

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

**Division of Administrative Law Appeals**

**Board of Registration in Medicine,  
Petitioner**

v.

Docket No. RM-17-988

**Rolf Pfannl, M.D.,  
Respondent**

**Appearance for Petitioner:**

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

**Appearance for Respondent:**

Paul Cirel, Esq.  
Todd & Weld LLP  
One Federal Street  
Boston MA 02110

**Administrative Magistrate:**

Kenneth J. Forton, Esq.  
Administrative Magistrate

**SUMMARY**

Respondent co-director of a pathology residency program sexually harassed a pathology resident by hugging and kissing her, paging her to come to his office for no work reason, and making comments about her body and appearance. This behavior violated the ethical principle contained in AMA Ethics Opinion 9.1.3, constituted misconduct in the practice of medicine, and undermined public confidence in the integrity of the medical profession. Respondent also made false representations on his 2016 request to renew his medical license and failed to respond to a subpoena and furnish the Board with information. Therefore, I recommend that the Board of Registration in Medicine impose the discipline it believes is appropriate.

**RECOMMENDED DECISION**

On November 9, 2017, Petitioner Board of Registration in Medicine, pursuant to G.L. c. 112, § 5 eighth par. (a), and 243 CMR 1.03(5)(a)(1), (16), and (18), issued a Statement of Allegations ordering Respondent Dr. Rolf Pfannl to show cause why he should not be disciplined for committing misconduct in the practice of medicine, engaging in conduct that undermines the public confidence in the integrity of medicine, fraudulently procuring his certificate of registration or its renewal, failing to respond to a subpoena or to furnish the Board documents, information or testimony to which the Board is legally entitled, and violating an ethical principle. On the same date, the Board issued an order to use pseudonyms and to impound, and referred the matter to the Division of Administrative Law Appeals. A lengthy series of discovery motions and arguments ensued after Dr. Pfannl secured counsel.

On January 3, 2019, the parties submitted a joint pre-hearing memorandum; I have marked this "Pleading A." I held the first day of the evidentiary hearing at the Division of Administrative Law Appeals, One Congress Street, 11th floor, Boston, Massachusetts on January 8, 2019. The hearing continued at DALA's new location, 14 Summer Street, 4th floor, Malden, Massachusetts on April 22-24, 2019. At the hearing, the Board produced eight witnesses: Resident 1, a former pathology resident; Dr. Jeffrey Saffitz, Chief of Pathology at Beth Israel Deaconess Medical Center (BIDMC); Dr. Yael Heher, pathologist at BIDMC; Dr. Katelyn Dannheim, former pathology resident at BIDMC; Brandon Willsie, Director of Operations at Rock Spot Climbing Gym; the Respondent, Dr. Pfannl; Amy Serino, Esq., Spruce Law, LLC, counsel to HMFP and BIDMC; and Susan Dye, Board investigator.

The hearing was stenographically recorded.<sup>1</sup> At the hearing I marked 47 exhibits (Exs. 1-47). I closed the record on October 17, 2019 after the parties filed their closing briefs.

**FINDINGS OF FACT**

Based upon the evidence presented, reasonable inferences drawn from it, and my assessment of the witnesses' credibility, I make the following findings of fact:

1. Dr. Rolf Pfannl was born in 1970. He graduated from the Universidad Nacional de Asuncion in 1995. He has been licensed to practice medicine in Massachusetts under certificate number 218402 since 2004. He is certified by the American Board of Pathology in pathology with subspecialty certifications in neuropathology and anatomic pathology. Dr. Pfannl previously worked at two teaching hospitals. (Stipulation.)
2. Dr. Pfannl was hired as a staff pathologist specializing in neuropathology by the Harvard Medical Faculty Physicians (HMFP) at Beth Israel Deaconess Medical Center, Inc. (BIDMC) on October 1, 2012. Dr. Pfannl also held an appointment to the medical staff at BIDMC. (Dr. Saffitz II:173; Exs. 5, 40.)
3. In September 2013, Dr. Pfannl was appointed co-director of the BIDMC pathology resident training program. (Dr. Saffitz II:174, 192-93.)
4. In December 2013, Dr. Pfannl was advised by his supervisor, Dr. Saffitz, that he had been named in an anonymous complaint in August 2013. No action against Dr. Pfannl was taken as a result of the anonymous complaint and subsequent

---

<sup>1</sup> Citations to the hearing transcripts will follow the following format: [Name of Witness] [Transcript Volume]: [Page Number(s)].

investigation. Dr. Pfannl was told to be more careful in sharing his personal life. (Dr. Saffitz II:197; Dr. Pfannl III:403; Stipulation.)

*Sexual Harassment*

5. The American Medical Association Code of Medical Ethics Opinion ("AMA Ethics Opinion") 9.1.3 states:

Sexual harassment can be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment in the practice of medicine is unethical. Sexual harassment exploits inequalities in status and power, abuses the rights and trust of those who are subjected to such conduct; interferes with an individual's work performance, and may influence or be perceived as influencing professional advancement in a manner unrelated to clinical or academic performance, harm professional working relationships, and create an intimidating or hostile work environment; and is likely to jeopardize patient care. Sexual relationships between medical supervisors and trainees are not acceptable, even if consensual. The supervisory role should be eliminated if the parties wish to pursue their relationship. Physicians should promote and adhere to strict sexual harassment policies in medical workplaces.

(Ex. 23.)

*Resident 1*

6. Resident 1 was a female resident in the Department of Pathology at BIDMC from July 2013 through July 2016. (Resident 1 I:63; Stipulation.)

7. Resident 1 is married and has children. She was married at the start of her residency. (Resident 1 I:24, 52; Dr. Dannheim II:251.)

8. Resident 1 completed two fellowships. (Resident 1 I:25-26.)

9. As part of their training, pathology residents were assigned to different services within the hospital's pathology department. (Stipulation.)

10. Residents "sign out" with the attending physician for the service they are assigned to. The sign-out process involves jointly reviewing specimen slides through a microscope and entering a diagnosis. (Resident 1 I:26, 73.)

11. The microscope is a two-headed microscope. To use it the resident and the attending physician face each other from opposite sides of the table. (Resident 1 I:79; Ex. 25.)

12. Attending physicians write evaluations for residents on their services. (Resident 1 I:84; Dr. Saffitz II:172.)

13. Dr. Pfannl's office at BIDMC was next to a public hallway and public restrooms. For security, the department required the office door to be closed. (Dr. Pfannl III:406, 441.)

14. Dr. Pfannl's office contained a U-shaped desk. The left arm of the desk was against the left wall of his office and held a computer. The bottom arm of the desk faced the entrance to the office and held a second computer. The right arm of the desk faced the right wall of the office. The two-headed microscope was on the right arm of the desk. He reviewed slides with residents on this microscope. He sat on the inside of the desk and the resident sat on the outside of the desk. (Dr. Pfannl III:384-88.)

15. Dr. Pfannl frequently paged Resident 1 to his office, even when she was not on his service. Resident 1, fearing negative consequences, reported to his office when she was paged. During these non-service calls Dr. Pfannl discussed personal matters, such as his marital struggles, with Resident 1. (Resident 1 I:30-32; Dr. Dannheim II:246.)

16. Dr. Pfannl discussed his ongoing divorce with other residents, as well. (Resident 1 I:57; Dr. Dannheim II:248.)
17. When she did report to his office, Dr. Pfannl greeted Resident 1 with a kiss on each cheek. At least once he tried to kiss her on the lips. On occasion, he hugged her very tightly and did not let go. (Resident 1 I:32, 49-50.)
18. Dr. Pfannl also complimented Resident 1 on her appearance and made comments about her body. (Resident 1 I:34, 50.)
19. Resident 1 felt that Dr. Pfannl's behavior was unprofessional and inappropriate, and she felt uncomfortable being alone with him. Resident 1 did not report Dr. Pfannl initially because she feared for her academic career, reputation, and prospects for fellowships. (Resident 1 I:33-34, 141; Dr. Heber II:229-30; Dr. Dannheim II:241-43.)
20. Resident 1 communicated with other residents about the unwanted and inappropriate attention she was getting from Dr. Pfannl. (Resident 1 I:34; Dr. Dannheim II:241.)
21. Resident 1 developed strategies to avoid spending time with Dr. Pfannl. For instance, she asked co-residents to page her "in . . . ten minutes with a reason" so she could leave. She asked other residents going to his office to pick up slides if she felt Dr. Pfannl's reason for paging her was contrived. She asked other residents to change sign-out schedules so she could avoid signing out with Dr. Pfannl. She asked other residents waiting to sign out to knock on the door after a certain period of time so that she could leave. (Resident 1 I:35-36; Dr. Dannheim II:247, 254.)
22. Resident 1 was a member of Rock Spot Climbing, an indoor rock climbing gym. (Resident 1 I:38.)

23. Rock Spot offers guest pass privileges to members of the gym. A guest pass is an electronic pass that allows a member to bring a guest into the gym. (Mr. Willsie II:264.)

24. Resident 1 and Dr. Pfannl had arranged to meet at Rock Spot on June 1, 2014. They agreed to bring their children. (Resident 1 I:38; Dr. Pfannl III:391-92.)

25. On June 1, 2014, Dr. Pfannl met Resident 1 at Rock Spot. His son was not present. Dr. Pfannl explained to Resident 1 that his wife had filed a restraining order against him the day before and would not allow their son to go with him. (Resident 1 I:38; Dr. Pfannl III:393.)

26. Resident 1 used one of her guest passes so that Dr. Pfannl could enter the facility on June 1, 2014. This was his first visit to Rock Spot. (Mr. Willsie II: 264, 266; Ex. 32.)

27. Dr. Pfannl purchased a membership to Rock Spot gym that same day, June 1, 2014. (Mr. Willsie II:266; Dr. Pfannl III:394.)

28. Dr. Pfannl went to Rock Spot five times after June 1, 2014: June 22, 2014, September 2, 2014, December 30, 2014, January 7, 2015, and April 12, 2015. Resident 1 was not present on any of those five days. (Mr. Willsie II:275-277; Ex. 32.)

29. On approximately June 4, 2014, Dr. Pfannl moved out of his marital home in Newton. He immediately moved to an apartment owned by a friend. He lived there for approximately four or five weeks. (Dr. Pfannl II:367-68.)

30. Sometime before August 25, 2014, Dr. Pfannl then moved to an apartment in Chestnut Hill. The apartment is approximately 1.6 miles from Resident 1's apartment,

approximately 4.5 miles from his former marital home, and approximately 10 miles to his son's school. (Ms. Dye IV:514; Ex. 2.)

31. Resident 1 saw Dr. Pfannl sometimes while she was running in her neighborhood. (Resident 1 I:44-45.)

32. Dr. Pfannl insisted on giving Resident 1 ski equipment that his son had outgrown, but he thought would fit Resident 1's son. (Resident 1 I:42; Dr. Pfannl III:396.)

33. Resident 1 picked up the skis from Dr. Pfannl's apartment. She felt scared but also as if she could not refuse the gesture, as Dr. Pfannl was persistent. She stepped inside the front door to get the equipment which had been placed there by Dr. Pfannl. (Resident 1 I:134-36; Dr. Pfannl III:396-97.)

34. Dr. Pfannl asked Resident 1 for a picture of herself several times. (Resident 1 I:51.)

35. Resident 1 sent Dr. Pfannl two pictures of her face in December 2014. (Resident 1 I:107-08; Exs. 26-28.)

36. In their last encounter, Resident 1 rebuffed Dr. Pfannl's advances, stating that he was her work superior. Dr. Pfannl replied that he would no longer be a program director, implying that having a relationship would be OK now because he would no longer be her superior. This worried Resident 1, as she thought Dr. Pfannl would intensify his pursuit of her. (Resident 1 I:48.)

37. After their last encounter, Resident 1 tried to avoid Dr. Pfannl. He continued to text her. (Resident 1 I:53, 128.)



38. In January 2016, Resident 1 filed a complaint at BIDMC regarding Dr. Pfannl's conduct. (Resident 1 I:120.)

39. After filing the complaint, Resident 1 texted Dr. Heher:

Dr. [Pfannl] is contacting me again per text (I'm not replying), and that just reminded me of something I really don't want to go back to at [BIDMC]. I was just wondering if you've heard anything from Dr Tibbles regarding the progression of things?

(Resident 1 I:53; Dr. Heher II:321-32; Ex. 31.)

40. On January 8, 2016, Dr. Heher forwarded a screenshot of the text message to Carrie Tibbles, Director of Graduate Medical Education at BIDMC. (Dr. Heher II:232; Ex. 31.)

41. On January 10, 2016, Dr. Tibbles forwarded Dr. Heher's email to Dr. Saffitz. Dr. Tibbles wrote:

I wanted to give you a quick update where we are. I am meeting with the lawyer you met and two of the women residents this Tuesday morning for formal interviews. I wanted to share a text to [Dr. Heher] from one of them this week so you can get a sense of how ongoing this is. I really appreciate your support as we try and resolve this.

(Ex. 30.)

*Resident 2*

42. Resident 2 was a female resident in the Department of Pathology at BIDMC. (Stipulation.)

43. Dr. Pfannl knew Resident 2 when she was a medical student where he previously worked. (Dr. Pfannl II:309.)

44. In July 2011, Resident 2 shared some of her artwork with Dr. Pfannl. (Ex. 33.)

45. From July 2011 to November 2015, Dr. Pfannl emailed Resident 2 nine times informing her of art exhibits and festivals in the area. (Dr. Pfannl II:300-14; Exs. 33, 41.)

46. In October 2013, Dr. Pfannl donated some of his art prints to a charity auction at which Resident 2's painting was also up for auction. Resident 2 wrote to Dr. Pfannl that she was disappointed by the amount her painting sold for. Dr. Pfannl responded with encouragement. (Ex. 46.)

47. In response to Dr. Pfannl's November 2, 2014 email forwarding a flyer from an art festival, in which Dr. Pfannl wrote "It is that time of the year again . . . I hope you get the chance to go this time!!," Resident 2 responded she could not and that "I'll make it one of these times . . . ." (Exs. 33, 41.)

48. Dr. Pfannl gave Resident 2 a little bottle of sand that had fallen out of the diving gear he had used during a Caribbean trip he took. (Dr. Pfannl II:335-36.)

49. Dr. Pfannl gave Resident 2 an art portfolio of his to transport her art pieces. (Dr. Pfannl II 337-38.)

50. Dr. Pfannl discussed personal matters, such as his marital struggles, with Resident 2. (Dr. Pfannl II:346.)

#### *Resignation*

51. HMFP investigated the claims about Dr. Pfannl's conduct. Dr. Pfannl was interviewed. (Dr. Saffitz II:180-81; Ms. Serino III:453; Ex. 30.)

52. By letter dated January 14, 2016 Dr. Pfannl was placed on a leave of absence from HMFP and BIDMC because of complaints about his "workplace behavior that warrant further investigation." (Ex. 38.)

53. Dr. Saffitz and Dr. Pfannl met on February 4, 2016, and Dr. Pfannl was given a letter, dated February 4, 2016, that terminated him for cause, citing Dr. Pfannl's "failure to comply with HMFP's policies prohibiting harassment and discrimination." His termination was effective immediately. Because of his termination, he was expected to resign his appointment to the BIDMC medical staff. As a courtesy, he was given 72 hours to tender his BIDMC resignation, or, according to the operative employment agreement, Dr. Saffitz would be appointed Dr. Pfannl's attorney-in-fact to submit the resignation for him. (Dr. Saffitz II:204-06; Ex. 5.)

54. On February 5, 2016, despite the clear language of the termination letter, it appears that HMFP offered Dr. Pfannl the option of resigning in lieu of being terminated for cause. He had until February 9, 2016 to decide whether or not to resign. (Exs. 44, 45.)

55. On February 9, 2016, Dr. Pfannl emailed Dr. Saffitz. He resigned his employment with HMFP and resigned his appointment to the medical staff at BIDMC. (Dr. Saffitz II:207-08; Ex. 6.)

*Board Investigation and Application Renewal*

56. The Board started an investigation into Dr. Pfannl in April 2016. (Ms. Dye IV:500.)

57. The Board uses contact information from a physician's most recent renewal application to contact the physician. It is the physician's responsibility to update the Board as to any changes of address or other personal information. (Ms. Dye IV:500-01.)

58. The Board sent to Dr. Pfannl's Newton address notice that it had docketed a complaint against him. The notice was dated May 26, 2016. After the letter was eventually returned as undeliverable, the Board emailed the letter to him on June 12, 2016. (Ms. Dye IV:501-02; Exs. 8, 9.)

59. On July 2, 2016, Dr. Pfannl submitted his 2016 license renewal application. (Ex. 1; Stipulation.)

60. Question 18 of the renewal application asks:

- a) Have you withdrawn an application to any governmental authority, health care facility, group practice employer or professional association?
- b) Have you taken a leave of absence from any health care facility, group practice or employer for reasons related to your competence to practice medicine?
- c) Have you been the subject of an investigation by any governmental authority, including the Massachusetts Board of Registration in Medicine or any other state medical board, health care facility, group practice, employer or professional association?
- d) Have you been the subject of a disciplinary action taken by any governmental authority, health care facility, group practice, employer, or professional association?

(Ex. 1.)

61. Dr. Pfannl answered "No" to all four parts of question 18. (Ex. 1.)

62. In an email to Dr. Pfannl, dated November 18, 2016, Ms. Dye wrote:

When we last spoke, you advised me that you would probably get an attorney to represent you concerning the above complaint. As yet, we have not heard from an attorney. If you still plan on seeking representation, please do so now as we will probably want to speak to you sometime next month. If you hire an attorney, please have them send me a written notification.

I noticed that your telephone is out of service. If you have a new number, please change your number with the Board.

(Ms. Dye IV:510; Ex. 9.)

63. Dr. Pfannl responded to the November 18, 2016 email on December 7, 2016. He wrote:

Thank you for following up with me.  
This email is to acknowledge receiving yours.  
I'll be sending you more information about the case soon. I'll be happy to schedule a phone conversation, with you, as you suggested.

(Ms. Dye IV: 504; Ex. 10.)

64. On December 14, 2016, Ms. Dye emailed Dr. Pfannl to set up a meeting in early January 2017 to discuss the complaint, and asked Dr. Pfannl to call and set up an appointment. (Ms. Dye IV:504; Ex. 11.)

65. On January 27, 2017, the Board mailed and emailed Dr. Pfannl a subpoena to appear before the Board on February 2, 2017. The letter was mailed to Dr. Pfannl's Chestnut Hill address. (Ms. Dye IV:505; Exs. 12, 13.)

66. On January 27, 2017, Dr. Pfannl responded to the emailed subpoena. He wrote:

As I stated in my prior email, I would be more than happy to have a phone conference at any time. However, I cannot be there in person as I mentioned, given that I'm in Paraguay, South America.

(Ms. Dye IV:506-07; Ex. 15.)

67. On January 30, 2017, the Board mailed and emailed a letter to Dr. Pfannl asking him to inform the board when he will be returning to Massachusetts and provide a current address. The letter was mailed to Dr. Pfannl's Chestnut Hill address. (Ms. Dye IV:507-08; Exs. 14, 15.)

68. On February 6, 2017, the Board mailed and emailed a letter similar to the January 30, 2017 letter. The February 6, 2017 letter included the following language:

You are required by 243 CMR 2.07(12) to file a response to this complaint within 30 days of the date of this letter. Your response may be written by you or by your attorney, but you must sign it or cosign it as the licensee.

The letter was mailed to Dr. Pfannl's Chestnut Hill address. (Ms. Dye IV:508; Exs. 16, 17.)

69. On March 4, 2017, Dr. Pfannl responded to the February 6, 2017 email stating he had received the email and the hard copies, and provided his address in Paraguay. (Ms. Dye IV:511; Ex. 18.)

70. On March 13, 2017, the Board mailed a letter to Dr. Pfannl to his address in Paraguay. The letter stated:

You were first notified of this complaint in May 2016. Since then you have chosen not to meet with us, please respond in writing to his letter within thirty days of the date of this letter. Failure to do so could result in an additional complaint.

As previously stated, the complaint is based upon a statutory report alleging failure to maintain boundary issues with residents. In addition to responding to the allegations that form the basis of the complaint, please respond to the following questions:

- Do you plan on returning to Massachusetts to practice medicine? Do you have a current Massachusetts residence?
- What is the nature of your current practice?
- What is/are the address(es) of all your place(s) of business?
- At which health care facilities do you currently hold privileges?

If you retain counsel to represent you in this matter, please ask the attorney to send a letter to me confirming that he or she represents you.

You are required by 243 CMR 2.07(12) to file a response to this complaint within 30 days of the date of this letter. Your response may be written by you or by your attorney, but you must sign it or cosign it as the licensee.

The letter was delivered to Dr. Pfannl's address on April 10, 2017. (Ms. Dye IV: 511; Ex. 19, 21, 22.)

71. On March 16, 2017, the Board emailed the March 13, 2017 letter to Dr. Pfannl. (Ms. Dye IV:511; Ex. 19.)

72. After not hearing from Dr. Pfannl for several months, on November 10, 2017 the Board issued its Statement of Allegations against him. (Ms. Dye IV:512-13.)

73. On February 22, 2018, Dr. Pfannl submitted his first response to the Statement of Allegations. On May 13, 2018, Dr. Pfannl supplemented his response. (Exs. 34, 35.)

#### CONCLUSION AND RECOMMENDATION

The Board issued a Statement of Allegations against Dr. Pfannl. It alleged that he committed misconduct in the practice of medicine;<sup>2</sup> violated an ethical principle;<sup>3</sup> engaged in conduct which undermines the public confidence in the integrity of the medical profession;<sup>4</sup> fraudulently procured the renewal of his certificate of registration;<sup>5</sup> and failed to respond to a subpoena or to furnish the Board documents, information or testimony to which it is legally entitled.<sup>6</sup>

The Board has the burden of proving the allegations set forth in the Statement of Allegations by a preponderance of the evidence. *See Craven v. State Ethics Comm'n*, 390 Mass. 191, 200 (1983) (preponderance of evidence is generally the standard at administrative proceedings); *cf. Randall v Bd. of Registration in Med.*, No. SJ-2014-0475,

---

<sup>2</sup> 243 CMR 1.03(5)(a)(18).

<sup>3</sup> *See Aronoff v. Bd. of Registration in Med.*, 420 Mass. 830, 834 (1995).

<sup>4</sup> *See Raymond v. Bd. of Registration in Med.*, 387 Mass. 708, 713 (1982); *Levy v. Bd. of Registration in Med.*, 378 Mass. 519, 527-28 (1979).

<sup>5</sup> G.L. c. 112, § 5; 243 CMR 1.03(5)(a)(1).

<sup>6</sup> 243 CMR 1.03(5)(a)(16).

Memorandum of Decision (Cordy, J., Jun. 9, 2015) (summary suspension may be upheld on review only if it is supported by a preponderance of the evidence). After a careful review of all the evidence in this case, I have concluded that, although the Board has not proven each and every allegation, it has nonetheless proven the five violations with which it charged Dr. Pfannl.

The Board has proven that Dr. Pfannl violated an ethical principle. AMA Ethics Opinion 9.1.3 states that sexual harassment in the practice of medicine is unethical because it exploits inequalities in status and interferes with an individual's work performance. Sexual harassment includes any physical or verbal conduct of a sexual nature which is found to interfere unreasonably with an employee's work performance. *See Melnychenko v. 84 Lumber Co.*, 424 Mass. 285, 290 (1997).

Dr. Pfannl, as an attending physician in a teaching hospital and as co-director of the residency training program, repeatedly failed to observe professional boundaries. He would hug and kiss, and make unwelcome comments about, Resident 1. Resident 1 and Dr. Dannheim credibly testified to the measures that Resident 1 took to avoid or limit her time with Dr. Pfannl because she felt uncomfortable being alone with him. This is the dynamic that the AMA Ethics Opinion seeks to prevent. Dr. Pfannl violated an ethical principle by violating the AMA Ethics Opinion; the Board has proved by a preponderance of the evidence that Dr. Pfannl violated an ethical principle. The Board may therefore discipline Dr. Pfannl. *See Aronoff*, 420 Mass. at 834.

The Board alleged additional harassment that it did not prove, largely because Resident 1's testimony was inconsistent with earlier versions of the stories that she had communicated to hospital lawyers who investigated her complaint. Notwithstanding



these inconsistencies, I found credible her testimony on Dr. Pfannl's behavior at work towards her. These allegations were corroborated by other hospital staff and supervisors.

For instance, the Board proved that Dr. Pfannl did move closer to Resident 1's residence after he left the home that he shared with his wife. But, it did not prove that Dr. Pfannl stalked Resident 1 while she was running. Likewise, the Board did not prove that Dr. Pfannl unexpectedly came to the rock climbing gym. Rather, he and Resident 1 agreed to meet at the climbing gym and bring their children. This arrangement, made reluctantly by Resident 1, satisfied her that nothing would happen between them because their children would be present. But, Dr. Pfannl showed up alone, without his son, because his wife had just filed a restraining order against him and forbade the son from going to the gym with him. This made Resident 1 uncomfortable because she expected him to show up with his children, but his presence was hardly unexpected.

Dr. Pfannl argues that I should draw a negative inference from the fact that Resident 1 deleted some of her text messages from around the time that he harassed her. I refrain from doing so because the unavailability of the texts does not lead me to any particular conclusion. Apparently, Dr. Pfannl similarly does not have access to these texts, which presumably both of them had access to at one time. Neither party took any extraordinary effort to track down the texts. In these circumstances, if I were to draw any inference it would be that neither party was interested in producing them.

The Board has not proven that Dr. Pfannl sexually harassed Resident 2. Pestering her about art festivals and giving her a portfolio to transport her artwork and another small gift did not have the same effect on Resident 2 that Dr. Pfannl's behavior had on Resident 1. Resident 2 was annoyed, but she was able to go about her duties without

difficulty. Resident 1, on the other hand, was forced to avoid Dr. Pfannl, going so far as to ask for the help of her fellow residents to avoid his unwanted advances and attention.

The Board may discipline a physician who has engaged in misconduct in the practice of medicine. See 243 CMR 1.03(5)(a)(18). The Supreme Judicial Court defined "misconduct" in *Hellman v. Board of Registration in Medicine*, 404 Mass. 800, 804 (1989):

"Misconduct" in general, is improper conduct or wrong behavior, but as used in speech and in law it implies that the conduct complained of was willed and intentional. It is more than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or lack of concern for one's conduct. Whether or not an act constitutes misconduct must be determined from the facts surrounding the act, the nature of the act, and the intention of the actor.

A physician may be disciplined for misconduct "in carrying out his professional activities." *Forziati v. Board of Registration in Medicine*, 333 Mass. 125, 130 (1955).

As co-director of the residency training program, Dr. Pfannl's professional responsibilities included training and supervising the pathology residents. Shortly after becoming co-director, Dr. Pfannl was warned to be more careful in sharing his personal life. Nevertheless, Dr. Pfannl continued to openly discuss his marital struggles with residents he supervised. The sexual harassment described above also constituted misconduct. His behavior made Resident 1 uncomfortable to be alone with him. The Board has proven that Dr. Pfannl committed misconduct in the practice of medicine and may discipline him pursuant to 243 CMR 1.03(5)(a)(18).

The Board has also proved that Dr. Pfannl engaged in conduct that undermines the public confidence in the integrity of the medical profession. See *Raymond*, 387 Mass. at 713; *Levy*, 378 Mass. at 527-28. The violation of ethical guidelines and harassment of

residents is conduct that undermines the public confidence in the integrity of the medical profession. *See Bd. of Registration in Med. v. Brendel*, RM-12-234, Recommended Decision, at \*5 (DALA 2012) (“The violation of the [ethics] guidelines is no more than a particular example of conduct which undermines public confidence in the integrity of the medical profession over which the Board has authority.” (quoting *Sugarman v. Bd. of Registration in Med.*, 422 Mass. 338, 343-44 (1996))); *see also Bd. of Registration in Med. v. Joseph*, RM-08-404, Recommended Decision, at \*3 (DALA 2009) (physician’s unwelcome comments and unwelcome physical contact with residents undermined confidence in integrity of profession). Therefore, the Board may discipline Dr. Pfannl. *See Raymond*, 387 Mass. at 713; *Levy*, 378 Mass at 527-28.

The Board may discipline a physician who fraudulently renews his certificate of registration. *See* 243 CMR 1.03(5)(a)(1). In Massachusetts, a physician must renew his certificate of registration every two years. *See* G.L. c. 112, § 2. “[F]raudulent intent may be shown by proof that a party knowingly made a false statement and that the subject of that statement was susceptible of actual knowledge. No further proof of actual intent to deceive is required.” *Fisch v. Bd. of Registration in Med.*, 437 Mass. 128, 139 (2002). The Board has proven that Dr. Pfannl fraudulently procured the renewal of his certificate of registration to practice medicine in Massachusetts when he submitted his 2016 Physician Renewal Application.

Dr. Pfannl’s negative answer to question 18, part C, of the renewal application was false. Dr. Pfannl was investigated by HMFP following complaints of his workplace behavior in 2016. Dr. Pfannl was terminated as a result of the investigation, but was given the opportunity to resign which he did several days later. Dr. Pfannl argues that he

was not required to answer "yes" to this question because he resigned and because the Board was already aware of the investigation. Dr. Pfannl was required to answer "yes" to part C because he was the subject of an investigation by the Board, which he knew several weeks before he submitted his application, and by HMFP. His answer to part D is a closer call. He was terminated by HMFP, but it appears that a side agreement was made between the hospital's lawyer and Dr. Pfannl's lawyer. Any formal agreement between the two regarding how his termination would be characterized is not in evidence. It is clear that Dr. Saffitz, who terminated Dr. Pfannl, believed that he was terminated. But, it appears that Dr. Pfannl tendered his resignation and that HMFP and BIDMC consider him to have resigned. I cannot conclude therefore that his answering "no" to part D of Question 18 was fraudulent. Dr. Pfannl fraudulently procured his 2016 renewal of his certificate of registration and is subject to discipline by the Board pursuant to 243 CMR 1.03(5)(a)(1). *See Fisch*, 437 Mass. at 139.

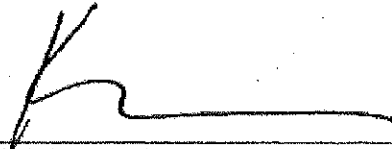
Finally, the Board has proven that Dr. Pfannl failed to respond to its numerous letters and emails, a subpoena, and the statement of allegations. The Board began attempting to contact Dr. Pfannl in May 2016 and first spoke with him sometime before November 2016. After the initial conversation, the Board requested his phone number in November 2016, which Dr. Pfannl finally provided on March 4, 2017. The Board sent Dr. Pfannl a subpoena on January 27, 2017. He replied on the same day, informing the Board for the first time that he was in Paraguay. On January 30, 2017 the Board emailed Dr. Pfannl more questions giving him 30 days to respond; he responded to the request March 4, 2017, and finally provided the Board with an updated phone number and address in Paraguay. On March 13, 2017 the Board's letter requesting more information,

giving him 30 days to respond, went unanswered. Dr. Pfannl's failure to respond to the Board violated 243 CMR 1.03(5)(a)(16), and the Board may discipline him. *See Bd. of Registration in Med. v. Kellogg*, RM-07-706, Recommended Decision, at \*49, \*53 (DALA 2010), *aff'd* 461 Mass. 1001 (2011).

### CONCLUSION

Based on the evidence presented at the hearing, the Board proved by a preponderance of the evidence that Dr. Pfannl fraudulently procured the renewal of his certificate of registration in 2016, committed misconduct in the practice of medicine, failed to respond to a subpoena and furnish the Petitioner with information, engaged in conduct that undermines the public confidence in the integrity of the medical profession, and violated an ethical principle. Therefore, I recommend that the Board of Registration in Medicine impose the discipline it believes is appropriate.

DIVISION OF ADMINISTRATIVE LAW APPEALS



---

Kenneth J. Forton, Esq.  
Administrative Magistrate

DATED: **NOV 25 2019**