

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, SS

Adjudicatory Case No. 2013-040
(RM-13-461)

In the Matter of)

Matthew Philips, 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 September 5, 2014. On November 19, 2014, the Board considered the Recommended Decision, which is attached hereto and incorporated by reference and the Petitioner's Memorandum on Disposition. The Board adopts the Recommended Decision, including the Stipulation of Facts and Conclusions of Law proposed by the Parties,¹ and imposes the following sanction:

Sanction

The record demonstrates that the Respondent has engaged in conduct that undermines public confidence in the integrity of the medical profession and has engaged in misconduct in the practice of medicine. Specifically, the Stipulation states that the Respondent "failed to conduct himself with adequate sensitivity" during his interaction with Patient A, a patient with terminal esophageal cancer, and with Patient A's wife. The Respondent also criticized Patient A's oncologist in an unprofessional manner to a member of the hospital staff. 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).

In the past, when a physician has engaged in a single incident of disruptive behavior, or the disruptive behavior has occurred on a single day, the Board has imposed an admonishment or reprimand. See, e.g., In the Matter of Umer Sayeed-Shah, M.D.,

¹ Stephen Harten represents Matthew Philips, M.D. James Paikos is the attorney for the Board.

Board of Registration in Medicine, Adjudicatory Case No. 00-22-XX (Consent Order, June 14, 2000)(admonishment and \$2,500 fine for altercation with another physician, when the second physician failed to respond to requests for a patient evaluation.) See also *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 of the patient).

The Board notes that there may be a link, at times, between a physician's frustration and the physician's disruptive behavior. See *Sayeed-Shah and Philip*. See also *In the Matter of Soule-Regine, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2013-042 (Consent Order, September 11, 2013)(reprimand for two instances of disruptive behavior linked to physician's frustrations about the admission of patients the physician believed should have been transferred to other facilities.)

The Board has determined that a physician's discharging frustration on colleagues and staff with disruptive behavior undermines the integrity of the medical profession. The Board considers a physician's discharging frustration on a terminally ill patient, as apparent in the pendant case, antithetical to the tenet expressed in the *Hippocratic Oath*, "First, do no harm," and expressed in the *Hippocratic Oath – Modern Version*,²

I will remember that...warmth, sympathy, and understanding may outweigh the surgeon's knife..."

Consistent with Board precedent, and the Parties' recommended sanction in the Stipulation, the Board ADMONISHES the Respondent and requires him to complete Massachusetts Medical Society's "Managing Workplace Conflict" course within one year from the issuance of this Final Decision and Order.

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

² The "Hippocratic Oath –Modern Version" was written in 1964 by Louis Lasagna, M.D., Academic Dean of the Tufts University School of Medicine.

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; 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 Final Decision and Order. The Respondent is further directed to certify to the Board within ten (10) days that s/he has complied with this directive.

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: November 19, 2014

Candace Lapidus Sloane, MD
Candace Lapidus Sloane, M.D.
Chair
Board of Registration in Medicine

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in
Medicine,
Petitioner

v.

Docket Nos. RM-13-461

Dated: September 5, 2014

Matthew Phillips, M.D.,
Respondent

Appearance for Petitioner:

James Paikos, Esquire
Complaint Counsel
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Stephen P. Harten, Esquire
Ratcliffe, Harten, Burke & Galamaga, LLP
40 Westminster Street
7th Floor, Suite 700
Providence, RI 02903

Administrative Magistrate:

Judithann Burke

CASE SUMMARY

Physician who failed to meet the standard of care, committed misconduct in the practice of medicine, engaged in conduct that undermines the integrity of the medical profession and engaged in conduct that places into question his competence to practice medicine, is subject to discipline by the Board of Registration in Medicine.

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RECEIVED**RECOMMENDED DECISION**

On September 11, 2013, the Petitioner, Board of Registration in Medicine (Board), issued a Statement of Allegations wherein it ordered the Respondent, Matthew Philips, M.D., to show cause why he should not be disciplined because it had reason to believe that: he engaged in conduct which calls into question his competence to practice medicine, G.L. c. 112, § 5, ninth par. (c) and 243 CMR 1.03(5)(a)3; engaged in conduct that undermines the public confidence in the integrity of the medical profession; and, committed misconduct in the practice of medicine. 243 CMR 1.03(5)(a)18. The Statement of Allegations is attached hereto as Attachment A.

On September 13, 2013, the matter was referred to the Division of Administrative Law Appeals (DALA). A pre-hearing conference was held on November 8, 2013. Thereafter, the parties exchanged discovery and entered into negotiations. Three days were set aside for a hearing in May 2014. On April 25, 2014, the parties submitted correspondence that they had signed a Stipulation in this matter that includes Findings of Fact and Conclusions of Law. The Stipulation is attached hereto as Attachment B.

The Stipulation contains fifteen (15) Findings of Fact and two (2) Conclusions of Law, executed by Dr. Philips, his counsel and Board's counsel. The Stipulation is incorporated herein by reference. Other than the facts as stipulated in the Stipulation and the admissions contained therein, I have not taken evidence with respect to the facts of this matter. Based on the facts as stipulated, I conclude that the Conclusions of Law set forth in the Stipulation are warranted and I hereby adopt them.

Based on the foregoing I recommend that the Board impose such discipline on Dr. Philips as it deems appropriate in light of the facts and conclusions of law as stipulated by the parties.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

BY:

Judithann Burke
Judithann Burke
Administrative Magistrate

DATED: September 5, 2014

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COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2013-040

In the Matter of

MATTHEW PHILIPS, M.D.

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Matthew Philips, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 11-420.

Biographical Information

1. The Respondent was born on April 20, 1966. He graduated from the Yale University School of Medicine in 1993. He is certified by the American Board of Neurological Surgery. He has been licensed to practice medicine in Massachusetts under certificate number 161120 since 1999. He has privileges at St. Anne's Hospital, Tobey Hospital, St. Luke's Hospital, and Charlton Hospital.

Factual Allegations

2. From 2001 to 2010, patients, hospital staff, and others complained that the Respondent was rude, used offensive language, was unprofessional, and intimidated staff.

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3. On October 16, 2011, Patient A, a 68-year-old male diagnosed with esophageal cancer, was admitted to St. Anne's Hospital (St. Anne's).
4. St. Anne's determined that Patient A's cancer had spread to his spine and that the cancer was impacting his spinal cord and his ability to walk.
5. Patient A's oncologists noted in Patient A's records that neurosurgery was not an option given Patient A's condition.
6. Patient A's oncologists determined that physical therapy and a brace might assist Patient A with his functional recovery and improve his ability to walk.
7. In order to determine whether it was safe for Patient A to perform physical therapy or to use a brace, one of Patient A's oncologists asked for a consultation from the neurosurgery department at St. Anne's.
8. On October 22, 2011, the Respondent performed the neurosurgery consultation and saw Patient A.
9. Despite the oncologists' reasons for the consult, the Respondent evaluated Patient A for surgery.
10. The Respondent told Patient A and his wife that: Patient A's prognosis was poor; Patient A would progress to paralysis with or without surgical intervention; the Respondent had never performed surgery on anyone with esophageal cancer that had gone to the bones and Patient A was no exception; Patient A needed hospice and not surgery; Patient A needed to have a heart to heart with his oncologist; and Patient A's oncologist was stupid.
11. The Respondent was insensitive and unprofessional when speaking with Patient A and his wife.

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12. After speaking with Patient A and his wife, the Respondent was angry and called one of Patient A's oncologists and loudly told her that the consult was a waste of time.
13. Board Policy Number 01-01 on Disruptive Physician Behavior states that "Disruptive behavior by a physician has a deleterious effect on the health care system and increases the risk of patient harm."
14. Behaviors such as foul language; rude, loud or offensive comments; and intimidation of staff, patients and family members are now recognized as detrimental to patient care.
15. Board Policy Number 01-01 on Disruptive Physician Behavior indicates that "health care systems must promote teamwork, the free exchange of ideas, and a collaborative approach to problem solving if medical errors are to be reduced."

Legal Basis for Proposed Relief

- A. Pursuant to G.L. c. 112, §5, ninth par. (c) and 243 CMR 1.03(5)(a)3, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that he engaged in conduct that places into question the Respondent's competence to practice medicine.
- B. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.
- C. Pursuant to 243 CMR 1.03(5)(a)18, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician committed misconduct in the practice of medicine.

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The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,

Candace Lapidus Sloane, MD
Candace Lapidus Sloane, M.D.
Board Chair

Date: September 11, 2013

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

Division of Administrative Law Appeals

Docket No. RM-13-461

BOARD OF REGISTRATION IN MEDICINE,
Petitioner,

v.

MATTHEW PHILIPS, M.D.,
Respondent.

STIPULATION

Matthew Philips, M.D. (Respondent), the Respondent's attorney, and Complaint Counsel agree that this Stipulation shall be filed with the Administrative Magistrate for the Division of Administrative Law Appeals (DALA) as a resolution of questions of material fact and law as set forth by the Statements of Allegations in the above matter. The Respondent admits to the Findings of Fact described below and agrees that the Administrative Magistrate and the Board may make the Conclusions of Law as set forth below.

FINDINGS OF FACT

1. The Respondent was born on April 20, 1966. He graduated from the Yale University School of Medicine in 1993. He is certified by the American Board of Neurological Surgery. He has been licensed to practice medicine in Massachusetts under certificate number 161120 since 1999. At all times relevant, he had privileges at St. Anne's Hospital, Tobey Hospital, St. Luke's Hospital, and Charlton Memorial Hospital.

2. On October 16, 2011, Patient A, a 68-year-old male diagnosed with terminal esophageal cancer, was admitted to St. Anne's Hospital (St. Anne's).

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3. St. Anne's determined that Patient A's cancer had spread to his spine and that the cancer was impacting his spinal cord and his ability to walk.
4. Patient A's oncologists noted in Patient A's records that neurosurgery was not an option given Patient A's condition.
5. Patient A's oncologists determined that physical therapy and a brace might improve Patient A's quality of life.
6. In order to determine whether it would be safe for Patient A to perform physical therapy, one of Patient A's oncologists asked for a consultation from neurosurgery at St. Anne's.
7. On October 22, 2011, the Respondent saw Patient A and performed the neurosurgery consultation.
8. The Respondent evaluated Patient A for surgical intervention. The Respondent told Patient A and his wife about Patient A's poor prognosis and of the high likelihood that Patient A would progress to paralysis regardless of surgical intervention. The Respondent recommended that Patient A speak with his oncologist regarding the reality of his condition. Approximately one month after the consultation, Patient A died as a result of his cancer.
9. The Respondent failed to conduct himself with adequate sensitivity during his interaction with Patient A and his wife.
10. As a result this incident, the Respondent has changed the way he communicates and interacts with patients.
11. Following the interaction with Patient A and his wife, the Respondent was frustrated because he believed that the consultation was unwarranted.
12. While still frustrated, the Respondent criticized Patient A's oncologist in an unprofessional manner to a member of the St. Anne's staff.

13. After speaking with Patient A and his wife, the Respondent completed a detailed report of his consultation and verbally communicated his recommendations to the referring oncologist.

14. Board Policy Number 01-01 on Disruptive Physician Behavior states that "Disruptive behavior by a physician has a deleterious effect on the health care system and increases the risk of patient harm."

15. Certain conduct in the practice of medicine is now recognized as detrimental to patient care.

LEGAL BASIS FOR PROPOSED RELIEF

A. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession. See *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

B. The Respondent has violated G.L. c. 112, § 5, ninth par. (c) and 243 CMR 1.03(5)(a)3 by engaging in misconduct in the practice of medicine.

SANCTION

The Respondent, the Respondent's attorney and Complaint Counsel expressly acknowledge that the Board may impose sanctions against the Respondent based upon the above Findings of Fact and Conclusions of Law. The Respondent, the Respondent's attorney and Complaint Counsel jointly agree to recommend to the Board that it impose the sanction set forth below. The parties hereto understand that the recommended sanction is not binding on the Board, and that the Board may wish to impose a different sanction on the Respondent.

At the time the Board considers this Stipulation, it will inform the parties of its inclination as to sanction. If the Board's sanction is different from the one recommended by the

parties, the Respondent will be given an opportunity to either accept or reject the proposed sanction. If the Respondent rejects the proposed sanction, then the matter will continue through the adjudicatory process pursuant to General Laws chapter 30A and 801 CMR 1.00 et seq.

The Respondent's license is hereby Admonished and he is required to complete the Massachusetts Medical Society's course on workplace conflict within one year of the Board issuing a Final Decision and Order in this matter.

EXECUTION OF THIS STIPULATION

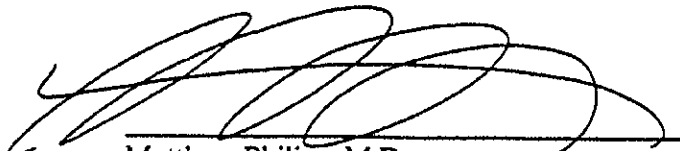
The parties agree that the approval of this Stipulation is left to the discretion of the Administrative Magistrate and the Board. As to any matter this stipulation leaves to the discretion of the Administrative Magistrate or the Board, neither the Respondent, nor anyone else acting on his behalf has received any promises or representations regarding the same.

The signature of the Respondent, his attorney, and Complaint Counsel are expressly conditioned on the Administrative Magistrate and the Board accepting this stipulation.

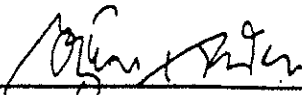
If the Administrative Magistrate rejects any provision contained in this Stipulation, the entire document shall be null and void and the matter will be scheduled for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.

If the Board rejects any provision in this Stipulation or modifies the Sanction and said modification is rejected by the Respondent, the entire document shall be null and void and the matter will be recommitted to the Division of Administrative Law Appeals for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.

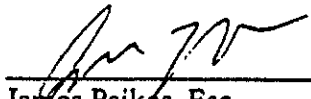
Neither of the parties nor anyone else may rely on the Stipulation in these proceedings or in any appeal there from.


Matthew Phillips, M.D.

4/18/14
Date


Stephen P. Harten, Esq.
Attorney for Respondent

04.18.14
Date


James Paikos, Esq.
Complaint Counsel

4-22-2014
Date

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