

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2015-011
(RM-15-122)

)
In the Matter of)
)

Robert Kohn, M.D.)
_____))

FINAL DECISION AND ORDER

This matter came before the Board for disposition on the basis of the Administrative Magistrate's Recommended Decision, dated July 8, 2016, which is attached hereto and incorporated by reference. Objections to the Recommended Decision were submitted by the Respondent, as well as a Response to Respondent's Objections by the Petitioner. Memoranda on Disposition were submitted by both the Respondent and the Petitioner. After full consideration of the Recommended Decision, Respondent's Objections to the Recommended Decision, Petitioner's Response to Respondent's Objections, Respondent's Memorandum on Disposition, Petitioner's Memorandum on Disposition, and a videotape viewing of the incident in question¹, the Board adopts the Recommended Decision, and adds 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 243 CMR 1.03(5)(a)3; engaged in misconduct in the practice of medicine in violation of 243 CMR 1.03(5)(a)18, and engaged in conduct that undermined the public confidence in the integrity of the medical profession in violation of the standards set forth in Raymond v. Board of Registration in

¹ This videotape was Exhibit 8 at the hearing before the Division of Administrative Law Appeals.

Medicine, 387 Mass. 708 (1982); Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

In specific cases where a physician has committed boundary violations, the Board has determined that indefinite suspension is the appropriate sanction. See In the Matter of Paul Hamburg, M.D., Board of Registration in Medicine, Adjudicatory Case No. 02-47-xx (Consent Order, November 20, 2002) (indefinite suspension with Probation Agreement and workplace monitoring. Psychiatrist travelled to the patient's home for sessions, gave gifts to the patient, allowed the patient to come to his home and hugged the patient during sessions.) See In the Matter of Daniel Davis, M.D., Board of Registration in Medicine, Adjudicatory Case No. 94-35-xx (Consent Judgment², March 9, 1994) (license suspension for five years with right to petition for reinstatement at the conclusion of one year, with Probation Agreement and monitoring. The physician repeatedly asked inappropriate questions of multiple patients. A psychiatric evaluation found the physician's behavior stemmed from his mental state and lack of impulse control.)

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". Where the Board has found misconduct, the Board has often reprimanded psychiatrists. In the Matter of Fredric Schiffer, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2011-0006 (RM-11-74)(Final Decision and Order, April 10, 2013). In that case, the Board determined that the patient had complained of a headache and therefore, the psychiatrist had the patient's best interest in mind when he touched the patient with a massage wand. The Board also took into account mitigating factors: the psychiatrist's immediate acknowledgement of his error, his entry into a Voluntary Agreement Not to Practice, and his long career without reports of any adverse information to the Board. See, e.g., In the Matter of James Philip, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-046-DALA (Final Decision and Order, March 16, 2011)(admonishment for striking a physician and a nurse on the back during an operation to restore quiet in the operating room for the well-being

² A Consent Judgment is the same as the present day Consent Order.

of the patient); In the Matter of Richard Pinegar, M.D., Board of Registration in Medicine, Adjudicatory Case No. 06-010-XX (Consent Order, March 15, 2006) (reprimand for angrily grabbing nurse's arm); In the Matter of Adele Wilkeson, M.D., Board of Registration in Medicine, Adjudicatory Case No. 05-060-XX (Consent Order, December 7, 2005) (reprimand for hitting staff member on head with chart); and In the Matter of H. Scott Breen, M.D., Board of Registration in Medicine, Adjudicatory Case No. 04-40-XX (September 14, 2004) (reprimand for slapping a child-patient).

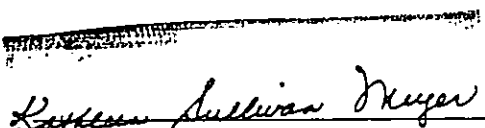
Examples of Massachusetts cases in which physicians were found guilty of gross misconduct are, Forziati v. Board of Registration in Medicine, 333 Mass. 125 (1955) (physician conspired with an attorney over several years to treat patients with personal injuries, arrange to employ the attorney to prosecute their claims and in return, receive substantial sums representing the difference between the amount of the charge for medical services and one half the combined medical and legal charges); Dugdale v. Board of Registration in Medicine, 270 Mass. 65 (1930) (physician informed patient that she had stomach cancer and cancer of the uterus, and that he could cure her. She did not have cancer and the board found that the physician made these statements for the purpose of obtaining money.)

In the present matter, the Board viewed a videotape where the Respondent yelled at the patient, clutched the patient's arm, struck the patient on the back, dragged the patient across the room, slid his hand up to the back of the patient's neck, and stood behind the patient and pushed her head onto a table. The Respondent also shortly thereafter grabbed the arm of a nurse and moved her out of a room. The Board has determined that the acts of the Respondent constitute gross misconduct. The Board hereby INDEFINITELY SUSPENDS the Respondent. The Respondent may petition to stay the suspension after one year, contingent upon 1) the successful completion of a comprehensive, multidisciplinary behavioral health assessment (which includes a neuropsychological evaluation) by a board-approved entity that specializes in the treatment of professional misconduct and disruptive behavior; 2) a total of sixteen (16) hours of Continuing Professional Development credits (CPDs), including ten (10) hours of CPDs in the management of trauma survivor patients, three (3) hours of CPDs in the management of violent patients, and three (3) hours of CPDs in the management of

personality disorders (all CPD requirements are over and above those which are required for renewal), and 3) entry into a five year Probation Agreement. The Probation Agreement shall include requirements for 1) a Board-approved workplace monitor who will make quarterly reports to the Board, 2) compliance with any recommendations made in the behavioral health assessment, and 3) any other requirements that the Board, in its discretion, may impose.

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: December 22, 2016


Kathleen Sullivan Meyer
Vice-Chair
Board of Registration in Medicine