

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-15-25

Dated: April 27, 2017

Nickolas Soumelidis, M.D.,
Respondent

Appearance for Petitioner:

Tracy Morong, Esq.
Board of Registration in Medicine
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Appearance for Respondent:

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Administrative Magistrate

James P. Rooney

Summary of Amended Decision

Hospitalist who had a brief relationship with a woman who had been his patient did not violate standards relating to sexual relationship with patients or ex-patients. There is no evidence that he had a sexual relationship while she was his patient in the hospital, and there is no evidence that he used his knowledge of her medical problems to exploit her when he had a romantic relationship with her after she was discharged from the hospital.

AMENDED RECOMMENDED DECISION

On January 23, 2015, the Board of Registration in Medicine issued a Statement of Allegations ordering Nickolas Soumelidis, M.D., a hospitalist, to show cause why he should not be disciplined by the Board for having sexual contact with a current or former patient. The Board also moved to summarily suspend Dr. Soumelidis. The doctor agreed to waive a hearing on the summary suspension and move directly to a hearing on the Statement of Allegations.

I held a hearing on June 2, 2015, which was transcribed. Dr. Soumelidis and his former patient (Patient A) testified. I admitted into evidence five exhibits offered by the Board. Both parties submitted briefs on August 7, 2015, when the record closed. Doctor Soumelidis filed AMA Opinion 8.115 with his brief, which I made Exhibit 6. I also made the Statement of Allegations Exhibit 7.

I issued a recommended decision on May 2, 2016. The Board remanded the matter to me on September 8, 2016 with instructions to make additional findings on witness credibility, the conversations the doctor had with Patient A about medication following her discharge, and certain of the electronic communications the two had.

Findings of Fact

Based on the testimony and evidence presented, and the reasonable inferences drawn from them, I make the following findings of fact:

1. Dr. Soumelidis was born in Russia in 1972. He graduated from Kuban State Medical Academy in 1996 and emigrated that year to the United States. He became a U.S. citizen in 2006 and was licensed to practice in Massachusetts in 2007. In 2014, he

lived in Florida with his wife and two children and worked for Medicus Healthcare Solutions, a physician “locum tenens” staffing company that provides doctors with temporary positions. He had been assigned to five or six hospitals in Massachusetts and had not been romantically involved with any of the patients he treated. (Soumelidis testimony; Ex. 7.)

2. In June 2014, Dr. Soumelidis was working as a hospitalist at Sturdy Memorial Hospital in Attleboro. His schedule required him to work seven days, then take seven days off. (Soumelidis testimony; Ex. 7.)

3. Patient A, a 39 year old married woman with three children, had a history of panic attacks for which she had been prescribed Ativan. In early June 2014, she awoke a few nights in a row with her heart racing. On the morning of June 9, 2014, she was anxious when she awoke. The feeling passed, but when she took a shower she felt chest pain, shortness of breath, and her vision dimmed. She took an Ativan, but her symptoms persisted, despite her efforts to calm herself down over the next three hours. Thinking she was going to die, she called her mother, who lived nearby. Her mother called an ambulance, which brought her to Sturdy Memorial. (Patient A testimony; Exs. 4 and 7.)

4. Patient A’s tronopin levels were elevated, and out of concern that she might have had a heart attack, she was admitted. When told that her tronopin level was elevated, she felt worse. The emergency room physician gave her Ativan, a benzodiazepine, to calm her down, lopressor, a blood pressure medication, and lovinox, a blood thinner. Ativan can cause drowsiness, but is not a sedative. The effect of the Ativan dose given to her in

the emergency room would have worn off by the next day. (Patient A and Dr. Soumelidis testimony.)

5. Dr. Soumelidis spoke to her twice in the emergency room about her cholesterol levels. He also asked her about the stresses in her life. Dr. Soumelidis recalled that she told him that raising three children was causing her stress and that her marriage was unhappy. (Soumelidis testimony.) She did not recall meeting him until the next day, after she was admitted. (Patient A testimony.)

6. On June 10, 2014, her troponin levels had decreased and an echocardiogram/ stress test was within the normal range. Dr. Soumelidis diagnosed her with “demand ischemia,” or stress on the heart (but not a heart attack). (Soumelidis testimony.)

7. Dr. Soumelidis spoke to Patient A in her room on the morning of June 10, 2014. He told her that the test results showed that her symptoms came from stress. They spoke further about the stresses in her life, including her children and her husband. The doctor noted that her husband was not at the hospital. He told Patient A that many people have marital difficulty – and admitted that he was one of them. He told her she was beautiful and that she needed to find a way to calm her life down. (Soumelidis and Patient A testimony.)

8. Patient A was discharged that afternoon between 3:00 and 4:00 p.m. Dr. Soumelidis came to her room before she was discharged and gave her a hug, which he described as a hug for good luck. He hugs other patients as well. Patient A found the hug to be strange, but caring. She thought she needed that, and had appreciated Dr.

Soumelidis's willingness to spend time with her and discuss her situation. (Soumelidis and Patient A testimony.)

9. Prior to discharge, Dr. Soumelidis switched Patient A from Ativan to Klonopin, which is longer acting. He told her he was switching her to a longer-acting medication, and told her to follow up with her primary care doctor, as needed, for her anxiety. He also suggested that she follow up with an endocrinologist because she had a relatively high level of thyroid-stimulating hormone. (Soumelidis testimony; Ex. 4.) Patient A's discharge summary, which was prepared by Dr. Soumelidis with a copy sent to Patient A's doctor, shows that she was to take the Klonopin nightly. (Ex. 4.)

10. The doctor-patient relationship between a hospitalist and his patient ends when the patient is discharged from the hospital. Dr. Soumelidis was aware of this. (Soumelidis testimony.)

11. Dr. Soumelidis had found Patient A attractive, but had no intention of attempting to see her after she was discharged. While Patient A was hospitalized, he did not ask Patient A whether he could see her following her discharge from the hospital. (Soumelidis and Patient A testimony).

12. Patient A's mother drove her home, which was within a few minutes drive from the hospital. Patient A had noticed Dr. Soumelidis's name on a board at the hospital. Shortly after she returned home, she looked him up on Facebook and sent him a "friend" request. He responded within ten to fifteen minutes, at around 4:50 p.m. They began exchanging text messages.¹ (Soumelidis and Patient A testimony; Ex. 2.)

¹ The text messages are not in evidence as both Dr. Soumelidis and Patient A deleted them. (Soumelidis and Patient A testimony.) The Facebook communication,

13. Once Patient A had contacted him, Dr. Soumelidis responded on Facebook, “[I] hope you made it home safely. [Y]ou are very beautiful and special person.” They discussed meeting. Dr. Soumelidis told her, “[I] would love to see you before [I] leave if at all possible. [I] don’t want to put pressure on [yo]u.” He then suggested meeting in Providence. The conversation continued:

Patient A: So we are meeting as friends, patient to doctor to discuss more opportunities for help, right?

Dr. Soumelidis: if that’s what you want.

Patient: Well, what do you want?

Dr. Soumelidis: [I] like you and want to get to know [yo]u as a person.

Patient A: Ok. I do as well. But, you do have to realize my hesitation. You are a doctor, [a] married doctor. I am married too. But, we both seem unhappy.

Dr. Soumelidis: we are.

Patient A: But how do I know you don’t do this to every patient?

Dr. Soumelidis: [I] am just an[] u[]nhappy guy who met a nice girl and wants to get to know her. Just need to have some trust in me, Patient A. [I] will not lie to you.

Patient A: I have obviously HUGE anxiety issues. Lol.

Dr. Soumelidis: I did not see you as a patient.”

Patient A: This wouldn’t be good for me to get them worse.

which is mostly from June 10, 2014, is in evidence. (Ex. 2.)

Dr. Soumelidis: [I] saw a beautiful interesting sexy woman in front of me.

That[‘s] why [I] said let[’]s not stress.

(Ex. 2.)

14. Dr. Soumelidis wanted to meet Patient A for dinner and see where that led. They discussed meeting for dinner, but did not make an arrangement. (Soumelidis testimony:

Ex. 2.)

15. During their communication on the evening of June 10, 2014, Dr. Soumelidis and Patient A had two exchanges about medication, as follows:

Patient A: You do relax me.

Dr. Soumelidis: and you me. We are a good medication for each other.

Patient A: Ha ha, yes’m. Yes. So speaking of, I only take [klonopin] at night? What about daytime?

Dr. Soumelidis: lets see what happens. If you feel anxious take it. If not th[e]n no.

Patient A: I feel anxious 24/7.

Dr. Soumelidis: do you know a lot of people in Providence? Not when [I] will be around you.

(Ex. 2, pp. 10-11.)

Dr. Soumelidis: How is your evening going [?]

Patient A: Oh yum!! Lol. I am in a trance. So much meds in me. Lol, feels lovely.

Dr. Soumelidis: Just klonopin. What else?

Patient A: Ativan too. And some type of blood pressure heartbeat relaxer. Every 5 hours. Feeling so relaxed.

Dr. Soumelidis: Or from the hospital. But that should be gone pretty soon.

Patient A: Can I take Ativan with klonopin? Ever?

Dr. Soumelidis: If u need to[. Better not to[. The idea of klonopin is to get rid of Ativan.

Patient A: Oh, ok, got it!! Thanks, doc.

(Ex. 2, pp. 29-32.) These were the only discussions Dr. Soumelidis and Patient A had post-discharge regarding her medications. (Patient A testimony.)

16. The following day, Dr. Soumelidis and Patient A again talked about meeting. Because Dr. Soumelidis did not know that area, they ended up agreeing to meet in a location with which he was familiar: an AutoZone parking lot. They each drove to the lot, got out of their cars and kissed for ten or more minutes. They again talked about meeting the next night for dinner. (Soumelidis and Patient A testimony.)

17. Their plans changed by the next day. Dr. Soumelidis proposed that they meet for dinner in Providence, but Patient A feared that she might run into someone she knew. She therefore suggested that they meet at his hotel. They met at his hotel at around 8:00 p.m. They were intimate, but did not have sex. They agreed to meet again the following day. They later exchanged pictures by phone; one of Dr. Soumelidis's pictures was nude. (Soumelidis and Patient A testimony.)

18. As agreed, they met the next following day at midday for coffee and took a walk in a local park. Dr. Soumelidis told Patient A he would see her again the following week, when he returned to Massachusetts. (Soumelidis and Patient A testimony.)

19. Dr. Soumelidis flew back to Florida the next day. Patient A continued to text him. Dr. Soumelidis's wife found out. Dr. Soumelidis was afraid he would lose his children; his wife had threatened to take them out of the country. He stopped responding

to Patient A's texts. He told her on Facebook that he could not give her the attention she wanted, that he needed to take care of his children, and that he hoped she understood.

(Soumelidis and Patient A testimony; Ex. 2.)

20. Patient A filed a complaint with the Board on December 10, 2014 alleging that Dr. Soumelidis had taken advantage of "her fragile emotional state." (Ex. 1.)

21. Patient A is now divorced. Dr. Soumelidis is separated. (Soumelidis and Patient A testimony.)

Discussion

The Statement of Allegations charges that Dr. Soumelidis violated ethical principles set forth in American Medical Association Code of Ethics Opinion 8.14 by engaging in sexual misconduct when Patient A was his patient and then after the doctor/patient relationship had ended.

AMA Ethics Opinion 8.14 states:

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.

The doctor/patient relationship between Dr. Soumelidis and Patient A should have lasted only so long as she was admitted to the hospital. As a hospitalist, Dr. Soumelidis's doctor/patient relationship with each of his patients ended when he or she left the hospital. Dr. Soumelidis testified to this, and the Board introduced no evidence to show that a hospitalist's relationship with any of his patients may continue following discharge from the hospital. Rather, the Board contends that Dr. Soumelidis engaged in inappropriate sexual conduct with Patient A while she was hospitalized and then, after she was discharged, when she was no longer his patient, he exploited his knowledge of her medical condition for his own sexual purposes.

In reviewing the evidence, I note that I do not regard this in the main as a credibility contest. I found both Dr. Soumelidis and Patient A to be credible, mature witnesses. Their accounts of their relationship coincide for the most part. I have relied upon Dr. Soumelidis's account of his interactions with Patient A when she was first hospitalized because she does not recall meeting him until the following day. Other than that, I have looked to the testimony of both of these witnesses to describe their interactions. The major exception concerns the complaint Patient A filed with the Board.

In it she wrote:

Shortly after I was discharged, Dr. Soumelidis started to text me romantically. Dr. Soumelidis was aware of my fragile emotional state, having counseled me but decided to also pursue me romantically while I was being treated for my panic attacks and depression. . . . In just a few days, he maneuvered himself first into a friend who I relied upon to help me work through my panic, depression and marriage issues, then he quickly initiated a sexual relationship. In some cases, our communications involved treatment, medication issues, and personal matters, mixed together.

(Ex. 1.) These statements are exaggerated or misleading. Patient A conceded in her testimony that she initiated contact with Dr. Soumelidis after her discharge, not the other way around. (Finding 12.) There is no evidence that Dr. Soumelidis planned to take advantage of her “fragile emotional state” or that indeed she was particularly fragile once she recovered from her panic attack and was released from the hospital. She showed some reluctance concerning her a relationship with Dr. Soumelidis, but that was because she was hesitant to embark on an affair. (Finding 13.) The suggestion that he maneuvered her into a sexual relationship is not supported by their lengthy Facebook communications or by their descriptions of the events of the next few days. It was clear from the beginning that both thought they were heading in a direction that was more than friendship – as the ten minutes of kissing when they first met demonstrates. (Finding 16.) Nor is there any evidence that their communications were replete with personal and medical matters intertwined. Patient A acknowledged in her testimony that the two Facebook exchanges they had about her medication were the only post-discharge communication they had about medication. (Finding 15.)

I am not persuaded that Dr. Soumelidis committed any sexual misconduct in his relationship with Patient A while she was hospitalized. During the day or so that Patient A was hospitalized at Sturdy Memorial Hospital, and a doctor/patient relationship existed between Dr. Soumelidis and Patient A, Dr. Soumelidis did not engage in a sexual or romantic interaction with her. He found her attractive, which is not alleged to be a violation of any standard,² and he hugged her once. Hugs can be sexual in nature, but

² In his subsequent Facebook conversation with Patient A, Dr. Soumelidis said he saw her not as a patient, but as “a beautiful interesting sexy woman.” (Finding 13.)

there is no evidence that Dr. Soumelidis, who testified that he hugs many of his patients, meant this hug to be sexual or that, intentionally or otherwise, the hug led to the later relationship. The evidence is, rather, that the doctor had determined that Patient A's heart-related symptoms were caused by anxiety. He questioned her about the sources of that anxiety, and attempted to reassure that her anxiety could be handled if she could find a way to calm her life down. He hugged her, according to him, as a way of wishing her good luck before she was discharged, which was the last contact Dr. Soumelidis thought he would have with Patient A because he did not intend to speak to her after she was discharged. (Findings 8 and 11.) That Patient A found the hug to be strange, but caring, (Finding 8) does not demonstrate that Dr. Soumelidis's intent was sexual. Nor does his questioning her about the sources of her anxiety, including her marital difficulties. Having determined that the physical symptoms that led to Patient A's hospitalization were not caused by a heart attack, but instead by anxiety, Dr. Soumelidis's decision to explore the sources of her anxiety seems medically related to his diagnosis and therefore appropriate. Patient A thought his conversations with her in the hospital showed that he was caring. The Board introduced no evidence to suggest that his discussion with her about her anxiety, including his comment that her husband was not there with her in the hospital, fell below a standard of care or went beyond consideration of facts material to

Whether he meant that this was his view when she was hospitalized or was his view when he said it after she was discharged is not entirely clear. He acknowledged that some of the statements he made to Patient A in their Facebook conversation were exaggerations. For example, he did not attempt to slow down Patient A's discharge so that she would be his patient for a longer period of time. (Soumelidis testimony.) Whatever Dr. Soumelidis meant by this statement, there is no proof that he gave her improper care in the hospital because he was attracted to her.

his anxiety diagnosis. While the Board suggests that Dr. Soumelidis's comments about the absence of Patient A's husband were personally motivated, these comments could just as easily have been made by any doctor treating Patient A, and there is no evidence that the doctor, when he was treating Patient A, ever thought he would see her after she was discharged.

The Board contends that Patient A continued to regard Dr. Soumelidis as her doctor after she was discharged, and that Dr. Soumelidis acted as such when he gave her medical advice about the drug he had prescribed her. I am not persuaded. The Sturdy Hospital records demonstrated that Patient A was discharged to the continuing care of her personal physician. Yet, given the quickness with which the Dr. Soumelidis and Patient A agreed to meet thereafter, it was understandable that Patient A, in her exchange with the doctor on Facebook, would wonder whether they were meeting as friends or as doctor and patient. Dr. Soumelidis's response that he was an "u[n]happy guy who met a nice girl and wants to get to know her" made clear that he did not intend to meet her to continue a doctor/patient relationship. (Finding 13.)

On the evening following Patient A's discharge, they had two brief discussions about medication. Dr. Soumelidis had written Patient A a prescription for Klonopin, which is longer-acting than the Ativan she had been taking. He had told her this before her discharge. The two brief exchanges they had about Klonopin concerned routine questions about when she should take it and whether to continue taking the Ativan she had been using. Dr. Soumelidis's responses mostly reiterated that he had prescribed her Klonopin to replace the Ativan she had been taking. These routine answers to routine

questions from Patient A are insufficient to show that Dr. Soumelidis was continuing to act as Patient A's doctor while pursuing a romantic relationship with her. Her testimony revealed no different understanding on her part. She showed a general respect for doctors, and some surprise that this doctor was considering an affair – and that she was as well. But when she had her two medication questions answered and he had reassured her that he did not do this routinely with female ex-patients, she resumed her exchange with Dr. Soumelidis about their personal relationship, not about doctor/patient matters. If the allegation is that the doctor violated some standard applicable to hospitalists who are asked post-discharge about medications they prescribed, the Board did not introduce any evidence at the hearing of what that standard was or how Dr. Soumelidis violated it.

In her objections to the Recommended Decision, Board counsel asserted that the present case is similar to *Board of Registration in Medicine v. Patel*, Docket No. RM-91-771 (Mass. Div. of Admin. Law App., Sept. 9, 1992). Dr. Patel was an internist at Taunton State Hospital who treated a 19-year old woman admitted as a psychiatric inpatient. This young woman suffered from bipolar disorder and other psychiatric conditions and was contemplating suicide. Although Dr. Patel did not treat the patient for any of her psychiatric conditions, he was aware from interacting with her that she was paranoid and he prescribed her medications to treat her mental health problems (or at least wrote legible prescriptions of medications the patient's psychiatrist had prescribed). After she was discharged, he called her to inform her that tests showed she need to see a urologist, and then immediately asked her for a date. The following day, he met her, engaged in unwanted fondling, told her she could have a drink while on a medication he

had prescribed, and then had sexual intercourse with her. The Board concluded that Dr. Patel had an ongoing doctor/patient relationship when he called her up to give her medical advice and that nothing ended that relationship in the few seconds he took to transition from a medical conversation to one in which he asked for a date. The Board also concluded that he continued to act as her doctor by offering her advice on whether she could drink while taking medication he had prescribed her, and that he had inappropriately “took advantage of a vulnerable, paranoid patient for his own sexual gratification.” *Id.* at 12.

Dr. Soumelidis’s situation is different. There was no discussion in the *Patel* case as to whether an internist’s doctor/patient relationship ends at or around the time a patient is discharged. The opinion assumes it does not, particularly when the doctor continues to contact the patient to follow up on tests performed in the hospital. Here, in contrast, the evidence is that the doctor /patient relationship between a hospitalist and a patient ends when the patient is discharged. And here, as well, it was the patient who contacted the doctor, and the two of them quickly clarified that they were conversing about a personal relationship, rather than continuing a doctor/patient relationship. In this context, the brief interchanges they had thereafter about medication, in which Dr. Soumelidis reiterated how Patient A was to take Klonopin, did not cause the relationship to resume being a doctor/patient relationship. Nor can Dr. Patel’s abusive treatment of a vulnerable 19-year old with serious mental health problems be compared with the relationship between two mature adults here. Patient A had anxiety problems, and Dr. Soumelidis was aware of

them, but there is no preponderance of evidence to show that he sought to use his knowledge of Patient A's anxiety to exploit her.

Still, because Dr. Soumelidis pursued a romantic relationship with Patient A in the days following her discharge, his actions are subject to that portion of AMA Ethics Opinion 8.14 that makes a romantic relationship with a former patient "unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship." Dr. Soumelidis knew Patient A suffered from anxiety and knew she had a panic attack severe enough to land her in the hospital. But as previously mentioned, there is no evidence that he exploited this knowledge during the course of their brief relationship.

Although Patient A testified that she felt sedated while in the hospital, there is no indication that she acted under the influence of medication once out of the hospital or that Dr. Soumelidis took advantage of her as a consequence. Dr. Soumelidis did not make the initial contact with Patient A after her discharge. Indeed, he had no intention of initiating a post-discharge relationship. The evidence does not show, therefore, that he had a plan to exploit Patient A based on what he had learned about her when she was his patient. When Patient A initiated contact, and Dr. Soumelidis responded, his goal was to have dinner with Patient A and see where that led. In their lengthy Facebook exchange on the evening of her discharge, there is no hint that he was trying to use her anxiety to further a sexual relationship with her. Instead, he tries to give her reasons to be calm. When they met the following day and kissed in an AutoZone parking lot, nothing suggests that Dr. Soumelidis was exploiting Patient A in any way. He reiterated an earlier request that

they arrange to meet for dinner. She initially agreed. Her anxiety about being seen by someone she knew led her to back away from this plan, but this was an anxiety that might have been felt by any married person who was planning on having a romantic dinner with someone who was not their spouse. To avoid being seen, Patient A suggested they meet at the doctor's hotel room. There is no evidence that the doctor tricked her into this meeting, or that any of the intimate contact that occurred in the hotel room was influenced by Dr. Soumelidis's knowledge of Patient A's anxiety issues. They met one other time, for coffee and a walk in a park. Nothing about that meeting appears to have had any relationship to Doctor Soumelidis's knowledge of Patient A's anxiety.

As a whole, the evidence is of two adults who met at a time when each of them was having marital problems and who then proceeded to have a brief personal relationship after the doctor/patient relationship had ended with the patient's discharge from the hospital. While this might not have been the wisest idea, there is no evidence that Dr. Soumelidis exploited his knowledge of Patient A to enter into or carry out this relationship. I therefore conclude that Dr. Soumelidis did not violate the standards set forth in AMA Ethics Opinion 8.14 and is accordingly not subject to discipline by the Board of Registration in Medicine.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

James P. Rooney
First Administrative Magistrate

Dated: April 27, 2017