Attachment A

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS

Division of Administrative Law Appeals
DALA Docket No. RM-18-0091
Adjudicatory Docket No. 2018-008

BOARD OF REGISTRATION IN MEDICINE,
Petitioner,

v.

SANJEEV SHARMA, M.D.,
Respondent.

STIPULATION

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

STIPULATED FACTS

1. The Respondent was born on December 5, 1964. He graduated from the Medical College of Guru Nanak Dev University in 1987 and has been licensed to practice medicine in Massachusetts under certificate number 80578 since 1995. The Respondent is certified by the American Board of Family Medicine. He has completed many advanced courses of study in cosmetic surgery and is a Fellow with the American Society of Cosmetic Surgeons. Since 2009, the Respondent has specialized in office-based cosmetic surgery at 1319 Worcester Road, Framingham, Massachusetts. Among the office-based procedures the Respondent performs are breast augmentation, awake liposuction, "Tummy Tucks," and mini face lifts.

2. In 2009, the Respondent began performing office-based cosmetic procedures in his office utilizing "tumescent anesthesia," a local anesthesia containing lidocaine, epinephrine and sodium bicarbonate in one liter of normal saline.

3. Patient A was a 39 year old woman who weighed 116 pounds and whose native language was Portuguese.

4. On July 21, 2011, Patient A had a consultation with the Respondent regarding the Respondent performing a breast augmentation procedure.

5. On July 25, 2011, the Respondent saw Patient A for a preoperative history and physical examination.

6. On August 6, 2011, Patient A was given 2mg of Xanax, 50 mg of Hydroxyzine (Vistaril), and 100 mg of Demerol orally and the Respondent performed a breast augmentation on Patient A in his office (the "Procedure") utilizing only tumescent anesthesia.

7. After the Procedure, Patient A was monitored for about one hour in the Recovery Room. Patient A was given prescriptions for Vicodin and Flexeril for use as needed after surgery.

8. On August 7, 2011, the following day, while at home, Patient A felt weak, fell, and hit her head on the bathroom sink.

9. Patient A was transported by ambulance to Metro West Medical Center.

10. A head CT showed that Patient A suffered diffuse edema of the brain consistent with a global ischemic change and hematoma overlying the left frontal bone.

11. Within hours Patient A died of a pulmonary embolus and cardiac event.

12. The Respondent's pre-operative intake sheet contains no specific questions about cardiac or pulmonary health concerns.

13. The Respondent had no preoperative note reflecting his conversation with Patient A about the Procedure.

14. The Respondent's preoperative intake sheet contains no questions about the use of oral contraceptives, use of which place patients at risk for thromboembolic events. The Respondent's history and physical form noted that there was no history of smoking. It also noted three prior pregnancies and did not indicate any pregnancy abnormalities.

15. There were ten patient forms associated with Patient A's Procedure. The Destination Beauty MedSpa was in Portuguese, Patient A's native language. The Complications form was in English and Portuguese. The remaining eight forms were in English only, including the Consent form, which required Patient A's initials after each paragraph.

16. While the Respondent's Nurse Practitioner and Medical Assistant were fluent in Portuguese, there is no documentation that the Respondent had an interpreter explain the complications or instructions to Patient A in Portuguese.

17. Patient A's lab results one week prior to the procedure were as follows: platelet count of 592, platelet volume of 7.2, eosinophil of 4.7, blood glucose of 100, blood urea nitrogen of 35, and creatinine of .6.

18. The Respondent performed the Procedure on Patient A without consulting her primary care physician.

19. Patient A was given tumescent anesthesia, a form of local anesthesia, and there was no anesthesiologist present during the Procedure.

20. The Respondent felt that it was not necessary to have Patient A monitored by an EKG during the Procedure and, therefore, she was not monitored by an EKG during the Procedure.

21. The Respondent felt that it was not necessary to provide Patient A with IV fluids during her Procedure and, therefore, none were provided.

22. The Respondent did not use compression boots on Patient A, during or after the Procedure.

23. Patient A's oxygen saturation was 98-99%. The Respondent did not provide oxygen to Patient A during the Procedure.

24. The medical record for Patient A does not include a dictated surgical note; it includes a handwritten procedure note.

25. The Respondent's office documentation does not reflect whether he provided postoperative instructions to Patient A or her family.

26. There was no follow-up call from the Respondent or his office to Patient A to see how she was doing. Patient A was scheduled for a follow up appointment.

27. Administering Xanax and Hydroxyzine (Vistaril) with Demerol can potentiate the effects of Demerol.

28. The Board considers the administration of 2mg of Xanax, 50 mg of Vistaril, and 100 mg of Demerol to Patient A, who was 116 pounds, to be more than minimal sedation.

29. Patient A was awake and verbal during the Procedure.

30. The Respondent draped towels around the operative site, with no sterile drapes covering the rest of Patient A.

31. The Respondent prescribed Arnica Montana and Mephyton to Patient A to be taken preoperatively, despite little data to support their efficacy for Patient A.

32. The Massachusetts Medical Society Office-Based Surgery Guidelines ("Guidelines"), endorsed by the Board, classify offices as Level I, II or III. Level I office surgery includes "minor procedures performed under topical or local anesthesia, not involving

drug-induced alternation of consciousness, other than minimal preoperative anti-anxiety medications." (Guidelines at 20). Level II office surgery includes "any procedure that requires administration of conscious sedation/analgesia making intra-operative and post-operative monitoring necessary." (Guidelines at 20).

33. From 2009 until May 14, 2013, the Respondent's office met the applicable standards for Level I offices, but did not meet all of the standards for Level II offices.

34. The Respondent performed Patient A's Procedure while his office met the standards for a Level 1 facility.

35. On May 14, 2013, the Respondent's office was accredited by The Joint Commission as a Level II office-based surgery practice.

36. The Board considers a breast augmentation using tumescent anesthesia to not be a minor surgical procedure and should be performed in a Level II office.

37. The Board has determined that Patient A's Procedure was a Level II procedure, which pursuant to the Guidelines would have required the following:

> "The surgeon must have staff privileges to perform the same or similar procedure in a hospital or accredited outpatient facility as that being performed in the office setting, or must be able to document satisfactory completion of training – such as board certification or board eligibility by a board approved by [sic] the American Board of Medical Specialties, American Osteopathic Association, ABOMS, or comparable background, formal training, or experience as determined by the Massachusetts [Board of Registration in Medicine]...."

CONCLUSIONS OF LAW

A. The Respondent has violated G.L. c. 112, § 5, eighth par. (b) and 243 CMR 1.03(5)(a)2 by committing an offense against a provision of the laws of the Commonwealth

relating to the practice of medicine, or a rule or regulation adopted thereunder—to wit, the Respondent failed to meet the Guidelines when performing the Procedure which the Board has determined should have been performed in a Level II office.

B. The Respondent has violated G.L. c. 112, § 5, eighth par. (c) and 243 CMR 1.03(5)(a)3 by engaging in conduct that places into question the Respondent's competence to practice medicine including practicing medicine beyond its authorized scope.

SANCTION

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

At the time the Board considers this Stipulation, it will inform the parties of its inclination as to sanction. If the Board's sanction is different from the one recommended by the parties, the Respondent will be given an opportunity to either accept or reject the proposed sanction. If the Respondent rejects the proposed sanction, then the matter will continue through the adjudicatory process pursuant to General Laws chapter 30A and 801 CMR 1.00 et seq.

The parties jointly agree to recommend to the Board that the Respondent's license be SUSPENDED indefinitely; said suspension shall be stayed immediately upon the Respondent's entry into a standard Probation Agreement. The Probation Agreement shall include a Practice Audit with a Board-approved Auditor and following any recommendations after the Board reviews the Practice Audit. The Practice Audit will include random chart reviews, including 10

chart reviews in liposuction cases, 10 chart reviews in breast augmentation cases, and 10 chart reviews for his medical practice.

EXECUTION OF THIS STIPULATION

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

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

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

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

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

Sanjeev Sharma, M.D.
Respondent

10/24/2018
Date

Ellen Janos, Esq.
Attorney for Respondent

10/24/18
Date

Karen Robinson, Esq.
Complaint Counsel

10/24/18
Date