

COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION IN MEDICINE

Middlesex, ss.

Adjudicatory Case  
No. 2013-041

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In the Matter of )  
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)

Jason Faulhaber, M.D. )  
\_\_\_\_\_ )

Final Decision and Order

Jason Faulhaber, M.D., (Respondent) has been licensed in Massachusetts since 2007. He is certified by the American Board of Medical Specialties in Internal Medicine with a subspecialty in Infectious Disease. Between September of 2007 and August of 2012, the Respondent practiced at Fenway Community Health Center, in Boston, providing primary care and treatment of patients with HIV.

This matter came before the Board on the basis of the Board's Partial Final Decision as to Findings of Fact and Conclusions of Law Only (Partial Decision), dated May 7, 2015. The Division of Administrative Law Appeals recommended that the Board impose discipline on the Respondent's license for his conduct with Patients A, B, and 2. The Findings of Fact and Conclusions of Law, as set forth more fully below, establish that the Respondent engaged in conduct that places in question his competence to practice medicine; committed misconduct in the practice of medicine; and engaged in conduct that undermines the public confidence in the integrity of the medical profession sufficient for the imposition of revocation of the Respondent's license to practice medicine.

The Findings of Fact and Conclusions of Law include, but are not limited to the following:

Patient A

In June 2009, the Respondent began treating Patient A, who had learned that he was HIV positive and was scared, nervous, and feeling vulnerable. At Patient A's second appointment, in early June of 2009, the Respondent kissed him on the lips and hugged him. During six to eight subsequent appointments, the Respondent kissed and hugged Patient A. The kisses shocked

Patient A, took him aback, and confused him. Patient A transferred his care to another doctor, because the Respondent had crossed a physician-patient boundary and because Patient A was dissatisfied with the Respondent's attention to him as a sick patient.

The Respondent violated American Medical Association Code of Ethics (AMA) *Opinion 8.14*, since kissing and hugging Patient A constituted either "[s]exual contact that occur[red] concurrent with the patient-physician relationship" or "non-sexual contact with a patient [that] may be perceived as or may lead to sexual contact." The Respondent knew or should have known, based on Patient A's recent diagnosis with HIV, that Patient A was "scared, nervous, and vulnerable." The Respondent "took advantage of Patient A's fear, nervousness, and vulnerability for his personal reasons, including pleasure."

With respect to Patient A, the Respondent:

- engaged in conduct that places in question his competence to practice medicine;
- committed misconduct in the practice of medicine; and
- engaged in conduct that undermines the public confidence in the integrity of the medical profession.

#### Patient B

The Respondent sent Patient B a Facebook message stating, "What up [sic] sweetness? Happy new year! Just wanted to say hi, and see if you're around 2/6." The Respondent signed the message, "j." February 6, 2010 was a Saturday, and the Respondent was not referring to a medical appointment. Patient B understood the Respondent's message as possibly an offer for a date. The message confused Patient B and made him uncomfortable. Patient B did not return to the Respondent's care after receiving the message.

Patient B was the Respondent's patient when the Respondent sent the message. By serving as Patient B's doctor, the Respondent knew that Patient B had recently broken up with his romantic partner and that the breakup had left Patient B distraught. By sending a Patient B a Facebook message, calling him "sweetness" and inviting him to a party, the Respondent violated AMA Opinion 8.14, since the message was "non-sexual contact with a patient [that] may be perceived as or may lead to sexual contact." The Respondent collected confidential information from Patient B, about Patient B's emotional state and the reason for it, in a medical context. The Respondent misused the information for his own personal and social purposes.

With respect to Patient B, the Respondent:

- engaged in conduct that places in question his competence to practice medicine;
- committed misconduct in the practice of medicine; and
- engaged in conduct that undermines the public confidence in the integrity of the medical profession.

#### Patient 2

The Respondent was Patient 2's primary care physician and provided Patient 2 with treatment for HIV. The Respondent saw Patient 2 in office visits between April 2009 and February 2010 and began a sexual and romantic relationship with Patient 2 in March of 2010. The Respondent wrote prescriptions for Patient 2 in April and June of 2010, and ordered tests for Patient 2 in March, June, and October of 2010. The sexual and romantic relationship continued at least through October of 2010. The Respondent provided medical care to Patient 2 while they were engaged in a sexual and romantic relationship.

With respect to Patient 2, the Respondent:

- engaged in conduct that places in question his competence to practice medicine;
- committed misconduct in the practice of medicine; and
- engaged in conduct that undermines the public confidence in the integrity of the medical profession.

After full consideration of the Partial Final Decision, including the Recommended Decision, and the Findings of Fact contained therein, which is attached hereto and incorporated by reference, the Memoranda on Disposition, and the Victim Impact Statement, the Board imposes the following sanction:

#### Sanction

The record demonstrates that the Respondent engaged in conduct that places in question his ability to practice medicine; committed 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).

In this case, the Respondent “took advantage” of the “fear, nervousness, and vulnerability of Patient A,” who had been recently diagnosed as HIV positive “for [the Respondent’s] personal reasons, including pleasure.” The Respondent “collected information from Patient B – about his emotional state and the reasons for it – in a medical context” and “misused it for his own personal and social purposes.” The Respondent was the primary care provider for Patient 2 and treated Patient 2’s HIV. The Respondent engaged in a sexual and romantic relationship with Patient 2.

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. *In the Matter of Romuald Sluyters, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2007-012 (Final Decision and Order, December 5, 2007). License revocation is the most severe sanction the Board can impose and is effective for a minimum of five years, unless the Board’s specifies otherwise (See 243 CMR 1.05(3)(b)).

In cases where the totality of the circumstances warrants, the Board has imposed a full 5-year revocation. See *In the Matter of Mark Beaumont, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2012-005 (Consent Order, January 18, 2012)(physician’s license was revoked for five years after having a sexual relationship with his patient, impregnating her, and without her knowledge, prescribing her a medication that would terminate the pregnancy); *In the Matter of David P. Ingalls, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 02-01-DALA (Final Decision and Order, November 19, 2003)(5-year revocation imposed for repeated acts of sexual misconduct with several vulnerable patients during medical visits); and *In the Matter of Richard B. Hawkins, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 03-12-DALA (Final Decision and Order, December 15, 2004)(sexual touching of two patients and lewd comments during multiple medical visits).

In some matters where boundary crossing has involved sexual intercourse, the Board has imposed a lesser sanction than revocation. In three instances,<sup>1</sup> the Board did so based on Findings of Facts relating to conduct in the 1980’s, prior to the issuance of the AMA *Opinions* 8.14 “Sexual Misconduct in the Practice of Medicine” (issued in 1992) and 8.115 “Termination

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<sup>1</sup> 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).

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 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).

The Board determines that the pendant matter is one where the totality of the circumstances, including the Respondent’s year-long, absolute disregard for physician-patient boundaries, taking advantage of the vulnerability of a patient recently diagnosed as HIV positive for his personal pleasure, and misusing information collected in a medical context for social purposes, warrants the imposition of the Board’s most severe sanction.

Accordingly, the Board REVOKES the Respondent’s inchoate right to renew his license to practice medicine. The Board acknowledges that the Respondent entered into a Voluntary Agreement Not to Practice on April 2, 2013. The Board chooses not to impose the sanction retroactive to that date in light of the egregious nature and instances of the Respondent’s boundary crossing, and in consideration of the Victim Impact Statement by Patient A. 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: July 2, 2015

*Candace Lapidus Sloane, MD*

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Candace Lapidus Sloane, M.D.  
Board Chair

SENT CERTIFIED MAIL 7/7/15 *(ms)* <sup>6</sup>