

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2016-044
(RM-16-483)

)
In the Matter of)

Arthur H. Pomerantz, M.D.)
_____)

FINAL DECISION AND ORDER

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's (Magistrate's) Recommended Decision, dated September 1, 2017, and the Board's Partial Final Decision as to Findings of Fact and Conclusions of Law Only (hereinafter "Partial Decision") dated January 11, 2018. After hearing from the Parties and considering the Partial Decision, which is attached hereto and incorporated by reference, as well as Petitioner's Memorandum on Sanction, the Board amends the Partial Decision by adding the following:

Sanction

The record demonstrates that the Respondent engaged in conduct that placed into question his competence to practice medicine including, but not limited to, gross misconduct in the practice of medicine, in violation of G.L. c. 112, § 5(c) and 243 CMR 1.03(5)(a)3, and engaged in conduct that undermines the public confidence in the integrity of the medical profession, in violation of the standards set forth in *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982); *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979).

Upon consideration of the entirety of the record before the Board, it is appropriate for the Board to sanction the Respondent in order to fulfill the Board's obligation to protect the public health, safety and welfare. See *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979). After a hearing, the Board may "revoke, suspend, or cancel the certificate of registration or reprimand, censure, impose a fine...require a

course of education or training or otherwise” discipline a physician. See G.L. c. 112, § 5, paragraph 9(c).

In cases involving misconduct, the Board has distinguished between misconduct and gross misconduct, as has the Supreme Judicial Court in the case of *Hellman v. Board of Registration in Medicine*, 404 Mass. 800, 804 (1989): “[m]isconduct, in general, is improper conduct or wrong behavior” that is “willed and intentional,” whereas gross misconduct is “flagrant and extreme.”

In cases involving gross misconduct, the Board has imposed the most severe sanctions, indefinite suspension of a physician’s license to practice medicine and revocation of a physician’s license to practice medicine. See *In the Matter of Robert Kohn, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2015-011 (Final Decision and Order, December 22, 2016)(Board imposed indefinite suspension of the physician’s license and set forth conditions for resumed practice, where physician engaged in gross misconduct in his interactions with a psychiatric patient, including his violation of a policy concerning the use of seclusion and restraints.) and *In the Matter of Anthony Perrone, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2014-020 (Final Decision and Order, May 25, 2017)(Board imposed license revocation, where physician engaged in gross misconduct by engaging in cybersex and text messaging with a patient.)

In the present matter, the Respondent’s acts, relating to surgery he performed on September 7, 2013, demonstrated flagrant disregard for numerous surgical risk management protocols that ensure patient safety, including but not limited to: failing to maintain a sterile operative field, failing to advise the surgical team of a planned shift from a laparoscopic procedure to an open procedure, contaminating a needle with blood from both the anesthetized patient and a surgical technician and then refusing to remove the needle from the sterile field for testing. The Board has determined that the acts of the Respondent, when considered together, constitute a serious departure from good and accepted medical practice and a complete abrogation of responsibility for the safety of both the anesthetized patient and the Respondent’s co-workers. The Board hereby REVOKES the Respondent’s inchoate right to renew his license, which lapsed on March 30, 2015.

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 suspension. 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: February 22, 2018

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair