

COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2019-052  
(RM-19-0527)

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In the Matter of )  
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Julian A. Mitton, M.D. )  
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FINAL DECISION AND ORDER

Procedural History

The Board of Registration in Medicine (Board) initiated this proceeding by issuing a Statement of Allegations (SOA) on October 24, 2019 and referring the matter to the Division of Administrative Law Appeals (DALA) on that date. On September 14, 15, 16 and on November 4, 2020, the DALA Magistrate conducted a hearing.

On March 29, 2022, the DALA Magistrate issued a Recommended Decision in which the Magistrate found that the Board did prove by a preponderance of the evidence that the Respondent committed misconduct in the practice of medicine, and engaged in conduct that undermines public confidence in the integrity of the medical profession when he crossed sexual boundaries, intentionally texting Patient A, seeking to convince her he was someone she knew, using information he obtained as her doctor.

The Respondent filed Objections to the Recommended Decision on July 6, 2022. Each party filed a Memorandum on Disposition on July 26, 2022.

The Board has reviewed the Recommended Decision, the Objections and the Memoranda on Disposition<sup>1</sup>. On the basis of its review the Board hereby adopts the Recommended Decision, which is attached hereto and incorporated by reference.

At its meeting on September 8, 2022, following its review of the Recommended Decision, the Objections and the Memoranda on Disposition, the Board heard from the parties on the issue of Sanction. The Board also took into consideration a Victim Impact

<sup>1</sup> The Board has noted the Respondent's Objections to the Recommended Decision and has provided an adequate statement of reasons for its decision; the Board is not required to answer each specific objection in its decision. *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 418 N.E.2d 1236 (1981). Insofar as Respondent's objections also assert that the Magistrate erred by failing to make a credibility finding as to Respondent's intentionality, the Board notes that pursuant to 801 CMR 1.01(11)(c)2., the Board may not reject the Magistrate's determination of credibility of witnesses personally appearing.

Statement that was submitted by Patient A, and reviewed by Respondent, in accordance with G.L. c. 112, § 5.

#### Discussion and Sanction

“In the past, the Board has dealt strictly with cases that involve a serious departure from good and accepted medical practice and a complete abuse of patient trust, frequently determining that license revocation is the appropriate sanction.” See, In the Matter of Anthony Perrone, M.D., Board of Registration in Medicine, Adjudicatory No. 2014-020 (Final Decision and Order, May 25, 2017; Amended Final Decision and Order, June 11, 2020, Second Amended Final Decision and Order, November 19, 2020) (inchoate right to renew license revoked nunc pro tunc to May 25, 2017 with leave to petition for reinstatement after two (2) years and upon demonstration of entry into a probation agreement for plastic surgeon who engaged in sexually explicit text message communications with a patient and requested sexually explicit images of the patient after the patient sent one initially). See also, In the Matter of John J. Scorza, M.D., Board of Registration in Medicine, Adjudicatory No. 2005-030 (Final Decision and Order, February 20, 2008) (psychiatrist had an inappropriate relationship with a patient and was convicted of violating restraining orders taken out by that patient); *In the Matter of Karen S. Kagey, M.D.*, Board of Registration in Medicine, Adjudicatory No. 2005-015 (Final Decision and Order, November 15, 2006) (engaging in improper economic activities with patients, and by allowing the line between a professional relationship and a personal relationship to blur, resulting in harm to Patients A and B); *In the Matter of William Kadish, M.D.*, Board of Registration in Medicine, Adjudicatory No. 2001-XX (Consent Order, August 22, 2001) (psychiatrist revoked for sexual misconduct, exchanging gifts with patients, frequent phone contact with patients, loaning money to patients, sharing personal information with patients, accompanying patients to restaurants, and acting as both a psychiatrist and a primary care provider by prescribing medication); *In the Matter of Robert P. Weinberg, D.O.*, Board of Registration in Medicine, Adjudicatory No. 99-01-DALA, (Final Decision and Order, October 30, 2002) (physician engaged in sexual activity with a current patient).

There has been a lesser sanction when there have been mitigating factors, including self-disclosure and consensual boundary crossing. *See In the Matter of Julieta*

*M. Holman, M.D.*, Board of Registration in Medicine, Adjudicatory No. 2015-014 (Final Decision and Order, September 22, 2016) (indefinite suspension for psychiatrist's ongoing sexually explicit emails with a patient).

When determining the appropriate sanction where there has been a violation of the laws and rules relating to the practice of medicine, the Board may discipline the Respondent, based on misconduct pursuant to 243 CMR 1.03(5)(a)(18), and engaging in conduct that undermines the public confidence in the integrity of the medical profession. See Levy v. Board of Registration in Medicine, 378 Mass. 519, 392 N.E. 2d 1036. See also, Raymond v. Board of Registration in Medicine, 387 Mass. 708, 713, 443 N.E. 2d 391, 395 (1982). Quoting language from *Hellman v. Board of Registration in Medicine*, 404 Mass. 800, 804 (1989):

.....improper conduct or wrong behavior, but as used in speech and in law it implies that the conduct complained of was willed and intentional. It is more than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or lack of concern for one's conduct. Whether or not an act constitutes misconduct must be determined from the facts surrounding the act, the nature of the act, and the intention of the actor.

The facts of the present matter are very serious in that the Respondent intentionally and improperly used Patient A's protected contact information to text message Patient A, anonymously, without identifying himself, and then used Patient A's private information to intimate that he was someone she knew. He sent unsolicited and unwelcome sexually suggestive text messages and disguised images of himself, including one of himself naked from the neck down. After Patient A identified mental health concerns involving depression and suicidal ideation during their medical appointment, the Respondent 1) failed to contact a behavioral health specialist to confirm follow up with Patient A, and 2) failed to follow his customary practice after seeing a patient with depression and suicidal ideation.

The Board takes specific note of Respondent's argument that the Magistrate did not make a credibility determination as to the intentionality of the Respondent's conduct. The Magistrate is the arbiter of credibility of witnesses and based on her observations of the witness' testimony, can credit or discount that testimony. More specifically as to the Respondent, she concluded, "His obfuscation leads me to conclude he was not a reliable

narrator of events, particularly when explaining his side of the text messages." Rec. Dec at 26. Further, she opines, "He intentionally texted Patient A and sought to convince her he was someone she knew, using information he obtained as her doctor." Rec. Dec. at 28. Given that determinations of credibility fall within the Magistrate's discretion, it is within the scope of her authority to make that finding.<sup>2</sup>

The Board has considered the mitigating factors that the Respondent has no prior discipline and cooperated with the Board by entering a Voluntary Agreement Not to Practice.

Based on the foregoing, the Board hereby REVOKES the Respondent's license to practice medicine with the right to petition for reinstatement in three (3) years. Any such petition would necessitate entering into a Probation Agreement requiring entry into a behavioral health monitoring contract with Physician Health Services, a Board-approved practice plan, and any other conditions deemed appropriate by the Board.

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; and the state licensing boards of all states in which he has any kind of license to practice medicine. 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

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<sup>2</sup> 801 CMR 1.01(11)(c)2 – "If the Agency does not accept the whole of the tentative decision, it shall provide an adequate reason for rejecting those portions of the tentative decision it does not affirm and adopt. However, the Agency may not reject a Presiding Officer's tentative determinations of credibility of witnesses personally appearing."

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: September 8, 2022

A handwritten signature in black ink, appearing to read 'Julian Robinson', written over a horizontal line.

Julian Robinson, M.D.  
Chair, Board of Registration in Medicine