

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

Middlesex, ss.

Adjudicatory Case
No. 2013-013

)
In the Matter of)

)
John E. Fattore, M.D.)
_____)

Final Decision and Order

This matter came before the Board for final disposition on the basis of the Board's Partial Final Decision as to Findings of Fact and Conclusions of Law Only (hereinafter "Partial Final Decision"), dated April 2, 2014. After full consideration of the Partial Final Decision, the Parties' Memoranda on Disposition, the Respondent's Reply to Complaint Counsel's Memorandum on Disposition, and the Victim Impact Statement, the Board amends the Partial Final Decision, which is attached hereto and incorporated by reference, by adding the following:

Sanction

The record demonstrates that the Respondent has committed misconduct in the practice of medicine, practiced medicine deceitfully, engaged in conduct that has the capacity to deceive or defraud, and engaged in conduct that undermines the public confidence in the integrity of the medical profession. Therefore, it is proper for the Board to impose sanction. *See Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982); *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979).

The record demonstrates that the Respondent, who had an interest in a non-patient that was "well beyond casual, friendly, and social,"¹ "used his scrubs, hospital identification, familiarity with the hospital, and familiarity with the nurses to end up in [the non-patient's] recovery bay, with the curtain closed, for no medical purpose." When appearing before this Board and when testifying under oath at the Division of Administrative Law Appeals, the Respondent was "eager to cover his tracks and fudge time."²

¹ *See* Recommended Decision at p. 23.

² *Id.* at p. 18.

The Board determines that, in part, this is a case of first impression. The Board determines that precedent concerning physicians who have intruded on the medical records of non-patients is analogous in some respects. In some instances the Board has imposed a reprimand in cases in which a physician has looked at the records of a patient who was not his/her own. See, e.g., In the Matter of Allison August, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2009-015 (Consent Order, May 20, 2009)(physician reprimanded for accessing electronic records of two patients who were not under her care). In other instances, the Board has imposed a fine and license suspension on physicians who have breached confidentiality and gained unauthorized access to the records of non-patients. See, e.g., In the Matter of Deborah Sichel, M.D., Board of Registration in Medicine, Adjudicatory Case No. 02-58-DALA (Final Decision and Order, September 1, 2004)(indefinite suspension and \$2,500 fine).

The Board acknowledges that the analogy has limitations, since the Respondent “trespassed” not upon a medical record but upon a recently-sedated patient. “Every patient...of a facility shall be provided by the physician in the facility the right to privacy during medical treatment or other rendering of care.” See G.L. c. 111 §70E, ¶6(b).

The Board also determines that, in part, this case is not one of first impression. The Board has imposed a reprimand and a substantial fine, \$10,000, on a physician who repeatedly lied to the Board. See In the Matter of Ann Marie Madigan, M.D., Board of Registration in Medicine, Adjudicatory Case no. 04-030-DALA (Final Decision and Order, July 26, 2006).

The Board considers a physician’s use of the indicia of his profession, as a means to pursue a non-medical, personal objective with a non-patient, antithetical to ensuring patient safety and public health, the missions of the medical profession and this Board. In fashioning a sanction in this case, the Board takes into account the Respondent’s cavalier disregard for the privacy of a non-patient for a self-interested, non-medical purpose. So, too, the Board takes into account the Respondent’s obstruction of the Board’s investigation and DALA’s administrative hearing by attempting to “cover his tracks.”

In consideration of these factors, the Board hereby imposes a REPRIMAND and a \$10,000 FINE to be paid within 60 days of the issuance of this Order. The Board will not renew the license of any physician who fails to pay a fine in a timely manner; this step will be taken automatically, and no further notice or process will apply.

In addition, the Board requires the Respondent:

- to complete a Board-approved course in the maintenance of professional boundaries within six months of this Order and submit documentation of successful completion of the course to the Board;
- to complete 4 hours of Board-approved continuing professional development (CPD) in ethics within six months of this Order; and
- to complete a Board-approved Category 1 CPD course in the rights of hospitalized patients within 90 days of this Order.

This sanction is imposed for each violation of law and not a combination of any or all of them.

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 in the year following the date of imposition of this reprimand. 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.

DATE: June 25, 2014

Candace Lapidus Sloane, MD
Candace Lapidus Sloane
Board Chair

SENT CERTIFIED MAIL 6/26/14 ³ (MS)