

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No RM-08-376
Date.

Gary M. Brockington, M.D.,
Respondent

Appearance for Petitioner:

Gloria Brooks, Esq.
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Paul Cirel, Esq.
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600 Atlantic Avenue
Boston, MA 02210

Administrative Magistrate:

Sarah H. Luick, Esq.

Summary of Recommended Decision

Petitioner has met its burden of proof by a preponderance of the evidence and shown that Respondent engaged in sexual misconduct with his patient over the course of a few weeks when he knew the physician-patient relationship had not fully ended. No other boundary violations were proven.

RECOMMENDED DECISION

On June 4, 2008, the Petitioner, the Board of Registration in Medicine, issued a Statement of Allegations ordering the Respondent, Gary M. Brockington, M.D., to show cause why he should not be disciplined based on his conduct with Patient A (Pt. A) during the time he lived in her home at the start of a medical leave of absence from his medical practice when he

81
8-10/06/11

11-09-11
10:06/11

engaged in a sexual relationship with her for a few weeks¹ The Statement of Allegations charges that he and Pt A had not ended the physician-patient relationship at the time ("A") Dr Brockington answered the Statement of Allegations on June 27, 2008, agreeing that he had a brief sexual relationship with Pt A, but that she was a former patient at the time. ("B")

On June 4, 2008, the Petitioner referred the matter to the Division of Administrative Law Appeals (DALA) for an adjudicatory hearing ("A") A pre-hearing conference was held July 7, 2008 at the DALA offices, 98 North Washington St, 4th floor, Boston, MA 02114 Thereafter, the parties engaged in discovery and worked on a stipulation agreement The parties filed stipulations dated October 6, 2008 ("C") Thereafter, a discovery dispute arose The Respondent sought discovery of all the peer review documents that the Petitioner had obtained The Petitioner objected to turning over all of the peer review documents The Respondent filed a Motion to Compel Discovery, and the Petitioner filed an objection. Both parties filed briefs A ruling was issued on June 10, 2010, denying the Respondent's motion. ("D") Prior to the start of the hearing, the Petitioner filed a Motion for Summary Decision The Respondent filed an objection to the motion A ruling was issued on May 6, 2011, denying the motion ("E")

The hearing was held May 9, 2011, at the DALA offices The hearing was transcribed Various documents are in evidence (Exs 1 - 22) The Respondent, the only witness, was called by the Petitioner The parties filed briefs and reply briefs by September 12, 2011 ("F" & "G")

FINDINGS OF FACT

These findings are based on the stipulations of the parties, the documentary and testimonial evidence presented at the hearing, and the reasonable inferences drawn therefrom

1 Gary M Brockington, d o b October 5, 1958, is a summa cum laude graduate of Fisk University and a 1984 graduate of Tufts University School of Medicine He has been licensed to practice medicine in Massachusetts from 1988 under certificate number 59672 He is

¹ In connection with issuance of the Statement of Allegations on June 4, 2008, Petitioner ordered the use of a pseudonym for the patient's name, and ordered that all her medical records involved in the case be impounded ("A") All documents in evidence, the filings made in the case, and the hearing transcript have redacted the name of the patient and just show Pt A.

board certified in internal medicine and in cardiovascular disease. He is affiliated with the Faulkner Hospital and performed his internship and residency there, including being Chief Resident for a year. He did a fellowship in cardiology at the New England Medical Center before returning to practice at the Faulkner Hospital in 1991 where he still practices. He has never had a malpractice judgment entered against him. He has no disciplinary record with the Board of Registration in Medicine ("C" Stipulation at hearing. Testimony)

2. Dr. Brockington has a sub-specialty in pacemaker technology. He has done research on electrophysiology and pacemaker technology with Mark Estes when Dr. Estes was the Director of Electrophysiology and Arrhythmia at Tufts University School of Medicine. They invented the number one selling device in the world for five years for placing pacemakers. Dr. Brockington has published on issues about cardiology, heart failure, constricted pericarditis, and pacemaker technology. He has a board certified specialty in pacing through the North American Society for Pacing and Electrophysiology (Testimony)

3. Dr. Brockington also worked on the development of a stethoscope that compares the frequency of about 600 sounds from a patient that are recorded into an internet sound that can be wirelessly available to tell the listener the cause of the sound such as a heart murmur. The device also feeds into an updated information file to list what the current treatment is for the particular problem (Testimony)

4. At the Faulkner Hospital there is a Pacing Lab that is shared with an Interventional Cardiology Lab. Dr. Brockington assesses patients who are candidates for various kinds of pacemakers. He determines if the patient needs one, inserts any needed pacemaker, and follows the person at the Pacing Arrhythmia Clinic where he has been the Director from 1992. The clinic sees about 2,600 persons at any given time. Dr. Brockington also has a private practice at the Faulkner Hospital where he sees patients that have cardiovascular or vascular disorders and internal medicine problems. He is sent referrals from physicians. Among the persons he treats are Faulkner Hospital employees. Every third month at the Faulkner Hospital, Dr. Brockington

directs the Intensive Care Unit. He ensures patients are handled correctly, is responsible for all admissions to it, supervises the physicians, and teaches Residents and Fellows about various procedures (Testimony)

5 When he first evaluated Pt. A in 1998 upon receiving a referral from her primary care physician for assessment of a cardiology issue, she was known to Dr. Brockington as a Faulkner Hospital staff technician who worked with him at times. She worked as a cross-technician in radiology and in the operating room. When she worked with Dr. Brockington, she would hand him medical pieces needed during the course of inserting pacemakers. By about 2000, he was her primary care physician, seeing her at his Faulkner Hospital office. Her last office visit was in April 2006 ("C" Testimony)

6 Dr. Brockington saw Pt. A for a combination of palpitations, atypical chest pains, migraine headaches, and a sleep disorder. He prescribed various medications to help her, and he evaluated her at periodic office visits. He also evaluated Pt. A's husband a few times, but he never became his primary care physician (Ex 20 "C" Testimony)

7 Leading up to the Spring 2006 time period, Dr. Brockington had endured a three-year long divorce process. As a result of the divorce, he took full responsibility for the finances from the marriage, and was left bankrupt. During this same time period, Dr. Brockington's only sibling, a sister, broke her neck and became wheelchair bound. At the time, she had two and four year old children, and her husband had left her. Dr. Brockington became a secondary legal guardian for the children. By the Spring 2006, Dr. Brockington was residing in a rental apartment, and learned he would need to move because the apartment was becoming a condominium. By this time, Dr. Brockington was experiencing a lot of stress and feeling despondent due to his personal life difficulties. He took a medical leave of absence from his practice and other medical responsibilities at the Faulkner Hospital. He maintained his office staff so that he could keep track of his patients even if he was not treating them directly while on

10/06/11

his leave of absence Dr Brockington asked some of the Faulkner Hospital staff if they knew of a place he could rent or stay in temporarily Pt A learned about his inquiry She and her husband gave him permission to stay in their home's basement. ("C" Testimony)

8. During the year Spring 2005 - Spring 2006, Dr Brockington saw Pt. A for office visits on at least May 13, 2005, June 1 and 16, 2005, August 25, 2005; October 5 and 26, 2005, November 17, 2005, and, December 20, 2005 An April 4, 2006 office visit was scheduled, but Pt. A did not appear for it He saw her April 12, 2006 An April 18, 2006 scheduled visit did not occur (Exs 1, 2, 4, 19 & 20)

9 The April 12, 2006 office visit involved Pt. A's symptoms of depression and anxiety in connection with her father's recent death Pt. A had witnessed his death due to a difficult terminal illness Dr Brockington gave Pt A a physical examination and he addressed her emotional suffering He prescribed continued use of certain medications and recommended counseling Pt. A's husband and mother joined her for a discussion with Dr Brockington about coping with her father's death The visit lasted about two hours Dr Brockington wrote a note about this office visit in two parts, one while giving the examination and the other after Pt. A had left the office Nothing in the visit notes mentioned that he would be terminating his care with Pt. A (Exs 1 & 2 Testimony)

10 After the April 12, 2006 visit, Dr Brockington accepted the offer of Pt A and her husband. He spoke to Pt A the day he moved into the basement in early May 2006, and explained that by residing in her home, he could no longer be her primary care physician He felt she understood, and he intended this to also mean being her cardiologist He offered to help her line up a new primary care physician Dr Brockington did not have any office visits with her, prescribe new medications, or perform any physical examinations on her after April 12,

10706/11

10/06/11

Patient A, as we discussed, I cannot be your primary [care physician] However, you have yet to find someone to replace me If intermittent pain recurs before you do get a primary, here is a blood slip and [an] ultrasound [slip] I would get if it recurs *fear of abandonment

12 Pt A did not undergo the ultrasound test at the Faulkner Hospital until June 29,
2006 (Ex 8 Testimony)

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with checks for him to sign, and with forms for him to fill out for his patients, including for Pt.

A This included forms for refills of ongoing prescriptions and requisition slips for recommended tests. If Pt A had stopped taking her medications, she could have suffered serious withdrawal symptoms (Testimony)

14 While on his medical leave of absence, Dr Brockington renewed Pt A's prescriptions on or about June 6, 2006 while he was residing in her basement. He again renewed prescriptions for her after he was residing elsewhere, and after he permanently returned in October 2006 to his active practice. This included prescribing on or about August 2, 22 and 23, 2006, and on or about January 17, 22, 23 and 30, 2007. He did this because Pt A did not have a new primary care physician to do this prescribing. Pt A did not necessarily fill each prescription refill on the day Dr Brockington wrote the renewal prescription (Exs 10 & 11 "C" Testimony Stipulation to #s 6, 11, 12, 13, 15, 16, 17 & 18 in "A")

15 During about a two week time period between about June 13 - 29, 2006, Dr Brockington and Pt A engaged in a sexual relationship while he was still on his medical leave of absence and while he was residing in Pt A's basement. Pt A proposed this relationship. Dr Brockington initially resisted the proposal, but Pt A persisted. She visited him in the middle of the night. Even when he locked the door at night, Pt A used her key to enter. Dr Brockington eventually agreed to Pt A's proposal, and they engaged in a mutually agreeable sexual relationship ("C" Testimony)

16 When Dr Brockington decided to call off the relationship, it stopped, even though Pt A wanted it to continue. This occurred while he was still residing in the basement and while he was still on his leave of absence. Once the relationship stopped, he began looking for another place to live ("C" Testimony)

10/06/11

17 At the time he decided to engage in the sexual relationship, Dr Brockington was aware that Pt A had not secured a new primary care physician and was seeking help for her ongoing care needs from him through refills of prescriptions and by coming to him with physical complaints that led to him giving her requisition slips for tests. Before commencing the sexual relationship, he did not require that Pt. A first secure a new primary care physician and wait until he moved out of her home (Testimony)

18 While still residing in Pt A's basement and when the sexual relationship was occurring, Dr Brockington was present when Pt A and her husband had a verbal fight. At one point Dr. Brockington felt Pt A's husband had struck Pt. A on the face and was about to strike her again. He physically intervened between them and this stopped Pt. A's husband from making any further physical threats against Pt A. Dr Brockington had observed a deteriorating and poor relationship between Pt A and her husband on prior occasions while residing with them. He was aware of this by the time the sexual relationship with Pt A started through the time it ended. (Testimony)

19 While residing in the basement, Dr Brockington did not tell Pt. A's husband about the sexual relationship he was having with Pt A. The incident where he intervened occurred close in time to when he stopped the sexual relationship and decided to move out. Dr Brockington moved out by at least July 4, 2006 (Testimony)

20 Despite the end of the sexual relationship and when Dr Brockington was residing elsewhere, Pt A did not secure a new primary care physician. She continued to seek refills of prescriptions from him. Dr Brockington only refilled her prescriptions for fear of abandonment of care issues. He never told Pt A he would again become her primary care physician even after he moved out of her home and even after he returned to his Faulkner Hospital practice once his

10/06/11

21. On at least one occasion after Dr Brockington had stopped residing in Pt A's basement and was residing elsewhere, Pt A came to his door to talk to him about resuming their intimate relationship. He would not let her inside his home. She left when he told her he would not resume the relationship. Once she left, he decided he would inform Pt A's husband about the sexual relationship to see if her husband could stop Pt A from pursuing the relationship and to get her to secure a new primary care physician. (Testimony.)

22 Dr Brockington met with Pt. A's husband and told him about the sexual relationship. Her husband was very upset. He also acknowledged that he and his wife were in counseling, and that he would seek to end her pursuit of Dr Brockington. He offered to help with securing a new primary care physician for Pt. A. (Testimony)

23 Pt A never again spoke to Dr Brockington after coming to his home when he told her he would not resume the sexual relationship (Testimony)

24 When Dr Brockington returned to his practice after ending his medical leave of absence in October 2006, he had many patient forms to review and sign, including some about Pt A's care For tests he was aware of and for requisition slips he had given to Pt A, Dr Brockington signed the forms to support the tests as part of Pt A's care plan for purposes of her health insurance coverage Because Pt A had not secured a new primary care physician even by October 2006, Dr Brockington continued to be listed as Pt A's primary care physician so that he received various test results from procedures he had not ordered These would have included tests ordered by other physicians Pt A saw for some of her specialty health needs such as for a mammogram and related tests, for a brain MRI, and for blood work regarding an inflammatory disease process including Lupus (Exs 15, 16, 17 & 18 Testimony)

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25 In December 2006, the Faulkner Hospital received an anonymous report that Dr Brockington had engaged in a sexual relationship with one of his patients who was not named. The hospital confronted him with the allegation. At first he denied the allegation, but then revealed the circumstances of his sexual relationship with Pt. A to the Chief of the Faulkner Hospital Medical Staff ("C" Testimony)

26 After the meeting with Pt. A's husband, after he had returned to his practice, and after he revealed to the Chief Physician at the Faulkner Hospital he had a sexual relationship with Pt. A, Dr. Brockington sent Pt. A a termination letter dated December 26, 2006. He signed the letter that was composed on his office stationery (Testimony). He wrote

This is a letter to inform you that under the circumstances it would probably be advisable that a new physician take over your medical care. My office is happy to provide you with several recommendations or we would also be happy to send records to any physician of your choice. It has been a privilege handling your care for the last 11 years and I wish you the best in the future. If there are any questions please feel free to contact my office manager.

(Ex. 13)

27 By letter to Dr. Brockington of January 19, 2007, Pt. A and her husband asked him to forward their medical records to them "as soon as possible" (Ex. 14)

28 The Board of Registration in Medicine learned of the allegation of Dr. Brockington having a sexual relationship with Pt. A, and began an investigation of the allegation. Dr. Brockington acknowledged this sexual relationship with Pt. A to the Board's investigators during an interview with them in April 2007 ("C" Testimony)

29 On June 4, 2008, the Board of Registration in Medicine issued a Statement of Allegations against Dr. Brockington for having had a sexual relationship with Pt. A. The Board alleged, that at the time, Dr. Brockington was in a physician-patient relationship with Pt. A as her primary care physician and cardiologist. To support its claim of the physician-patient

51-115378-10706/11

relationship, the Board cited the prescriptions Dr Brockington wrote for Pt. A after he had moved into her home and after they had the sexual relationship. The Board relied on Dr Brockington's admission that he had engaged in a sexual relationship with Pt. A. ("A") Dr Brockington denied to the Board that he had engaged in a sexual relationship with Pt. A while they were in a physician-patient relationship ("B")

30. The Statement of Allegations also charged Dr Brockington with having "engaged in prescribing violations, [and] boundary violations" in his conduct with Pt. A. ("A")

31 The American Medical Association's Code of Medical Ethics at Opinion 8.14 from 1992, titled "Sexual Misconduct in the Practice of Medicine," reads as follows

Sexual contact that occurs concurrent with the patient physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

(Ex. 3)

32 The American Medical Association's Code of Medical Ethics at Opinion 8.11.5 from 1996, titled "Termination of the Physician-Patient Relationship," reads as follows

Physicians have an obligation to support continuity of care for their patients. While physicians have the option of withdrawing from a case, they cannot do so without giving notice to the patient, the relatives, or responsible friends.

sufficiently long in advance of withdrawal to permit another medical attendant to be secured

(Ex 22)

33 Dr Brockington was always aware that he needed to avoid having a sexual relationship with Pt A while he was in a physician-patient relationship with her. He knew he had an obligation not to permit Pt A to suffer adverse medical consequences from withdrawing as her primary care physician before she had a new physician to take over the care he had been giving her. He had not sought any advice, or read the American Medical Association Code of Medical Ethics Opinions, before he began the sexual relationship (Testimony)

Conclusion and Recommendation

Legal Bases in Statement of Allegations:

Hellman v Board of Registration in Medicine, 404 Mass 800, 804 (1989) addresses what misconduct and gross misconduct mean in the practice of medicine

'Misconduct,' in general, is improper conduct or wrong behavior . [I]t 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 of 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. 'Gross' is generally defined as 'flagrant' and 'extreme.'" *State ex rel Gremillion v O'Hara*, 252 La. 540, 552 (1968). Webster's New International Dictionary 1106 (2d ed 1959), defines "gross" in part to mean "[o]ut of all measure, beyond allowance, not to be excused, flagrant, shameful, as, a gross injustice."

The Board of Registration in Medicine charged Dr Brockington with violations of the standards of conduct set forth in M G L c 112, § 5(c) and 243 CMR 1 03(5)(a)3 and 243 CMR 1 03(5)(a)18. The Board charged Dr Brockington with engaging in conduct that calls into question his ability to practice medicine, including engaging in gross misconduct. The Board cited the cases of *Levy v Board of Registration in Medicine*, 378 Mass 519 (1979) and *Raymond*

v Board of Registration in Medicine, 387 Mass 708 (1982), for the authority it has to discipline physicians for lack of good moral character and for engaging in conduct that undermines the public's confidence in the integrity of the medical profession

In order for the Board of Registration in Medicine to prevail on its Statement of Allegations, it has to prove, by a preponderance of the evidence, that Dr Brockington and Pt. A had not fully terminated their physician-patient relationship at the time of the sexual relationship. I conclude there is sufficient proof to show that the Board has satisfied this burden of proof. *Craven v State Ethics Commission*, 390 Mass 191, 200 (1983). I conclude that at the time they started the sexual relationship, Dr Brockington was living in Pt. A's home, had sufficient knowledge that Pt. A had not secured a new primary care physician, was still viewing him as her primary care physician, and that she needed ongoing medical care for her health conditions. Such findings show that Dr Brockington knew the physician-patient relationship had not fully concluded and that he violated these legal standards when he engaged in the sexual relationship.

In reaching this conclusion, I referred to the American Medical Association Code of Ethics at Opinions 8.14 and 8.115 for guidance in determining if Dr Brockington had a sexual relationship with only a former patient (Exs 3 & 22). The Board of Registration in Medicine is able to rely on codes and guidelines that show a physician's ethical and professional obligations, and that show a physician's conduct has undermined the public's confidence in the integrity of the medical profession. *Sugarman v Board of Registration in Medicine*, 422 Mass 338, 343-344 (1996), *Aronoff v Board of Registration in Medicine*, 420 Mass 830, 834 (1995). The American Medical Association Code of Medical Ethics at Opinions 8.14 and 8.115 support this conclusion on the particular set of circumstances that existed at the time the sexual relationship commenced.

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I conclude Dr Brockington only moved into Pt A's home to gain temporary housing when his apartment was being sold as a condominium and when he started a medical leave of absence from his practice because of difficult stresses he was facing in his personal life I believe him that he did not engineer moving into Pt. A's home in hopes that they would have a sexual relationship I believe his intention upon moving into Pt. A's home was to end the physician-patient relationship, and that he attempted to do this with Pt. A as well as he knew how But, I also conclude he was well aware that his efforts were not succeeding, and that he entered into the sexual relationship with Pt A knowing the physician-patient relationship had not fully concluded The note he kept on what he did for Pt. A on May 16, 2006 and the note he made when renewing her ongoing prescriptions on June 6, 2006, show he was concerned Pt A may not have viewed the physician-patient relationship as over. In addition, his office continued to be run in his absence, and he received no indication from his office that Pt. A had secured a new primary care physician His office was running in his absence because he did not terminate his physician-patient relationships with all his existing patients who would periodically during his absence need the kinds of attention he provided to Pt A Moreover, there were further steps he could have taken toward ensuring there was an end to the physician-patient relationship before commencing the sexual relationship He could have but did not, consult guides and regulations regarding how to ensure an end to the physician-patient relationship and under what circumstances he could enter into a sexual relationship with a former patient

I conclude Dr Brockington voluntarily and intentionally engaged in the sexual relationship with Pt A, and that it makes no difference for purposes of having committed sexual misconduct whether Pt A seduced him or proposed the sexual relationship I find it is no defense to his misconduct that Dr Brockington was despondent over the stresses in his personal

2023/10/06/11

life, or that he was on a medical leave of absence at the time I find that it is sexual misconduct to engage in a sexual relationship with a patient before a complete end to the physician-patient relationship has occurred Engaging in a sexual relationship while there is still a physician-patient relationship is a boundary violation

The Board of Registration in Medicine also charges Dr Brockington with having "committed an offense against the provisions of the laws of the Commonwealth relating to the practice of medicine or rule or regulation promulgated hereunder," citing to M G L Chapter 94C and M G L c. 112, § 5(h), and related regulations of the Board, i e , 243 CMR 2 07(5) and 243 CMR 1 03(5)(a)11 Because the physician-patient relationship was still in place at the time of the sexual relationship with Pt A, the Board charges Dr Brockington with violating the prescribing rules by prescribing medications and issuing test requisition slips to Pt A I do not find Dr Brockington to have done what the Board charged as to these provisions

At all times that Dr Brockington prescribed medications and issued the test requisition slips to Pt A, he was only addressing continuity of care matters to avoid patient abandonment. He never issued new prescriptions or test requisition slips for any new condition he found Pt A had or might have as a result of any evaluation and/or examination he performed on Pt A He also noted in writing that he was doing these things so that there would be no abandonment of medical care for her, something a physician has to pay attention to during the time period before the patient secures a new primary care physician The findings show, contrary to the Board of Registration in Medicine's arguments, that Dr Brockington did not renew any prescriptions, issue any test requisition slips, or examine or evaluate Pt A during the sexual relationship The findings of fact should not be stretched so far as to find this conduct in and of itself a separate set of violations of the required standards of conduct regarding prescribing practices or any other

boundary violations I did not find even after the sexual relationship had ended that Dr Brockington ever agreed to restart a physician-patient relationship with Pt. A, and to the contrary, continued in good faith to encourage her to secure a new primary care physician

Credibility Determinations

The case of *Herridge v Board of Registration in Medicine*, 424 Mass 201 (1997) makes clear the importance of considering all the evidence and explaining why testimony was believed or not credited Dr Brockington was the only person who testified By the time of the hearing, the parties had developed some stipulations of fact and Dr Brockington had admitted to having a sexual relationship with Pt A during June 2006 while residing in her home I found his testimony was consistent with the stipulations and with his admission

No evidence of any kind addresses whether Pt A agrees with Dr Brockington's admission that he and Pt A had a sexual relationship, or whether she would agree with him that the physician-patient relationship had ended by the time they had the sexual relationship She never testified, no sworn affidavit from her was offered, no other evidence is in the record to show her side of what happened between the two of them I am relying on Dr Brockington's admission against his interests that he and Pt A had a sexual relationship during the time period he acknowledged in June 2006 He testified at the hearing that it occurred His Answer to the Statement of Allegations admits it occurred He stipulated in preparation for the hearing that it occurred. He admitted it occurred to the Faulkner Hospital's Chief Physician He admitted it occurred to the Board of Registration in Medicine during the investigation stage leading up to issuance of the Statement of Allegations

I did not find credible Dr Brockington's claim that he felt Pt A was only a former patient at the time they started the sexual relationship My examination of the evidence showed

10/06/11

2008-06-11 10:06:11

Dr Brockington knew Pt A had not yet secured a new primary care physician at the time they started the sexual relationship. She was engaging in conduct inconsistent with viewing him as only her former physician by asking him to examine her for abdominal complaints on May 16, 2006, and by requesting a renewal of prescriptions on June 6, 2006. This latter date was about five weeks after he told her he was ending their physician-patient relationship. These conclusions are supported by documentary evidence, stipulations, and Dr Brockington's own testimony. Given that Dr Brockington had not produced a termination letter for Pt A at this point, something he acknowledged in his testimony, and given Pt A's failure to secure a new primary care physician, something Dr Brockington was aware of, I conclude there is insufficient proof that the physician-patient relationship had fully ended when the sexual relationship started. If Dr Brockington and Pt A had taken further steps before starting their sexual relationship, his claim that Pt A was a former patient might have been more believable. He could have first moved out of Pt A's home, issued her a termination letter, and required Pt A to secure a new primary care physician. He could have required that a good amount of time pass after all these additional events occurred.

Mitigating Factors

The Board of Registration in Medicine has dealt harshly with physicians who have engaged in sexual misconduct with a patient. *Ingram v Board of Registration in Medicine*, 445 Mass 291 (2005), *Daniels v Board of Registration in Medicine*, 418 Mass 380 (1994). Such misconduct signals a lack of sound professional judgment, a lack of sensitivity regarding the trust a patient places in a physician, and shows a lack of integrity. *Board of Registration in Medicine v Stuart Brink*, RM-05-622 (DALA 2007 at p 34), *In the Matter of Terrence M O'Neill v Board of Registration in Medicine*, Adjudicatory Case No 88-44-TR (Final Decision).

11/28/12
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and Order, August 9, 1994). Dr Brockington's conduct demonstrates these failures. He engaged in the sexual misconduct in the face of Pt A's failure to secure a new primary care physician and while asking for his continued help with her medical care. He engaged in the sexual relationship inside the home she shared with her husband and children. He engaged in the sexual misconduct repeated times.

Nevertheless, in determining a particular sanction for the sexual misconduct, the Board of Registration in Medicine has given consideration to mitigating factors surrounding an offending physician's conduct. I conclude some of Dr Brockington's conduct shows he was trying to do the right thing.

Dr Brockington moved out of Pt A's home as soon as he could once he decided his sexual relationship with Pt A had to end. After he moved out of Pt A's home, he avoided contact with Pt. A, and when she came to his new home to talk to him about resuming the sexual relationship all the while not having secured a new primary care physician, he would not let her into his home and refused her overtures at his door. Moreover, after that encounter, he told Pt. A's husband about the sexual relationship and sought his help in making Pt A secure a new primary care physician. Dr Brockington also acknowledged his sexual relationship with Pt A to the Chief Physician at the Faulkner Hospital, and in his Answer to the Statement of Allegations. Nothing he said in his testimony at the hearing showed anything less than a full acknowledgement that the sexual relationship occurred.

What is also lacking in terms of the evidence presented is any account of particular harms suffered by Pt. A as a result of Dr Brockington's sexual misconduct. Nothing in the record shows Dr. Brockington tricked or maneuvered Pt A to have the sexual relationship with him. His credible testimony is that Pt A proposed the sexual relationship and that he initially resisted.

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Also, after Dr Brockington ended the sexual relationship, he did not abandon Pt A's ongoing medical needs to her jeopardy. He continued to renew her needed prescriptions. He provided her with required physician sign-offs for tests she had while he was on his medical leave of absence. He also continued to try to get her to secure a new primary care physician, including asking for her husband's help.

Dr Brockington has no record of any prior discipline, and has been involved in a successful medical practice that has utilized his medical specialties to the benefit of many patients over the years.

For these reasons, I recommend that the Board of Registration in Medicine impose what it finds to be an appropriate discipline on Dr Brockington for sexual misconduct taking into account these mitigating factors.

**DIVISION OF ADMINISTRATIVE
LAW APPEALS**

Sarah H. Luick
Sarah H. Luick, Esq.
Administrative Magistrate

Dated **OCT - 5 2011**