

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

---

**Board of Registration in Medicine,**

Petitioner,

Docket No.: RM-23-0085

v.

**Christopher Kovanda, M.D.,**

Respondent.

---

**Appearance for Petitioner:**

Rachel N. Shute, Esq.  
Board of Registration in Medicine  
178 Albion Street, Suite 330  
Wakefield, MA 01880

**Appearance for Respondent:**

Christopher Kovanda, M.D., *pro se*  
Minneapolis, MN 55439

**Administrative Magistrate:**

John G. Wheatley

**RECOMMENDED DECISION**

On February 2, 2023, the petitioner, Board of Registration in Medicine (Board), issued a statement of allegations ordering the respondent, Christopher Kovanda, M.D., to show cause why the Board should not discipline him based on the findings and discipline imposed by the Minnesota Board of Medical Practice (Minnesota Board). The Board referred the matter to the Division of Administrative Law Appeals (DALA) for recommended findings of fact and

necessary conclusions of law. Dr. Kovanda has not filed an answer to the Board's statement of allegations.

On May 24, 2023, the Board filed a motion for summary decision. In support of its motion, the Board attached documents from the proceedings in Minnesota as Exhibits 1 and 2. Dr. Kovanda did not file an opposition to the Board's motion for summary decision.

### FINDINGS OF FACT

Based on the evidence in the record, I find the following facts to be undisputed:

1. At the request of the Minnesota Board's Complaint Review Committee, an administrative law judge in Minnesota's Office of Administrative Hearings held a hearing on May 9 through 13, 2022, concerning potential grounds for disciplinary action against Dr. Kovanda. (Ex. 1, at 1, 9.)
2. On June 14, 2022, the administrative law judge issued findings of fact and conclusions of law, based on which the judge recommended that the Minnesota Board take disciplinary action against Dr. Kovanda. (Ex. 1, at 9-30.)
3. The Minnesota Board adopted all of the administrative law judge's findings of fact, noting in particular the following facts pertaining to two of Dr. Kovanda's patients:

#### Patient #2

5. In 2019, Patient #2 saw Respondent for breast augmentation surgery.
6. During a pre-operative visit, Patient #2 signed some paperwork while she was seated in Respondent's clinic. Respondent briefly caressed Patient #2's leg with the back of his hand when he took the signed paperwork from Patient #2's lap.
7. During a pre-operative visit, Respondent also directed Patient #2 to stand in front of a mirror while he stood close behind her with his hands on her hips.
8. On November 25, 2019, Respondent performed Patient #2's breast augmentation surgery at Respondent's clinic, and the following occurred before the surgery:

- a. Patient #2 took medication and an IV was started, in a pre-operative room, before Respondent entered the room. There was some difficulty putting the IV in Patient #2, and she hyperventilated until after the IV was successfully inserted;
- b. When Respondent entered the pre-operative room, he sat at Patient #2's side and held her hand. Respondent then moved around to reposition himself near Patient #2's feet, which were elevated. Respondent rubbed his erect penis, which was inside his medical scrubs, into Patient #2's feet; and
- c. When Respondent and Patient #2 were alone in the pre-operative room, Respondent pushed Patient #2's legs apart and pressed his erect penis that was inside his scrubs into Patient #2's vaginal area, over her underwear.

....

**Patient #3**

10. In 2010, Patient #3 saw Respondent at his office in Maple Grove, Minnesota, for carpal tunnel syndrome in both wrists, for breast reduction surgery, and for a tummy tuck (abdominoplasty).
11. During a visit Patient #3 had with Respondent in 2010, before surgery for breast reduction and abdominoplasty, Respondent lunged toward Patient #3, put both his hands on her breasts, and straddled her right knee, placing his testicles on that knee while Respondent and Patient #3 had their pants on ("2010 Incident").
12. When Respondent put his testicles on her knee, Patient #3 straightened up in shock and Respondent quickly removed his testicles from her knee.
13. After the 2010 incident, Patient #3 went home and told her husband, who was a retired police detective, what had happened during her appointment with Respondent.
14. Patient #3's husband accompanied Patient #3 to her next appointment with Respondent, and he sat in the waiting room during that appointment.
15. After the 2010 incident, Patient #3 underwent breast reduction surgery, abdominoplasty, and right carpal tunnel surgery with Respondent at North Memorial Hospital in 2010.

(Ex. 1, at 3-6.)

4. The Minnesota Board concluded that Dr. Kovanda violated Minn. Stat. § 147.091, subdivision 1(t), for engaging in sexual conduct with both patients. In addition, regarding

Patient #2, the Minnesota Board concluded that Dr. Kovanda engaged in unethical or improper conduct in violation of Minn. Stat. § 147.091, subdivision 1(g). (Ex. 1, at 7.)

5. In consequence, the Minnesota Board revoked Dr. Kovanda's license to practice medicine in Minnesota and ordered him to pay a civil penalty of \$15,360.00. (Ex. 1, at 8.)
6. On May 22, 2023, the Minnesota Court of Appeals affirmed the Minnesota Board's decision. (Ex. 2.)

#### CONCLUSIONS OF LAW

The Board may discipline a physician because of discipline imposed by another State's licensing authority, provided that the reasons for that discipline are "substantially the same" as those that would subject the physician to discipline in Massachusetts. 243 Code Mass. Regs. § 1.03(5)(a)(12). When there is no significant difference between another state's reasons for discipline and the grounds for discipline cognizable in Massachusetts, the doctrine of collateral estoppel prevents physicians from relitigating the underlying facts or questions decided against them in the foreign jurisdiction. *Haran v. Board of Registration in Med.*, 398 Mass. 571, 575 (1986); *Matter of Meyers*, Adjudicatory Case No. 2012-027 (BORIM May 22, 2013).

The Minnesota Board disciplined Dr. Kovanda for "unethical or improper conduct" and "sexual misconduct" with his patients. It cited the following statutory grounds for disciplinary action, under Minn. Stat. § 147.091:

- (g) Engaging in any unethical or improper conduct, including but not limited to:
  - (1) conduct likely to deceive or defraud the public;
  - (2) conduct likely to harm the public;
  - (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;
  - (4) medical practice that is professionally incompetent; and

(5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.

....

(t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient.

The above grounds for disciplinary action against a physician in Minnesota are substantially the same as those set forth in G. L. c. 112, § 5(c) and 243 Code Mass. Regs. § 1.03(5)(a)(3) & (18), which subject a physician to discipline based on:

3. Conduct which places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions; [and]

18. Misconduct in the practice of medicine.

Engaging in sexual conduct with a patient has been found to constitute gross misconduct in the practice of medicine, as proscribed by G. L. c. 112, § 5(c) and 243 Code Mass. Regs. §

1.03(5)(a)(3). See, e.g., *Daniels v. Board of Registration in Med.*, 418 Mass. 380, 381 (1994); *Friedman v. Board of Registration in Med.*, 408 Mass. 474, 475 (1990). By implication, sexual misconduct with a patient also constitutes misconduct in the practice of medicine, in violation of 243 Code Mass. Regs. § 1.03(5)(a)(18).

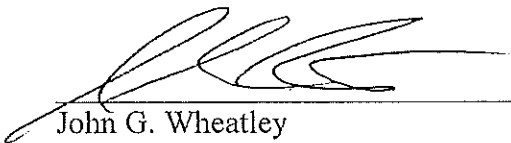
Accordingly, the Board may impose reciprocal discipline on Dr. Kovanda based on the discipline imposed by the Minnesota Board, for reasons substantially the same as those set forth in G. L. c. 112, § 5(c) and 243 Code Mass. Regs. § 1.03(5)(a)(3) & (18). The Board may also impose discipline for conduct that indicates "lack of good moral character" and for "conduct that undermines public confidence in the integrity of the medical profession." See *Raymond v. Board of Registration in Med.*, 387 Mass. 708, 713 (1982); *Matter of Medhat Michael, M.D.*, Adjudicatory Case No. 2015-017, at 2 (BORIM Apr. 4, 2019) (sexual misconduct with patients

and employees subjected doctor to discipline for lack of good moral character and “for conduct that undermines the public confidence in the medical profession”). Lastly, the Board may discipline Dr. Kovanda for violation of “an ethical principle, specifically, American Medical Association Code of Medical Ethics, Opinion 8.14, which defines sexual contact concurrent with the patient/physician relationship as sexual misconduct in the practice of medicine.” See *Matter of John P. Katzenberg, M.D.*, Adjudicatory Case No. 2017-044, at 6 (BORIM Aug. 9, 2018).

CONCLUSION

I recommend that the Board impose upon Dr. Kovanda the discipline it deems appropriate considering the findings and conclusions above and those of the Minnesota Board of Medical Practice in its disciplinary decision dated August 4, 2022, a copy of which is attached hereto.

DIVISION OF ADMINISTRATIVE LAW APPEALS

A handwritten signature in black ink, appearing to read 'John G. Wheatley', is written over a horizontal line.

John G. Wheatley  
Administrative Magistrate

AUG 21 2023

# TRUE AND EXACT COPY OF ORIGINAL

## BEFORE THE MINNESOTA BOARD OF MEDICAL PRACTICE

In the Matter of  
the Medical License of  
Christopher John Kovanda, M.D.,  
License No. 41657

## FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The above-entitled matter came on for hearing on May 9 through 13, 2022, before Administrative Law Judge ("ALJ") Steven M. Bialick, at the request of the Minnesota Board of Medical Practice ("Board") Complaint Review Committee ("Committee") pursuant to a Third Amended Notice and Order for Hearing: Temporary Suspension ("Third Amended Notice and Order") dated February 28, 2022. Daniel Schueppert and Rebecca Huting, Assistant Attorneys General, represented the Committee. Nicole L. Brand, Besse H. McDonald, Andrew C. Case, John M. Degnan, and Brayanna J. Bergstrom, Esq., represented Christopher John Kovanda, M.D. ("Respondent").

On June 14, 2022, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendation, with an attached memorandum ("ALJ's Report"); recommending the Board take disciplinary action against Respondent's license to practice medicine and surgery in the State of Minnesota. (A true and accurate copy of the ALJ's Report is attached and incorporated herein as Exhibit A.)

The Board convened to consider the matter on July 30, 2022 via WebEx videoconference. The Board's business address is 335 Randolph Avenue, Suite 140, St. Paul, Minnesota 55102.

The following Board members were present at the hearing: Chaitanya Anand, M.B., B.S.; Cheryl L. Bailey, M.D.; Stephanie A. Bumgardner, MSW, LICSW, RPT; Pamela Gigi Chawla M.D., M.H.A., Tenbit Emiru, M.D., Ph.D., M.B.A.; Peter J. Henry, M.D.; Shaunequa B. James, MSW, LGSW; Kristina M. Krohn, M.D.; John M. (Jake) Manahan, J.D.; Bruce Sutor, M.D.;

Jennifer Y. Kendall Thomas, D.O., FAOCPRM; Karen Thullner, M.F.A.; and Averil M. Turner, M.A. Daniel Schueppert and Rebecca Huting, Assistant Attorneys General, appeared on behalf of the Committee. Nicole L. Brand, Esq., and John M. Degnan, Esq., appeared on behalf of Respondent. Hans A. Anderson, Assistant Attorney General, was present as legal advisor to the Board.

Committee member Kimberly W. Spaulding, M.D., M.P.H., was not present for the hearing and did not participate in the deliberations. Committee member John M. (Jake) Manahan, J.D., did not participate in the deliberations. Board staff who assisted the Committee did not participate in the deliberations.

The Board has reviewed the June 14, 2022, ALJ's Report and the record and accordingly issues the following:

### **FINDINGS OF FACT**

The Board has reviewed the record of this proceeding and hereby accepts the June 14, 2022, ALJ's Report, and accordingly adopts and incorporates by reference all of the Findings of Fact therein as Findings of Fact in this Order, including but not limited to the following.<sup>1</sup>

#### **Background**

1. On July 10, 1999, the Board issued Respondent a license to practice medicine and surgery in the State of Minnesota. Respondent is board certified in plastic surgery.

---

<sup>1</sup> The Board accepts and adopts all of the ALJ's Findings of Fact but is only reproducing in this Order the facts that pertain to the proven allegations, which primarily regard Patient #2 and Patient #3. To conform to the standard format the Board uses for findings of fact and for ease of reading, the Board has made a number of non-substantive edits to the ALJ's Findings of Fact to the extent they are specifically reproduced in this order. The ALJ's factual findings and citations to the record contained in the ALJ's Report, attached as Exhibit A, are Findings of Fact in this Order.



2. On November 12, 2011, Respondent entered into a Stipulation and Order ("2011 Order") with the Board based on his suggestive language and suggestive touching with a patient during pre-operative and post-operative visits in 2009, and at least one occasion of sexual intercourse with a patient following a post-operative visit.

3. The 2011 Order placed conditions on Respondent's license and required, in part: (a) a female chaperone to be present when Respondent treated any female patients, (b) coursework in professional boundaries, (c) practice in a preapproved setting, (d) a supervising physician, (e) quarterly meetings with a designated Board member, and (f) payment of a civil penalty. In November 2014, Respondent obtained an unconditional license from the Board.

4. Respondent is self-employed as the owner and plastic surgeon at his practice in Minneapolis, Minnesota.

**Patient #2**

5. In 2019, Patient #2 saw Respondent for breast augmentation surgery.

6. During a pre-operative visit, Patient #2 signed some paperwork while she was seated in Respondent's clinic. Respondent briefly caressed Patient #2's leg with the back of his hand when he took the signed paperwork from Patient #2's lap.

7. During a pre-operative visit, Respondent also directed Patient #2 to stand in front of a mirror while he stood close behind her with his hands on her hips.

8. On November 25, 2019, Respondent performed Patient #2's breast augmentation surgery at Respondent's clinic, and the following occurred before the surgery:

a. Patient #2 took medication and an IV was started, in a pre-operative room, before Respondent entered the room. There was some difficulty putting the IV in Patient #2, and she hyperventilated until after the IV was successfully inserted;

b. When Respondent entered the pre-operative room, he sat at Patient #2's side and held her hand. Respondent then moved around to reposition himself near Patient #2's feet, which were elevated. Respondent rubbed his erect penis, which was inside his medical scrubs, into Patient #2's feet; and

c. When Respondent and Patient #2 were alone in the pre-operative room, Respondent pushed Patient #2's legs apart and pressed his erect penis that was inside his scrubs into Patient #2's vaginal area, over her underwear.

9. The ALJ found Patient #2 to be a credible witness and the Board accepts the ALJ's credibility determination regarding Patient #2 as described in Paragraphs 45 to 57 of the ALJ's Findings of Fact and on Page 5 of the ALJ's Memorandum.

**Patient #3**

10. In 2010, Patient #3 saw Respondent at his office in Maple Grove, Minnesota, for carpal tunnel symptoms in both wrists, for breast reduction surgery, and for a tummy tuck (abdominoplasty).

11. During a visit Patient #3 had with Respondent in 2010, before surgery for breast reduction and abdominoplasty, Respondent lunged toward Patient #3, put both his hands on her breasts, and straddled her right knee, placing his testicles on that knee while Respondent and Patient #3 had their pants on ("2010 Incident").

12. When Respondent put his testicles on her knee, Patient #3 straightened up in shock and Respondent quickly removed his testicles from her knee.

13. After the 2010 incident, Patient #3 went home and told her husband, who was a retired police detective, what had happened during her appointment with Respondent.

14. Patient #3's husband accompanied Patient #3 to her next appointment with Respondent, and he sat in the waiting room during that appointment.

15. After the 2010 incident, Patient #3 underwent breast reduction surgery, abdominoplasty, and right carpal tunnel surgery with Respondent at North Memorial Hospital in 2010.

16. The ALJ found Patient #3 and her husband to be credible witnesses and the Board accepts the ALJ's credibility determinations regarding Patient #3 and her husband as described in Paragraphs 64 to 68 of the ALJ's Findings of Fact and on Page 26 of the ALJ's Memorandum.

**Temporary Suspension of Respondent's License**

17. On February 28, 2022, the Committee filed a Third Amended Notice and Order for Hearing: Temporary Suspension ("Third Amended Notice and Order"), which reasserted allegations and asserted new allegations of misconduct by Respondent.

18. On February 28, 2022, the Board also issued an Order for Temporary Suspension, temporarily suspending Respondent's license to practice as a physician in Minnesota due to allegations that he engaged in misconduct in violation of the Minnesota Medical Practice Act and that Respondent's continued practice as a physician presented an imminent risk of serious harm, and that a temporary suspension of his license was warranted.

19. In the ALJ's Report to the Board, the ALJ concluded that the Board had probable cause to temporarily suspend Respondent's license, that Respondent violated the Medical Practice Act, and recommended that the Board take disciplinary action against Respondent's license.

## CONCLUSIONS

The Board has reviewed the record of this proceeding and hereby accepts the June 14, 2022, ALJ's Report and accordingly adopts and incorporates by reference all of the Conclusions of Law therein as Conclusions of Law in this Order, including but not limited to the following.

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 147.001-.381, 214.077, 214.10, and 214.103.

2. The Board and Committee have complied with all procedural requirements of statutes and rule in this matter.

3. Minn. Stat. § 214.077(a) provides that, when a health-related licensing board receives a complaint regarding a regulated person and has probable cause to believe that the regulated person has violated a statute or rule that the health-related licensing board is empowered to enforce, and continued practice by the regulated person presents an imminent risk of serious harm, the health-related licensing board shall issue an order temporarily suspending the regulated person's authority to practice.

4. The Board had probable cause to believe that Respondent violated a statute or rule that the Board is empowered to enforce and that continued practice by Respondent presented an imminent risk of serious harm. Therefore, it was appropriate for the Board to issue the Order of Temporary Suspension.

5. Pursuant to Minn. Stat. § 214.077, the temporary suspension remains in effect until the Board completes an investigation, holds a contested hearing pursuant to the Administrative Procedures Act, and issues a final order.

6. Minn. Stat. § 147.091, subd. 1, provides that the Board may impose disciplinary action, as described in Minn. Stat. § 147.141, against any physician. Minn. Stat. § 147.091,

subd. 1, also provides that the following conduct is prohibited and is grounds for disciplinary action:

- (g) Engaging in any unethical or improper conduct, including but not limited to:
  - (1) conduct likely to deceive or defraud the public;
  - (2) conduct likely to harm the public;
  - (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;
  - (4) medical practice that is professionally incompetent; and
  - (5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.
- (t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient.

7. The Committee has the burden of proving by a preponderance of the evidence that Respondent engaged in conduct prohibited by Minn. Stat. § 147.091, subd. 1, and that the Board has grounds for disciplining Respondent.

8. The Committee proved by a preponderance of the evidence that Respondent violated Minn. Stat. § 147.091, subd. 1(g) (unethical or improper conduct) and subd. 1(t) (sexual misconduct), regarding Patient #2.

9. The Committee proved by a preponderance of the evidence that Respondent violated Minn. Stat. § 147.091, subd. 1(t), regarding Patient #3.

10. The Committee did not prove by a preponderance of the evidence that Respondent violated a statute or rule that the Board is empowered to enforce, regarding Patient #1 or Patient #4.

11. The Committee did not prove by a preponderance of the evidence that Respondent engaged in the other sexual misconduct alleged in paragraph 27 of the Third Amended Notice and

Order.

12. Disciplinary action against Respondent is appropriate.

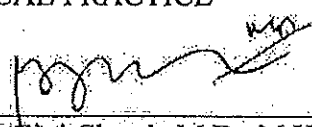
**ORDER**

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice medicine in Minnesota is **REVOKED**.
2. IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Board in the amount of \$15,360.00 as reimbursement for part of the costs of investigation and this proceeding pursuant to Minnesota Statute section 147.141.
3. IT IS FURTHER ORDERED that the Order for Temporary Suspension issued to Respondent on February 28, 2022 shall have no further force or effect.

Dated: 8/4/2022

MINNESOTA BOARD OF  
MEDICAL PRACTICE

  
\_\_\_\_\_  
Pamela Gigi Chawla M.D., M.H.A.  
Secretary  
Presiding Board Member

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF MEDICAL PRACTICE

In the Matter of the Medical License of  
C.J.K., M.D.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND RECOMMENDATION**

License No. 41657

This matter came before Administrative Law Judge Steven M. Bialick for a hearing on May 9, 10, 11, 12, and 13, 2022, by Microsoft Teams video conference (final hearing). The final hearing record was held open until June 3, 2022, to allow the parties to submit written final arguments. The final hearing record closed on June 3, 2022.

Daniel S. Schueppert and Rebecca Huting, Assistant Attorneys General, appeared on behalf of the Minnesota Board of Medical Practice (Board), Complaint Review Committee (Committee). Nicole L. Brand, Meagher & Geer, PLLP, and John Degnan, Taft Law, appeared on behalf of C.J.K., M.D. (Licensee).

**STATEMENT OF THE ISSUES**

I. Did the Committee prove by a preponderance of the evidence that Licensee's conduct constituted one or more of the following grounds for disciplinary action?

- (A) Engaging in any unethical or improper behavior, in violation of Minn. Stat. § 147.091, subd. 1(g), including but not limited to:
  - (1) conduct likely to deceive or defraud the public;
  - (2) conduct likely to harm the public;
  - (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;
  - (4) medical practice that is professionally incompetent; and
  - (5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.
- (B) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal

behavior which is seductive or sexually demeaning to a patient, in violation of Minn. Stat. § 147.091, subd. 1(t).

II. Did the Board have probable cause to believe that Licensee violated a statute or rule that the Board is empowered to enforce, and that continued practice by Licensee presented an imminent risk of serious harm, as is necessary to issue an order temporarily suspending Licensee's authority to practice as a physician in Minnesota pursuant to Minn. Stat. § 214.077?

III. Should the Board take disciplinary action against Licensee?

### **SUMMARY OF RECOMMENDATION**

I. The Administrative Law Judge concludes that the Committee proved by a preponderance of the evidence that Licensee violated Minn. Stat. § 147.091, subds. 1(g) and 1(t).

II. The Administrative Law Judge also concludes that the Board had probable cause to believe that Licensee violated Minn. Stat. § 147.091, subds. 1(g) and 1(t), and that continued practice by Licensee presented an imminent risk of serious harm, so as to justify the issuance of an order temporarily suspending Licensee's authority to practice as a physician in Minnesota pursuant to Minn. Stat. § 214.077.

III. The Administrative Law Judge recommends that the Board take disciplinary action against Licensee.

Based upon the evidence in the record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

#### **I. PROCEDURAL BACKGROUND**

1. On July 10, 1999, the Board issued Licensee a license to practice medicine and surgery in the State of Minnesota. Licensee is board certified in plastic surgery.<sup>1</sup>

2. On November 12, 2011, Licensee entered into a Stipulation And Order (2011 Order) with the Board based on his suggestive language and suggestive touching with a patient during pre-operative and post-operative visits in 2009, and at least one occasion of sexual intercourse with a patient following a post-operative visit.<sup>2</sup>

3. The 2011 Order placed conditions on Licensee's license and required, in part: (a) a female chaperone to be present when Licensee treated any female patients, (b) coursework in professional boundaries, (c) practice in a preapproved setting, (d) a

---

<sup>1</sup> Exhibit (Ex.) 1.

<sup>2</sup> *Id.*



supervising physician, (e) quarterly meetings with a designated Board member, and (f) payment of a civil penalty. In November 2014, Licensee obtained an unconditional license from the Board.<sup>3</sup>

4. Licensee is self-employed as the owner and plastic surgeon at his practice in Minneapolis, Minnesota.<sup>4</sup>

#### **Notice And Order For Prehearing Conference And Hearing (April 1, 2021)**

5. On April 1, 2021, the Committee issued a Notice And Order For Prehearing Conference And Hearing (Notice and Order) to Licensee, in which it alleged that conduct of Licensee regarding Patient #1 constituted one or more of the following grounds for disciplinary action:

- (1) Engaged in unethical or improper conduct, in violation of Minn. Stat. § 147.091, subd. 1(g).
- (2) Engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing medical practice in which case proof of actual injury need not be established, in violation of Minn. Stat. § 147.091, subd. 1(k).
- (3) Engaged in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient, in violation of Minn. Stat. § 147.091, subd. 1(t).<sup>5</sup>

#### **Amended Notice And Order For Prehearing Conference And Hearing (August 6, 2021)**

6. On August 6, 2021, the Committee issued an Amended Notice And Order For Prehearing Conference And Hearing (Amended Notice and Order). The Amended Notice and Order listed allegations of conduct by Licensee against Patient #1, which had been listed in the Notice and Order, and added allegations of conduct by Licensee against Patient #2.<sup>6</sup>

7. In the Amended Notice and Order, the Committee alleged that the conduct of Licensee constituted one or more of the following grounds for disciplinary action:

- (1) Engaged in unethical or improper conduct, in violation of Minn. Stat. § 147.091, subd. 1(g).
- (2) Engaged in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal

---

<sup>3</sup> *Id.* Ex. 31.

<sup>4</sup> Ex. 31.

<sup>5</sup> Notice and Order.

<sup>6</sup> Amended Notice and Order.

behavior which is seductive or sexually demeaning to a patient, in violation of Minn. Stat. § 147.091, subd. 1(t).<sup>7</sup>

### **First Probable Cause Hearing**

8. In response to the Amended Notice and Order, Licensee filed a motion for a probable cause hearing, pursuant to Minn. Stat. § 147.092(a), regarding the allegations that Licensee violated Minn. Stat. § 147.091, subd. 1(t).<sup>8</sup>

9. A probable cause hearing (first probable cause hearing) was held on September 24, 2021.<sup>9</sup> As a result of the first probable cause hearing, on October 11, 2021, the Administrative Law Judge issued an Order On Probable Cause, which stated:

- (1) There is not a sufficient showing of probable cause to believe that Licensee committed the violations of Minn. Stat. § 147.091, subd. 1(t), listed in the Amended Notice and Order, regarding Patient #1.
- (2) There is a sufficient showing of probable cause to believe that Licensee committed the violations of Minn. Stat. § 147.091, subd. 1(t), listed in the Amended Notice and Order, regarding Patient #2.<sup>10</sup>

### **Partial Dismissal Without Prejudice**

10. On October 21, 2021, Licensee filed a written request for an order of dismissal without prejudice, pursuant to Minn. Stat. § 147.092(c), regarding all allegations asserted by Patient #1 against Licensee.<sup>11</sup>

11. On October 27, 2021, the Committee filed a response, objecting to Licensee's request for an order of dismissal and requesting an order confirming that the Committee may proceed with all allegations contained in the Amended Notice and Order.<sup>12</sup>

12. On November 5, 2021, the Administrative Law Judge issued an Order Of Partial Dismissal Without Prejudice, which stated:

- (1) Pursuant to Minn. Stat. § 147.092(c), the allegations that Licensee committed the violations of Minn. Stat. § 147.091, subd. 1(t), listed in the Amended Notice and Order, regarding Patient #1, are hereby dismissed without prejudice.

---

<sup>7</sup> *Id.*

<sup>8</sup> Order on Probable Cause Hearing (Oct. 11, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Order Of Partial Dismissal Without Prejudice (Nov. 5, 2021).

<sup>12</sup> *Id.*

- (2) The Committee's request that an order be issued confirming that the Committee may proceed with all allegations contained in the Amended Notice and Order is denied.<sup>13</sup>

**Second Amended Notice And Order For Prehearing Conference And Hearing (November 17, 2021)**

13. On November 17, 2021, the Committee filed a Second Amended Notice And Order For Prehearing Conference And Hearing (Second Amended Notice and Order) which contained the identical allegations and issues that were contained in the Amended Notice and Order. The Second Amended Notice and Order did not allege any additional facts or claim that any new evidence relating to Patient #1 had been discovered.<sup>14</sup>

14. On November 29, 2021, Licensee filed a motion to dismiss and/or strike the allegations in the Second Amended Notice and Order that Licensee committed violations of Minn. Stat. § 147.091, subd. 1(t), regarding Patient #1.<sup>15</sup>

15. On November 30, 2021, Licensee filed a motion for a second probable cause hearing, pursuant to Minn. Stat. § 147.092(a), due to the Second Amended Notice and Order.<sup>16</sup>

16. On December 16, 2021, the Administrative Law Judge issued an Order Striking Second Amended Notice And Order For Hearing And Denying Motion For Second Probable Cause Hearing which stated:

- (1) The Second Amended Notice and Order is stricken.
- (2) The Amended Notice And Order For Prehearing Conference And Hearing dated August 6, 2021, (Amended Notice and Order), as modified by the Order Of Partial Dismissal Without Prejudice, dated November 5, 2021, shall remain in effect.
- (3) Licensee's motion for a second probable cause hearing is denied.<sup>17</sup>

**Third Amended Notice And Order For Hearing: Temporary Suspension (February 28, 2022)**

17. On February 28, 2022, the Committee filed a Third Amended Notice And Order For Hearing: Temporary Suspension (Third Amended Notice and Order), which reasserted allegations regarding Patient #1 and Patient #2, and asserted new allegations regarding Patient #3 and Patient #4, as well as other new allegations of

---

<sup>13</sup> *Id.*

<sup>14</sup> Order Striking Second Amended Notice And Order For Prehearing Conference And Hearing And Denying Motion For Second Probable Cause Hearing (Dec. 16, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

sexual misconduct by Licensee set forth in paragraph 27 of the Third Amended Notice and Order. The Third Amended Notice and Order also scheduled a hearing for March 29, 2022, in addition to the hearing dates of March 21, 22, and 23, 2022, which had previously been scheduled.<sup>18</sup>

18. On February 28, 2022, the Board also issued an Order For Temporary Suspension, temporarily suspending Licensee's license to practice as a physician in Minnesota due to allegations that he violated the following provisions of Minn. Stat. § 147.091, subd. 1:

- (g) Engaging in any unethical or improper conduct, including but not limited to: (1) conduct likely to deceive or defraud the public; (2) conduct likely to harm the public; (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient; (4) medical practice that is professionally incompetent; and (5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established;
- (t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient;

and that Licensee's continued practice as a physician presents an imminent risk of serious harm, and that a temporary suspension of his license is warranted pursuant to Minn. Stat. § 214.077.<sup>19</sup>

19. Pursuant to the agreement of the parties, the hearing that had been scheduled for March 21, 22, and 23, 2022, and the hearing that had been scheduled for March 29, 2022, were continued and consolidated into one hearing that was scheduled for May 9, 10, 11, 12, and 13, 2022.<sup>20</sup>

### **Second Probable Cause Hearing**

20. On March 18, 2022, in response to the Third Amended Notice and Order, Licensee filed a Motion For Probable Cause Hearing pursuant to Minn. Stat. § 147.092(a), to address new allegations that Licensee violated Minn. Stat. § 147.091, subd. 1(t), related to Patient #3 and Patient #4, together with paragraph 27 of the Third Amended Notice and Order.<sup>21</sup>

21. On April 4, 2022, the Administrative Law Judge issued an Order Confirming Second Probable Cause Hearing, which stated that:

---

<sup>18</sup> Third Amended Notice and Order; Fourth Prehearing Order And Order For Continuance (March 9, 2022).

<sup>19</sup> Ex. 37.

<sup>20</sup> Fourth Prehearing Order And Order For Continuance (March 9, 2022).

<sup>21</sup> Motion For Probable Cause Hearing (March 18, 2022).

- (1) A second probable cause hearing would be held on April 7, 2022, at 9:30 a.m., via Microsoft Teams videoconference. The scope of that hearing would be limited to allegations that Licensee violated Minn. Stat. § 147.091, subd. 1(t), specifically related to Patient #3 and Patient #4, together with the allegations in paragraph 27 of the Third Amended Notice and Order.
- (2) The prior determination by the Administrative Law Judge that there was not a sufficient showing of probable cause to believe Licensee committed violations of Minn. Stat. § 147.091, subd. 1(t), regarding Patient #1, remains in effect.
- (3) The prior determination by the Administrative Law Judge that there was a sufficient showing of probable cause to believe Licensee committed violations of Minn. Stat. § 147.091, subd. 1(t), regarding Patient #2, remains in effect.
- (4) The prior order dismissing allegations that Licensee committed violations of Minn. Stat. § 147.091, subd. 1(t), regarding Patient #1, without prejudice, remains in effect.
- (5) The Committee's request that the Administrative Law Judge resolve Licensee's Motion For Probable Cause Hearing with an order that there is a sufficient showing of probable cause to believe Licensee committed the violations listed in the Third Amended Notice and Order based on the Board's Temporary Suspension Order, without holding the second probable cause hearing, is denied.<sup>22</sup>

22. A second probable cause hearing was held on April 7, 2022.

23. On April 20, 2022, the Administrative Law Judge issued a Second Order On Probable Cause which stated:

There is a sufficient showing of probable cause to believe that Licensee committed the violations of Minn. Stat. § 147.091, subd. 1(t), listed in the Third Amended Notice And Order For Hearing: Temporary Suspension (Third Amended Notice and Order), dated February 28, 2022, regarding patient #3, Patient #4, and the allegations of sexual misconduct by Licensee set forth in paragraph 27 of the Third Amended Notice and Order.<sup>23</sup>

<sup>22</sup> Order Confirming Second Probable Cause Hearing (April 4, 2022).

<sup>23</sup> Second Order on Probable Cause (April 20, 2022).

**Allegation That Licensee Violated Minn. Stat. § 147.091, subd. 1(g) Regarding Patient #3 Not Pursued**

24. At the final hearing on May 10, 2022, an attorney for the Committee stated that the Committee would not be pursuing the allegation that Licensee violated Minn. Stat. § 147.091, subd. 1(g) regarding Patient #3.

**II. PATIENT #1**

25. On April 25, 2017, Patient #1 met with Licensee to discuss undergoing plastic surgery.<sup>24</sup>

26. On June 8, 2018, Licensee performed liposuction and fat-grafting breast surgery on Patient #1 in a hospital setting.<sup>25</sup>

27. Patient #1 had post-operative follow-up visits at Licensee's office in June and July 2018.<sup>26</sup>

28. On November 15, 2018, the Board received a complaint alleging that Licensee made inappropriate and sexual contact with Patient #1.<sup>27</sup>

29. The Board conducted an investigation of the allegations concerning Patient #1.<sup>28</sup>

30. In the Third Amended Notice and Order, the Committee alleged that the following occurred during Patient #1's June and July 2018 post-operative visits:

- (1) Licensee directed Patient #1 to fully undress.
- (2) Licensee gave Patient #1 a full-frontal hug while Patient #1 was fully undressed.
- (3) Licensee praised Patient #1's appearance and suggestively caressed Patient #1's bare back and hips while Patient #1 stood in front of a full-length mirror. Much of Licensee's touching was unrelated to explaining and visually demonstrating the potential results of the body contouring procedures Patient #1 had undergone.
- (4) Licensee stood close behind Patient #1. Licensee pressed himself up against Patient #1 in such a way that Patient #1 could feel Licensee's penis on her buttocks as Patient #1 stood naked in front of the mirror while Licensee reached around and lifted her breasts.

---

<sup>24</sup> Ex. 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Ex. 2.

<sup>28</sup> Ex. 5.

- (5) On two occasions, Licensee touched the bare skin of Patient #1's exposed vagina with his hand while helping Patient #1 put on a post-operative compression garment. In both instances, the touching occurred when Licensee adjusted the leg and buttocks area of the crotchless garment even though Patient #1 could adjust that area on her own. Other individuals were able to help Patient #1 in and out of her garment without reaching between her legs or ever touching her vagina.
- (6) While Patient #1's upper body was undressed, Licensee unbuttoned and unzipped Patient #1's pants and pulled them down to demonstrate expected results of surgical procedures. Licensee then put Patient #1's pants back on her, zipping them up while Patient #1 remained standing in front of a mirror. Licensee did this while sitting in a rolling chair, grabbing Patient #1's hips and turning her to face him.<sup>29</sup>

31. On October 31, 2018, Patient #1 had her final post-operative follow-up appointment with Licensee.<sup>30</sup>

32. On January 14, 2019, Licensee congratulated Patient #1 through an online networking website on getting a new job.<sup>31</sup>

33. At the final hearing, in support of its allegations regarding Patient #1, the Committee offered the following exhibits that were received into evidence:

- (1) Patient #1's written complaint to the Board;<sup>32</sup>
- (2) Patient #1's medical records;<sup>33</sup>
- (3) The transcript of Patient #1's interview with the Board;<sup>34</sup>
- (4) Diagrams signed by Patient #1;<sup>35</sup>
- (5) A LinkedIn message in which Licensee congratulated Patient #1 on getting a new job;<sup>36</sup>
- (6) The transcript of Licensee's interview with the Board regarding Patient #1;<sup>37</sup>

---

<sup>29</sup> Third Amended Notice and Order.

<sup>30</sup> Ex. 3.

<sup>31</sup> Ex. 7.

<sup>32</sup> Ex. 2.

<sup>33</sup> Exs. 3, 4.

<sup>34</sup> Ex. 5.

<sup>35</sup> Ex. 6.

<sup>36</sup> Ex. 7.

- (7) The Board's Notice of Conference regarding Patient #1;<sup>38</sup>
- (8) Licensee's response to the Notice of Conference regarding Patient #1;<sup>39</sup>
- (9) The transcript of the Committee's meeting with Licensee regarding Patient #1;<sup>40</sup>
- (10) The transcript of Patient #1's deposition;<sup>41</sup> and
- (11) Documents relating to Patient #1's lawsuit against Licensee.<sup>42</sup>

34. However, Patient #1 did not testify at the final hearing.

35. Licensee testified at the final hearing and denied the allegations that he acted inappropriately regarding Patient #1. His impression was that Patient #1 was excited about the results of her surgery and was happy with the care she had received.<sup>43</sup>

36. A Certified Medical Assistant (CMA) who worked at Licensee's clinic testified at the final hearing that she was typically in the room when Licensee met with patients and that she did not see anything unusual happen when Licensee met with Patient #1. The CMA also testified that Patient #1 did not report any complaints to her.<sup>44</sup>

37. A medical chart note dated June 14, 2018, stated that Patient #1 presented at Licensee's clinic after bilateral fat transfers to her breasts, that she was doing well, and that she was pleased with the results.<sup>45</sup>

38. In a medical chart note dated July 5, 2018, it was again stated that Patient #1 was doing well.<sup>46</sup>

39. Patient #1 returned to the clinic again on October 31, 2018, and was considering additional surgery.<sup>47</sup>

40. Patient #1 had Instagram posts in July 2018, in which she expressed happiness with the results of her surgery.<sup>48</sup>

---

<sup>37</sup> Ex. 8.

<sup>38</sup> Ex. 9.

<sup>39</sup> Ex. 10.

<sup>40</sup> Ex. 11.

<sup>41</sup> Ex. 12.

<sup>42</sup> Ex. 13.

<sup>43</sup> Testimony (Test.) of Licensee.

<sup>44</sup> Test. of K.S.

<sup>45</sup> Ex. 3.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Ex. 109.



### III. PATIENT #2

41. In 2019, Patient #2 saw Licensee for breast augmentation surgery.<sup>49</sup>

42. During a pre-operative visit, Patient #2 signed some paperwork while she was seated in Licensee's clinic. Licensee briefly caressed Patient #2's leg with the back of his hand when he took the signed paperwork from Patient #2's lap.<sup>50</sup>

43. During a pre-operative visit, Licensee also directed Patient #2 to stand in front of a mirror while he stood close behind her with his hands on her hips.<sup>51</sup>

44. On November 25, 2019, Licensee performed Patient #2's breast augmentation surgery at Licensee's clinic, and the following occurred before the surgery:

- (1) Patient #2 took medication and an IV was started, in a pre-operative room, before Licensee entered the room. There was some difficulty putting the IV in Patient #2, and she hyperventilated until after the IV was successfully inserted;<sup>52</sup>
- (2) When Licensee entered the pre-operative room, he sat at Patient #2's side and held her hand. Licensee then moved around to reposition himself near Patient #2's feet, which were elevated. Licensee rubbed his erect penis, which was inside his medical scrubs, into Patient #2's feet;<sup>53</sup> and
- (3) When Licensee and Patient #2 were alone in the pre-operative room, Licensee pushed Patient #2's legs apart and pressed his erect penis that was inside his scrubs into Patient #2's vaginal area, over her underwear.<sup>54</sup>

45. On January 14, 2020, Patient #2 called Licensee's office and spoke with Licensee while she was with a private investigator. Patient #2 had the call secretly tape recorded (recorded conversation).<sup>55</sup>

46. During the recorded conversation, Patient #2 said:

Okay. If you think that I'm going to just sit there and let you run-rub your erection on me right before surgery and, when I'm trying to move my butt, you keep on placing your erection on my butt and then move to touching it

---

<sup>49</sup> Ex. 17.

<sup>50</sup> Test. of Patient #2.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Ex. 127.

on my vagina and be silent about it with no explanation from you or not even a sorry.<sup>56</sup>

47. During the recorded conversation, Patient #2 also said:

-and you're not going to sit here and tell me that you're sorry for this. You're going to make me go to the medical board or the cops --<sup>57</sup>

48. During the recorded conversation, Licensee then said that he gave Patient #2 her money back "because I feel so devastated about what you experienced", and he asked what she wanted.<sup>58</sup> Licensee also said "I'm sorry." When Patient #2 asked Licensee what he was sorry for, Licensee said "For your feeling my penis pushed against you."<sup>59</sup>

49. During the recorded conversation, the following was also said:

PATIENT #2: Yes. And why did you think that was okay to do to me? And why did you do that?

LICENSEE: I don't. I do not think that's okay. I'm going to verify and then make sure that there's always a nurse present with me anytime I'm with a patient that's disrobed and can feel uncomfortable.

PATIENT #2: Okay.

LICENSEE: I'm so sorry because—

PATIENT #2: Okay.

LICENSEE: --I know how devastating this is because of what my wife's been through.

PATIENT #2: Yes. I just hope you would never ever do that to a woman again.

LICENSEE: I can promise you that it won't.

PATIENT #2: I just want—And how—I just want to know like how you justify this in your mind, what you did to me, and you don't feel ashamed of it and you can do it to others.

LICENSEE: I feel ashamed for everything that you've been through. I do. And I don't feel it's okay. And I can promise you I'm going to do

---

<sup>56</sup> *Id.* at 6.

<sup>57</sup> *Id.* at 6.

<sup>58</sup> *Id.* at 6.

<sup>59</sup> *Id.* at 7.

everything I can to make sure that doesn't have an experience with anybody else.<sup>60</sup>

50. During the recorded conversation, Patient #2 also said "I don't get why you would do that", and Licensee responded "I don't think there is any explanation".<sup>61</sup>

51. During the recorded conversation, Licensee also said that he did not want to be reported to the Board and that, if Patient #2 came forward, it would be a personal and professional problem for him.<sup>62</sup>

52. On June 1, 2021, the Board received a complaint from Patient #2 regarding Licensee.<sup>63</sup>

53. The Board conducted an investigation of the allegations concerning Patient #2. As part of that investigation, an investigator from the Minnesota Attorney General's office contacted a friend of Patient #2, who told the investigator the following:

(1) Patient #2 called the friend on the day of Patient #2's surgery, after the surgery.<sup>64</sup>

(2) During that conversation, Patient #2 told the friend the following:

She said that it was horrible with the I.V. and that she was like pretty hysterical during it. And when it was all, when that was all done and she calmed down a little bit, she said it was her and (Licensee) and a nurse in the room and he had the nurse leave. She, she said he closed the door and came back to her. And when he went to put the markings on her, she said that he climbed on top of her and rubbed his dick on her. And she said he had a boner and she pushed him off and said, 'What are you doing?' And then he acted like nothing happened. And so she was super shocked by that, and that was right before she went under, was about to go in.<sup>65</sup>

(3) Patient #2 said she felt Licensee's erection on her foot and leg.<sup>66</sup>

54. Patient #2 testified at the final hearing. Her testimony was consistent with her allegations set forth above, and the Administrative Law Judge found her to be a credible witness.<sup>67</sup>

---

<sup>60</sup> *Id.* at 7.

<sup>61</sup> *Id.* at 8.

<sup>62</sup> *Id.* at 6, 8.

<sup>63</sup> Ex. 14.

<sup>64</sup> Ex. 19 at 7.

<sup>65</sup> *Id.* at 8.

<sup>66</sup> *Id.* at 9.

<sup>67</sup> Test. of Patient #2.

55. Licensee also testified at the final hearing, and he denied Patient #2's allegations or that he did anything inappropriate regarding Patient #2.<sup>68</sup>

56. Several witnesses who had provided professional services at Licensee's clinic on the day of Patient #2's surgery also testified at the final hearing. Those witnesses testified that they did not see Licensee do anything improper; that they did not see Licensee with an erection; and that, on the day of the surgery, Patient #2 did not mention to them that Licensee had made inappropriate or sexual contact with her.<sup>69</sup>

57. Licensee also offered written statements from people who had provided services at Licensee's clinic, which were received into evidence. Those statements included the following:

- (1) One worker stated she did not see Licensee with an erection on the day of Patient #2's surgery. She also stated that an erection would have been readily apparent, due to the material of the scrub uniform Licensee was wearing.<sup>70</sup>
- (2) Another worker stated that Licensee was very professional and that she did not witness any evidence of misconduct or anything out of the ordinary.<sup>71</sup>
- (3) Another worker stated that Patient #2 came into Licensee's clinic on January 7, 2020, for Botox treatment and a second post-op appointment. The worker stated that Patient #2 was smiling and seemed completely comfortable, and that Patient #2 did not seem distressed in any way during their brief conversation.<sup>72</sup>
- (4) Another worker stated that Patient #2 called Licensee's clinic on January 8, 2020, and stated that she wanted to file a charge against Licensee regarding his behavior with her.<sup>73</sup>

#### IV. PATIENT #3

58. In 2010, Patient #3 saw Licensee at his office in Maple Grove, Minnesota, for carpal tunnel symptoms in both wrists, for breast reduction surgery, and for a tummy tuck (abdominoplasty).<sup>74</sup>

59. During a visit Patient #3 had with Licensee in 2010, before surgery for breast reduction and abdominoplasty, Licensee lunged toward Patient #3, put both his

---

<sup>68</sup> Test. of Licensee.

<sup>69</sup> Test. of K. S.; Test. of M.H.; Test. of W.T.

<sup>70</sup> Ex. 103.

<sup>71</sup> Ex. 105.

<sup>72</sup> Ex. 107.

<sup>73</sup> Ex. 106.

<sup>74</sup> Test. of Patient #3.

hands on her breasts, and straddled her right knee, placing his testicles on that knee while Licensee and Patient #3 had their pants on (2010 incident).<sup>75</sup>

60. When Licensee put his testicles on her knee, Patient #3 straightened up in shock and Licensee quickly removed his testicles from her knee.<sup>76</sup>

61. After the 2010 incident, Patient #3 went home and told her husband, who was a retired police detective, what had happened during her appointment with Licensee.<sup>77</sup>

62. Patient #3's husband accompanied Patient #3 to her next appointment with Licensee, and he sat in the waiting room during that appointment.<sup>78</sup>

63. After the 2010 incident, Patient #3 underwent breast reduction surgery, abdominoplasty, and right carpal tunnel surgery with Licensee at North Memorial Hospital in 2010.<sup>79</sup>

64. Patient #3 delayed reporting the 2010 incident to authorities out of a concern that she would not be believed. However, the incident continued to bother her.<sup>80</sup>

65. Patient #3 later saw newspaper articles regarding complaints against Licensee, and she then filed a complaint with the Maple Grove police department on December 3, 2021, about the 2010 incident.<sup>81</sup>

66. Patient #3 also reported the 2010 incident to the Board and was interviewed by an investigator for the Minnesota Attorney General's office on January 18, 2022, and January 26, 2022. During those interviews, Patient #3 described what had happened with Licensee during the 2010 incident.<sup>82</sup>

67. Patient #3 and her husband testified about the 2010 incident at the final hearing,<sup>83</sup> and the Administrative Law Judge found them to be credible witnesses.

68. Licensee also testified at the final hearing, and he denied lunging at Patient #3 or putting his testicles on her knee.<sup>84</sup>

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Test. of Patient #3; Test. of Patient #3's husband.

<sup>78</sup> Test. of Patient #3; Test. of Patient #3's husband.

<sup>79</sup> Test. of Patient #3; Ex. 24.

<sup>80</sup> Test. of Patient #3.

<sup>81</sup> Test. of Patient #3; Ex. 23.

<sup>82</sup> Exs. 25, 26.

<sup>83</sup> Test. of Patient #3; Test. of Patient #3's husband.

<sup>84</sup> Test of Licensee.

## V. PATIENT #4

69. In 2016, Patient #4 saw Licensee for abdominoplasty.<sup>85</sup> Drainage tubes were inserted during the surgery.<sup>86</sup>

70. In a deposition on April 4, 2022, Patient #4 testified that, during a post-op visit after the abdominoplasty, Licensee quickly touched the outer lips of her vagina with two of his fingers while he was removing a drainage tube from an area near her vagina. Patient #4 also claimed that Licensee quickly rubbed her knee before he left.<sup>87</sup>

71. Patient #4 returned to Licensee for breast augmentation and BBL (Brazilian Butt Lift) surgeries.<sup>88</sup>

72. During the first examination for the removal of breast implants and placement of bigger breast implants, Patient #4 felt that Licensee was giving her "lustful stares," like he found her attractive, based on his facial expressions.<sup>89</sup>

73. During her deposition, Patient #4 testified that she told Licensee she was thinking about working at a gentlemen's club and that Licensee asked her to let him know which strip club she chose to work at and that he would visit her.<sup>90</sup>

74. Patient #4 then had Licensee perform the breast augmentation procedure.<sup>91</sup>

75. Patient #4 also saw Licensee in November 2016 regarding the Brazilian Butt Lift. In her deposition, Patient #4 testified that, during that visit, Licensee told her to turn around while examining her backside, said she was going to look great and sexy, and quickly rubbed her thigh.<sup>92</sup>

76. Patient #4 had Licensee perform the Brazilian butt lift procedure on March 17, 2017. That procedure included liposuction of the abdomen, back, flanks, arms, and thigh, and inserting fat from those areas into Patient #4's buttocks.<sup>93</sup> During her deposition, Patient #4 testified that, after the surgery, Licensee examined her and called her sexy, said she looked great, and asked her to let him know what strip club she would be at.<sup>94</sup>

---

<sup>85</sup> Ex. 49 at 18.

<sup>86</sup> *Id.* at 24.

<sup>87</sup> *Id.* at 24-27.

<sup>88</sup> *Id.* at 29.

<sup>89</sup> *Id.* at 30-31.

<sup>90</sup> *Id.* at 32.

<sup>91</sup> *Id.* at 33.

<sup>92</sup> *Id.* at 36.

<sup>93</sup> *Id.* at 39, 50, 56.

<sup>94</sup> *Id.* at 52-53.

77. Patient #4 was not happy with the butt lift, because she did not think it was big enough and it was not shaped how she wanted it.<sup>95</sup>

78. During her deposition, Patient #4 testified that she thought it was inappropriate for Licensee to rub her thigh, ask about the strip club, and touch the outer lips of her vagina.<sup>96</sup>

79. Patient #4 received compensation from Licensee for the butt lift.<sup>97</sup>

80. Patient #4 filed a written complaint against Licensee with the Board in April 2017. That complaint included allegations that Licensee had called her sexy, touched and rubbed her inappropriately, asked her what strip club she would be at so he could come see her, and made her feel uncomfortable.<sup>98</sup>

81. The Board then interviewed Licensee in June 2017 regarding Patient #4's allegations, and Licensee denied those allegations.<sup>99</sup>

82. In September 2017, the Board sent letters to Patient #4 and Licensee. The letter to Patient #4 informed her that the facts of the case did not provide a sufficient basis for the Board to take disciplinary or corrective action against Licensee's physician license and that its file was closed. However, the letter to Patient #4 also stated that her complaint would remain on file as a permanent record and may be reopened if the Board received similar complaints against Licensee's license.<sup>100</sup>

83. The Board's September 2017 letter to Licensee informed him that the Board decided to dismiss Patient #4's complaint and close its investigation at that time. However, the letter to Licensee also stated that the investigation may be reopened if the Board received information that was not previously considered during the initial investigation of the complaint, or if the Board received similar complaints regarding his practice of medicine.<sup>101</sup>

84. After the Board received similar complaints against Licensee, it reopened its investigation of Patient #4's complaint. The Minnesota Attorney General's office interviewed Patient #4 on February 23, 2022. During that interview, Patient #4 said Licensee was very flirtatious, winked a lot and called her beautiful, stared lustfully, made little innuendos, said he would come see her if she worked at a strip club, and rubbed her bare knee. Patient #4 also said Licensee's hand lingered and made tapping movements in the area of her vagina when taking out a drainage tube.<sup>102</sup>

85. Patient #4 did not testify at the final hearing.

---

<sup>95</sup> *Id.* at 51.

<sup>96</sup> *Id.* at 39.

<sup>97</sup> *Id.* at 54.

<sup>98</sup> Ex. 27.

<sup>99</sup> Ex. 31.

<sup>100</sup> Ex. 116.

<sup>101</sup> Ex. 117.

<sup>102</sup> Ex. 32.

86. During his testimony at the final hearing, Licensee denied Patient #4's allegations of inappropriate behavior.<sup>103</sup>

87. A former employee of Licensee (E.C.) also testified at the final hearing. E.C. remembered that Patient #4 had said something about inappropriate behavior, that Patient #4 wanted her money back, and that Patient #4 said "how am I supposed to feed my son."<sup>104</sup>

88. E.C. did not remember if Patient #4 was unhappy with the surgery or if she was unhappy about something else.<sup>105</sup>

89. At the final hearing, the CMA who had worked for Licensee (K.S.) testified that she was always there when drains were removed from patients and that she never observed Licensee touching a vagina or any unprofessional behavior by Licensee when drains were removed.<sup>106</sup>

90. Patient #4 was extremely displeased with the Brazilian butt lift because she did not think that Licensee put enough fat into her butt, and she wanted a refund.<sup>107</sup>

91. K.S. testified that Patient #4 did not complain to her about sexual or other misconduct.<sup>108</sup>

#### **VI. OTHER ALLEGATIONS OF SEXUAL MISCONDUCT SET FORTH IN PARAGRAPH 27 OF THE THIRD AMENDED NOTICE AND ORDER**

92. Paragraph 27 of the Third Amended Notice and Order states:

Information obtained from court documents relating to the marital dissolution of Respondent and one of his former spouses includes an affidavit of the former spouse stating that Respondent admitted to her that he has had sex with several of his patients. Additionally, the former spouse found a "love letter" from a previous patient addressed to Respondent in Respondent's closet.

93. Licensee's former spouse signed the affidavit referred to in paragraph 27 of the Third Amended Notice and Order on April 5, 2021, a redacted copy of which was received into evidence, and it stated:

(Licensee), a self-employed Plastic Surgeon, admitted to me on multiple occasions he has had sex with several of his patients. I found a love letter from a previous client addressed to him hidden in his closet. (Licensee) had restrictions placed on his practicing medicine by the Medical Board

---

<sup>103</sup> Test. of Licensee.

<sup>104</sup> Test. of E.C.

<sup>105</sup> *Id.*

<sup>106</sup> Test. of K.S.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*



due to accusations by three (3) women of sexual harassment and impropriety.<sup>109</sup>

94. Licensee's former spouse did not testify at the final hearing.

95. During his testimony at the final hearing, Licensee denied admitting he had sex with patients. Licensee also testified that there was no love letter.<sup>110</sup>

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Board have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 147.001-.381, 214.10, 214.077, and 214.103.

2. The Board and Committee have complied with all procedural requirements of statutes and rule in this matter.

3. Licensee timely appealed, and this matter is properly before the Board, the Committee, and the Administrative Law Judge.

4. Minn. Stat. § 147.091, subd. 1, provides that the Board may impose disciplinary action, as described in Minn. Stat. § 147.141, against any physician. Minn. Stat. § 147.091, subd. 1, also provides that the following conduct is prohibited and is grounds for disciplinary action:

(g) Engaging in any unethical or improper conduct, including but not limited to:

- (1) conduct likely to deceive or defraud the public;
- (2) conduct likely to harm the public;
- (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;
- (4) medical practice that is professionally incompetent; and
- (5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.<sup>111</sup>

and

<sup>109</sup> Amended Ex. 36.

<sup>110</sup> Test. of Licensee.

<sup>111</sup> Minn. Stat. § 147.091, subd. 1(g).

- (t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient.<sup>112</sup>

5. Minn. Stat. § 147.141 provides that disciplinary action against a physician for violating a provision or provisions of Minn. Stat. § 147.01 to Minn. Stat. § 147.22 may include the following:

- (1) revoke the license;
- (2) suspend the license;
- (3) revoke or suspend registration to perform interstate telehealth;
- (4) impose limitations or conditions on the physician's practice of medicine, including the limitation of scope of practice to designated field specialties; the imposition of retraining or rehabilitation requirements; the requirement of practice under supervision; or the conditioning of continued practice on demonstration of knowledge or skills by appropriate examination or other review of skill and competence;
- (5) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the physician of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding;
- (6) order the physician to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution; or
- (7) censure or reprimand the licensed physician.

6. The Committee has the burden of proving by a preponderance of the evidence that Licensee engaged in conduct prohibited by Minn. Stat. § 147.091, subd. 1, and that the Board has grounds for disciplining Licensee.<sup>113</sup>

7. The preponderance of the evidence standard requires that, to establish a fact, it must be more probable that the fact exists than that the contrary exists.<sup>114</sup>

8. Minn. Stat. § 214.077(a) provides that, when a health-related licensing board receives a complaint regarding a regulated person and has probable cause to believe that the regulated person has violated a statute or rule that the health-related

---

<sup>112</sup> Minn. Stat. § 147.091, subd. 1(t).

<sup>113</sup> Minn. R. 1400.7300, subp. 5 (2021).

<sup>114</sup> *City of Lake Elmo v. Metro Council*, 685 N.W.2d. 1, 4 (Minn. 2004).

licensing board is empowered to enforce, and continued practice by the regulated person presents an imminent risk of serious harm, the health-related licensing board shall issue an order temporarily suspending the regulated person's authority to practice.

9. Pursuant to Minn. Stat. § 214.077, the temporary suspension remains in effect until the Board completes an investigation, holds a contested hearing pursuant to the Administrative Procedures Act, and issues a final order.

10. In civil cases, probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment under the circumstances in entertaining it.<sup>115</sup>

11. The Committee proved by a preponderance of the evidence that Licensee violated Minn. Stat. § 147.091, subd. 1(g) (unethical or improper conduct) and subd. 1(t) (sexual misconduct), regarding Patient #2.

12. The Committee proved by a preponderance of the evidence that Licensee violated Minn. Stat. § 147.091, subd. 1(t), regarding Patient #3.

13. The Board had probable cause to believe that Licensee violated a statute or rule that the Board is empowered to enforce and that continued practice by Licensee presented an imminent risk of serious harm. Therefore, it was appropriate for the Board to issue the Order of Temporary Suspension.

14. The Committee did not prove by a preponderance of the evidence that Licensee violated a statute or rule that the Board is empowered to enforce, regarding Patient #1 or Patient #4.

15. The Committee did not prove by a preponderance of the evidence that Licensee engaged in the other sexual misconduct alleged in paragraph 27 of the Third Amended Notice and Order.

16. Disciplinary action against Licensee is appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law judge makes the following:

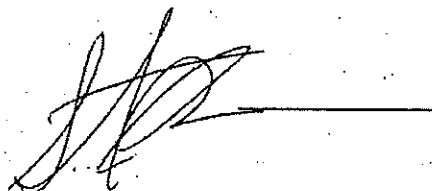
---

<sup>115</sup> See *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 674 (Minn. 2003), quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 110 (Conn. 1990).

## RECOMMENDATION

The Administrative Law Judge recommends that the Board take disciplinary action against Licensee.

Dated: June 14, 2022



STEVEN M. BIALICK  
Administrative Law Judge

Reported: Digitally recorded  
Transcript prepared

## NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61 (2020), the Board shall not make a final decision until this Report has been made available to the parties to the proceeding for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact Ruth Martinez, Executive Director of the Minnesota Board of Medical Practice, 335 Randolph Avenue, Suite 140, St. Paul, Minnesota 55102, (612) 617-2130, to ascertain the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.60, subd. 2a (2020). In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2020), the Board is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

## MEMORANDUM

When the resolution of a contested case depends, to a large extent, on whether to believe one person's version of events over another person's contrary version, it is important to determine the credibility of each individual. That determination is crucial in cases where a physician acts inappropriately with a patient because the inappropriate conduct is typically only witnessed by the physician and the patient.

Rule 52.01 of the Minnesota Rules of Civil Procedure recognizes the deference to be given to a trial court's determination of witness credibility when it states:

Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

An important factor in determining the credibility of a witness is the demeanor of the witness. That determination includes considering the witness' manner and appearance, as well as his or her frankness and sincerity, or the lack thereof.

In *State of Minnesota v. George Maurel Carroll*, 639 N.W.2d 623 (Minn. App. 2002), at pages 627 and 628, the Minnesota Court of Appeals stated:

In every case, the credibility of anyone who takes the stand—defendant, victim, and all other witnesses—is on trial. See 10 *Minnesota Practice*, CRIMJIG 3.12 (1999) (instructing that jurors are sole judges of witnesses' credibility and may consider witnesses' interest or lack of interest in outcome of case; their relationship to parties; their ability and opportunity to know, remember, and relate facts, their manner and appearance; their age and experience; their frankness and sincerity, or lack thereof; reasonableness or unreasonableness of their testimony in light of all other evidence; any impeachment of their testimony; and any other factors that bear on credibility and weight); 4 *Minnesota Practice* 4, CIVJIG 12.15 (1999) (stating the same).

When determining the sufficiency of evidence, an appellate court's review of bench trials is the same as the review of jury trials.<sup>116</sup>

The appearance and testimony of a witness at a final evidentiary hearing assists the judge in determining the demeanor and credibility of the witness. The absence of a witness impedes that determination.

When discussing witness credibility determinations by a judge, the Minnesota Worker's Compensation Court of Appeals stated in *Theodore J. Vanderbeek v. City of St. Paul/Self-Insured and Healthpartners*, 72 W.C.D. 789 (Minn.Work.Comp.Ct.App. 2012) at page 797:

---

<sup>116</sup> *Davis v. State of Minnesota*, 595 N.W.2d 520, 525 (Minn. 1999).

As a general rule, questions of credibility of the witnesses are matters reserved to the finder of fact and reviewed by this court on the basis of the substantial evidence standard. A judge is not required to relate or to discuss each piece of evidence bearing on the witness's credibility for truthfulness that is introduced at the hearing. Consequently, it is not the role of this court to reevaluate how influential each piece of evidence bearing on the witness's credibility for truthfulness was to the compensation judge or to make our own determination of the probative value of a witness's testimony. Ultimately, we are not free to substitute our own factual determinations of witness credibility for those of the compensation judge where, based on the judge's weighing of the testimony and the evidence presented at trial, he found the employee's testimony to be credible. Furthermore, because a compensation judge is generally entitled to accept all or any part of a witness's testimony, any arguable inconsistencies in the testimony provide insufficient basis to reverse the judge's decision.

These factors were considered by the Administrative Law Judge when addressing the allegations relating to Patients #1, 2, 3, and 4, as well as the allegations contained in paragraph 27 of the Third Amended Notice and Order.

#### **Patient #1**

On June 8, 2018, Licensee performed liposuction and fat-grafting breast surgery on Patient #1. The Committee alleged that Licensee acted inappropriately during post-operative visits in June and July 2018, while assessing the results of Patient #1's surgery with her.

Licensee appeared at the final hearing and denied that he had acted inappropriately.

A Certified Medical Assistant (CMA) who had worked at Licensee's clinic also appeared at the final hearing. The CMA testified that she was typically in the room when Licensee met with patients and that she did not see anything unusual happen when Licensee met with Patient #1. The CMA also testified that Patient #1 did not report any complaints to her.

Patient #1 did not testify at the final hearing, so the Administrative Law Judge was not able to evaluate her credibility by observing and listening to her. Further, Patient #1's assertions regarding Licensee are given less weight because she had several posts on Instagram in July 2018, in which she expressed happiness with the results of her surgery but did not mention any inappropriate behavior by Licensee.

The Committee did not prove by a preponderance of the evidence that Licensee violated a statute or rule that the Board is empowered to enforce, regarding Patient #1.

## Patient #2

In 2019, Patient #2 saw Licensee for breast augmentation surgery. Patient #2 claims that, during a pre-operative visit, Licensee briefly caressed her leg with the back of his hand when he took signed paperwork from her lap.

Patient #2 also claims that, on November 25, 2019, when Licensee was in a pre-operative room with her, Licensee rubbed his erect penis into her feet, while it was inside his scrubs. Patient #2 also claims that Licensee pushed her legs apart and pressed his erect penis that was inside his scrubs into her vaginal area over her underwear.

Licensee testified at the final hearing and denied these allegations.

Several witnesses who had provided professional services at Licensee's clinic on the day of Patient #2's surgery also testified at the final hearing. Those witnesses testified that they did not see Licensee do anything improper; that they did not see Licensee with an erection; and that, on the day of her surgery, Patient #2 did not mention to them that Licensee had made inappropriate or sexual contact with her. However, it is undisputed that Licensee was alone with Patient #2 for a brief period of time, shortly before Patient #2's surgery.

Patient #2 testified at the final hearing. Her testimony was consistent with the allegations set forth above, and the Administrative Law Judge found her to be a credible witness. Patient #2 appeared to be sincere and very upset by what she testified had happened.

As part of the Board's investigation of the allegations concerning Patient #2, an investigator from the Minnesota Attorney General's office contacted a friend of Patient #2. During a recorded interview, the friend told the investigator that Patient #2 had called her on the day of Patient #2's surgery, after the surgery, and told the friend what Licensee had done to her in the pre-operative room. The friend's description of what Patient #2 told her is consistent with the allegations regarding Patient #2 set forth above.

Finally, during a recorded telephone conversation Patient #2 had with Licensee after the day of the surgery, Licensee apologized for Patient #2 feeling his penis pushed against her and said there was not any explanation for it.

Based on Patient #2's credible testimony, corroboration by Patient #2's friend, and Licensee's apology, the Administrative Law Judge determined that the Committee proved by a preponderance of the evidence that Licensee violated Minn. Stat. § 147.091, subd. 1(g), by engaging in unethical or improper conduct regarding Patient #2.

For these same reasons, the Administrative Law Judge also determined that the Committee proved by a preponderance of the evidence that Licensee violated

Minn. Stat. § 147.091, subd. 1(t), by engaging in sexual misconduct regarding Patient #2.

### **Patient #3**

In 2010, Patient #3 met with Licensee at his Maple Grove, Minnesota, office, before surgery for breast reduction and abdominoplasty. Patient #3 claims that, during that visit, Licensee lunged toward her, put both his hands on her breasts, and straddled her right knee, placing his testicles on that knee while Licensee and Patient #3 had their pants on (2010 incident).

Patient #3 claims that she straightened up in shock, and Licensee quickly removed his testicles from her knee.

Patient #3 went home from that visit and told her husband, who was a retired police detective, what had happened. Patient #3's husband accompanied Patient #3 to her next visit with Licensee and waited in the waiting room during that appointment.

After the 2010 incident, Patient #3 proceeded to undergo surgery with Licensee at North Memorial Hospital.

Patient #3 delayed reporting the 2010 incident to authorities out of a concern that she would not be believed. However, the incident continued to bother her.

On December 3, 2021, after Patient #3 saw newspaper articles regarding complaints against Licensee, she filed a complaint about the 2010 incident with the Maple Grove police department. Patient #3 also reported the incident to the Board and was interviewed by an investigator from the Minnesota Attorney General's office in January 2022.

Patient #3 and her retired police detective husband both testified at the final hearing in a sincere and forthright manner. The Administrative Law Judge found Patient #3 and her husband to be credible witnesses.

During his testimony at the final hearing, Licensee denied Patient #3's allegation. However, Patient #3 and her husband had little to gain by their testimony and Licensee had much to lose if he admitted that Patient #3's allegation was true.

The Administrative Law Judge found the testimony of Patient #3 and her husband regarding the 2010 incident to be more credible than Licensee's testimony.

At the final hearing, the Committee withdrew its allegation that Licensee violated Minn. Stat. § 147.091, subd. 1(g), (unethical or improper behavior) regarding Patient #3, but continued to assert its allegation that Licensee violated Minn. Stat. § 147.091, subd. 1(t), (sexual misconduct) regarding Patient #3.

The Committee proved by a preponderance of the evidence that Licensee violated Minn. Stat. § 147.091, subd. 1(t), regarding Patient #3.



#### **Patient #4**

Patient #4 saw Licensee for abdominoplasty in 2016. Drainage tubes were inserted during the surgery.

Patient #4 claimed that, while Licensee was removing a drainage tube from an area near Patient #4's vagina during a post-op visit, Licensee quickly touched the outer lips of Patient #4's vagina with two of his fingers. Patient #4 also claimed that Licensee quickly rubbed her knee before he left.

After that alleged incident, Patient #4 returned to Licensee for breast augmentation and Brazilian Butt Lift (BBL) surgeries. The BBL surgery included liposuction of Patient #4's abdomen, back, flanks, arms, and thighs, and inserting fat from those areas into Patient #4's buttocks.

Patient #4 was unhappy with the result of the BBL, because she did not think her buttocks were big enough or shaped the way she wanted.

Patient #4 also claimed that, during office visits, Licensee called her sexy, said she looked great, and gave her "lustful stares." Patient #4 also claimed that, after she told Licensee she was thinking of working in a gentlemen's club, Licensee asked her to let him know which strip club she chose so he could visit her.

Patient #4 received compensation from Licensee for the butt lift. She also filed a written complaint against Licensee with the Board in April 2017. That complaint included allegations that Licensee had called her sexy, touched and rubbed her inappropriately, asked her what strip club she would be at so he could come see her, and made her feel uncomfortable.

The Board interviewed Licensee in June 2017 regarding Patient #4's allegations, and Licensee denied those allegations.

In September 2017, the Board sent letters to Patient #4 and Licensee, saying the facts of the case did not provide a sufficient basis for the Board to take disciplinary or corrective action against Licensee's physician license. The Board closed its file at that time.

The Board eventually reopened its investigation after receiving similar complaints against Licensee, and the Committee included Patient #4's allegations in the Third Amended Notice and Order.

During his testimony at the final hearing, Licensee denied Patient #4's allegations of inappropriate behavior.

A former employee of Licensee also testified at the final hearing. That employee remembered Patient #4 had said something about inappropriate behavior, that Patient #4 wanted her money back, and that Patient #4 said "how am I supposed to feed my son."

A Certified Medical Assistant who had worked for Licensee also appeared at the final hearing and testified that she was always present when drains were removed from patients. She also testified that she never observed Licensee touching a vagina or any unprofessional behavior by Licensee when drains were removed.

Patient #4 did not appear or testify at the final hearing, so the Administrative Law Judge was not able to evaluate her credibility by observing and listening to her.

The Committee did not prove by a preponderance of the evidence that Licensee violated a statute or rule that the Board is empowered to enforce, regarding Patient #4.

### **Other Allegations of Sexual Misconduct Set Forth in Paragraph 27 of the Third Amended Notice and Order**

The Committee also alleged that Licensee engaged in sexual misconduct with patients based on allegations in an affidavit Licensee's former spouse filed in relation to her marriage dissolution action. Licensee denied those allegations during his testimony at the final hearing. Licensee's former spouse did not testify at the final hearing, and the Administrative Law Judge was not able to assess the credibility of Licensee's former spouse.

The Committee did not prove the allegations contained in the affidavit of Licensee's former spouse by a preponderance of the evidence.

### **Order of Temporary Suspension**

Minn. Stat. § 214.077(a) provides that, when a health-related licensing board receives a complaint regarding a regulated person and has probable cause to believe that the regulated person has violated a statute or rule that the board is empowered to enforce, and continued practice by the regulated person presents an imminent risk of serious harm, the board shall issue an order temporarily suspending the regulated person's authority to practice.

Minn. Stat. § 214.077(c) provides that, at the time it issues a temporary suspension order, the health-related board "shall schedule a contested case hearing, on the merits of whether discipline is warranted, to be held pursuant to the Administrative Procedure Act."

Licensee argues that the evidence demonstrates that there is no "imminent risk of serious harm" as is necessary to maintain the order temporarily suspending Licensee's license and, therefore, the suspension should be immediately vacated.

The Committee argues that the review of this matter by the Administrative Law Judge should be limited to whether discipline is warranted and should not include the basis for the Order of Temporary Suspension. The Committee then goes on to argue that, without waiving its position regarding the scope of this proceeding, the Order of Temporary Suspension was proper because the Board had probable cause to believe

that Licensee violated the Medical Practice Act and that his continued practice presents an imminent risk of serious harm to the public.

As set forth in Minn. Stat. § 147.141, suspension of a physician's license is a form of discipline. Part of determining whether the temporary suspension of Licensee's license was warranted is determining whether the statutory basis for the temporary suspension was met. The statutory basis upon which the Board temporarily suspended Licensee's license was its determination that it had probable cause to believe that Licensee violated Minn. Stat. § 147.091, subd. 1, and that continued practice by Licensee presented an imminent risk of serious harm. Accordingly, the review of this matter by the Administrative Law Judge includes whether the Board had probable cause to believe that Licensee violated Minn. Stat. § 147.091, subd. 1, and that continued practice by Licensee presented an imminent risk of serious harm.

The Board received multiple complaints of sexual misconduct by Licensee. Inappropriate sexual conduct by a physician with a patient can cause serious emotional harm to the patient. The Committee presented sufficient evidence at the final hearing to demonstrate that the Board had probable cause to believe that Licensee violated Minn. Stat. § 147.091, subd. 1, and that continued practice by Licensee presented an imminent risk of serious harm. Therefore, it was appropriate for the Board to issue the Order of Temporary Suspension of Licensee's physician license.

### **Conclusion**

The Committee proved by a preponderance of the evidence that Licensee violated Minn. Stat. § 147.091, subd. 1(g) (unethical or improper behavior) and subd. 1(t) (sexual misconduct). Therefore, the Administrative Law Judge recommends that the Board take disciplinary action against Licensee.

**S. M. B.**