

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION IN MEDICINE

Adjudicatory Case No. 2013-055 (RM-13-546)

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In the Matter of )  
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)

LUIS SANTIAGO-CRUZ, M.D. )  
\_\_\_\_\_)

Final Decision and Order

This matter came before the Board of Registration in Medicine (the “Board”) for final disposition on the basis of the Administrative Magistrate’s Recommended Decision, dated October 24, 2014. On November 3, 2014, the Respondent filed one objection to the Findings of Fact in the Recommended Decision (“Decision”).<sup>1</sup> After full consideration of the Respondent’s Objection, Ruling on Petitioner’s Motion for Reconsideration, Complaint Counsel’s Memorandum on Disposition, the Respondent’s Memorandum on Disposition, the letters supporting the Respondent,<sup>2</sup> the Victim Impact Statement, and the Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Recommended Decision, amending it by deleting Finding of Fact number 7 and adding the following:

Findings of Fact

7. Early on in his relationship with Patient A, the Respondent texted her that he believed that his wife had engaged in an affair with another man.

<sup>1</sup> The Respondent’s objection to the Findings of Fact in the Recommended Decision was also filed with the Administrative Magistrate. On November 7, 2014, the Administrative Magistrate revised the original Finding of Fact number 7 to read “Early on in his relationship with Patient A, the Respondent texted her that he believed that his wife had engaged in an affair with another man.” Because this is not part of the Recommended Decision, Finding of Fact number 7 has been added to the Final Decision and Order for the sake of clarity.

<sup>2</sup> The Board accepts the letters of support submitted by the Respondent solely on the issue of sanction.

### Sanction

The record establishes that the Respondent has:

- engaged in conduct which places into question his competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions in violation of 243 CMR § 1.03(5)(a)3;
- committed misconduct in the practice of medicine in violation of 243 CMR § 1.03(5)(a)18;
- demonstrated a lack of good moral character and engaged in conduct that undermines the public confidence in the integrity of the medical profession See, Raymond v. Board of Registration in Med., 387 Mass. 708 (1982); and Levy v. Board of Registration in Med., 378 Mass. 519 (1979);
- violated 243 CMR § 1.03(5)(a)(2), which prohibits committing an offense against the laws or regulations relating to the practice of medicine by violating G. L. c. 94C, § 19(a), which requires that a physician issue prescriptions for controlled substances for a legitimate medical purpose and in the usual course of his medical practice; and
- violated 243 CMR § 1.03(5)(a)11 by violating 243 CMR § 2.07(13)(a), which requires a physician maintain a medical record for each patient that is adequate to enable the licensee or another physician to provide proper diagnosis and treatment, and to maintain a patient's medical record in a manner that permits the former patient or successor physician reasonable access to the medical records.

When a physician has engaged in sexual misconduct with a patient the Board has typically revoked the physician's license to practice medicine. See, 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 at least five years, unless the Board orders otherwise." 243 CMR § 1.05(3)(b).

When determining whether to allow a physician to petition for reinstatement in less than five years, the Board has considered a variety of factors, including but not limited to the following: (1) whether the sexual misconduct was intermingled with other misconduct; (2) whether the patient was particularly vulnerable; (3) the number of

patients involved; (4) the length of the misconduct; (5) whether the physician-patient relationship terminated prior to the sexual relationship; (6) whether the physician self-reported the misconduct, admitted the misconduct, and cooperated with the Board; and (7) prior misconduct. 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); and 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).

While the Board considers these factors, there is not an assigned weight to each factor, nor is a formula applied. The Board's determination whether to permit a petition prior to five years is integrally intertwined with its mission; to ensure public health, safety and welfare.

The Respondent's sexual misconduct was intermingled with other misconduct. The Magistrate concluded that the Respondent breached the confidentiality of three non-patients when he accessed each individual's medical records while Patient A was present. The Respondent also sent Patient A by way of a text message a photo of his patient list. See, In the Matter of Josephine Scotto DiCarlo, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2006-040 (Final Decision and Order, December 20, 2006) (physician who accessed the medical records of a non-patient and then disclosed medical information to a third-party without a valid medical purpose had her license to practice medicine suspended, suspension was stayed upon payment of a \$2,500 fine). The Magistrate also concluded that the Respondent engaged in multiple prescribing violations. See, In the Matter of R. James Klingenstein, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2012-012 (Consent Order, April 11, 2012) (physician who engaged in multiple prescribing violations with multiple patients had his license to

practice medicine indefinitely suspended, suspension to be stayed upon entering into a five-year Probation Agreement). For example, the Magistrate found that the Respondent issued multiple prescriptions to Patient A's son without examining him. The Magistrate found that the Respondent prescribed Patient A medication without seeing her and without documenting the prescriptions in her medical record. On one occasion, the Respondent "succumbed to [Patient A's] request for anti-anxiety medication and prescribed her six times more of a dosage of the drug in the benzodiazepine class than was necessary." Decision at 15. Specifically, the Magistrate found that the Respondent prescribed "Patient A medications over the course of weeks not because he had a legitimate medical purpose for doing so, but rather because he was attracted to her and wanted to continue their torrid sexual relationship." Decision at 15-16. The Respondent lied to his employer and the Board about his relationship with Patient A, and testified at the "hearing in untruthful manner[.]" Decision at 17.

Another factor for the Board to consider is whether the patient was particularly vulnerable. Patient A testified at the hearing. The Magistrate found that the Respondent had knowledge that Patient A "suffered from anxiety and that she had been experiencing personal difficulties." Decision at 14. The Magistrate found that Patient A's history of anxiety made her potentially vulnerable and that the Respondent "took advantage of any vulnerability by simultaneously pursuing a sexual/romantic relationship while offering to treat and relieve her of some of her anxiety." Decision at 15.

An additional factor is the length of the misconduct, which in this case is approximately two months. On its face, the short duration of the misconduct appears to favor the Respondent; however, the record shows that the Respondent became Patient A's Primary Care Physician ("PCP") almost simultaneous with the commencement of his

romantic/sexual relationship with her. Decision at 14. Although the Respondent's misconduct was relatively short, almost two months, focusing solely on the duration of the misconduct detracts from the simple fact that his misconduct was present the entire time that the Respondent was Patient A's PCP.

The Board should also take into consideration whether the physician-patient relationship was terminated before the commencement of the sexual relationship. The physician-patient relationship was not terminated prior to the Respondent and Patient A starting their sexual relationship. In fact, the opposite occurred here, the Respondent became Patient A's PCP on "or about the same time as he began a personal/sexual relationship with her." Decision at 14. The record reflects that the Respondent became Patient A's PCP on March 6, 2014. During this appointment Patient A asked for anti-anxiety medication and the Respondent "wrote a prescription for six 5 milligram tablets, six times more than the common medical treatment for Patient A's anxiety." Decision at 6. Later that same day, after the Respondent had seen Patient A in his office, they had lunch. The following night, March 7, 2014, the Respondent and Patient A had "sexual contact" in his office.

In determining the appropriate length of a physician's license revocation, the Board may also look at whether the physician self-reported the misconduct, admitted the misconduct, and cooperated with the Board. In the instant case, the Respondent did not self-report his misconduct. The Respondent did however enter into a Voluntary Agreement Not to Practice and admitted to certain aspects of his conduct. The Respondent's limited cooperation, however is undermined by the Magistrate's findings that the Respondent "lied to the Board about his relationship with Patient A" and that the Respondent "testified at the hearing in an untruthful manner that is belied by the myriad,

detailed and sexually explicit text messages as well as Patient A's statements to police and the Board." Decision at 17.

The Board should also consider the Respondent's lack of a history of misconduct and the fact that the sexual misconduct in this case involved only a single patient. These two factors; however, are woefully outweighed by the totality of the circumstances. The Respondent commenced a sexual/romantic relationship with Patient A almost immediately upon becoming her PCP. Patient A was vulnerable and the Respondent took advantage of her vulnerability by simultaneously pursuing a "sexual/romantic relationship while offering to treat and relieve her of some of her anxiety." Decision at 15. Furthermore, the Respondent wrote Patient A prescriptions for medications "over the course of several weeks not because he had a legitimate medical purpose for doing so, but rather because he was attracted to [Patient A] and wanted to continue their torrid sexual relationship." Decision at 15-16.

The Respondent had an inappropriate sexual/romantic relationship with a patient and engaged in other types of misconduct. The Board's decision to revoke the Respondent's license to practice medicine for five years is based on the totality of the circumstances. The Board hereby terminates the Respondent's Voluntary Agreement Not to Practice, and REVOKES the Respondent's inchoate right to renew his license to practice medicine. Due to the egregious nature of the Respondent's conduct the revocation of his inchoate right to renew his license to practice medicine is not being made retroactive to the date that he entered into the Voluntary Agreement Not to Practice. This sanction is imposed for each violation of law and not a combination of any or all the violations of law.

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.

*Candice Lapidus Sloane, MD*

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Candice Lapidus Sloane, M.D.  
Board Chair

Date: April 2, 2015

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