In some matters where boundary crossing has involved sexual intercourse, the Board has imposed a lesser sanction than revocation. In three instances,¹ the Board did so based on Findings of Facts relating to conduct in the 1980's, prior to the issuance of the American Medical Association's (AMA) Code of Ethics Opinions 8.14 "Sexual Misconduct in the Practice of Medicine" (issued in 1992) and 8.115 "Termination of the Physician-Patient Relationship" (issued in 1996), and prior to the Supreme Judicial Court's decision upholding the Board's authority to use these guidelines when making a

¹ See *In the Matter of Terrence M. O'Neill, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 88-44-TR (Final Decision and Order, August 9, 1994); *In the Matter of Harold Williams, M.D.*, Board of Registration in medicine, Adjudicatory Case No. RM-92-373 (Final Decision and Order, April 14, 1993); and *In the Matter of Lee R. Younger, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 95-7-DALA (Final Decision and Order, December 9, 1994).


disciplinary determination based on a physician's ethical and professional obligations. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 344 (1996). In a fourth instance, the Board imposed a lesser sanction, based on an out-of-state action, with scant Findings of Fact and where the physician self-reported his wrongdoing to the state medical board. See *In the Matter of Laurent Brard, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2009-010 (Final Decision and Order, July 7, 2010).

In light of the fact that the Respondent engaged in a boundary crossing that involved sexual intercourse concurrent with the physician-patient relationship, the Board REVOKES the Respondent's license to practice medicine *nunc pro tunc* to December 11, 2012. In recognition of mitigating factors, including the Respondent's admission of wrong-doing, cooperation throughout the proceeding, and expression of remorse, the Respondent may petition for reinstatement three years from December 11, 2012. At the time of any petition, the Respondent must demonstrate his competency to practice medicine. Such demonstration of competency may include, but is not limited to, a clinical skills assessment by a Board-approved entity and an assessment of the Respondent's maintenance of physician-patient boundaries by a Board-approved entity that specializes in boundaries. This sanction is imposed for each violation of the law, and not a combination of any or all of them.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he has any kind of license to practice medicine; the Drug Enforcement Administration – Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this revocation. The Respondent is further directed to certify to the Board

within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

DATE: April 16, 2015



Kathleen Sullivan Meyer, J.D.
Board Vice Chair