

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

Suffolk, ss.

Adjudicatory Case
No. 2006-007
(RM-06-68)

_____)
In the Matter of) Final Decision & Order
)
Russel Aubin, D.O)
_____)

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's Recommended Decision dated October 5, 2006, and the Board's Partial Final Decision as to Findings of Fact and Conclusions of Law Only (hereinafter "Partial Final Decision"), dated January 10, 2007. After full consideration of the Partial Final Decision, which is attached hereto and incorporated by reference, the Board imposes the following sanction:

Sanction

The record demonstrates that the Respondent has been disciplined by another jurisdiction for reasons substantially the same as those found in M.G.L. c. 112 § 5 and 243 CMR 1.03(5), specifically that he committed misconduct in the practice of medicine in violation of 243 CMR 1.03(5)(a)(18), and that he engaged in conduct which places into question his competence to practice medicine, including gross misconduct in the practice of medicine, in violation of M.G.L. c. 112 § 5 and 243 CMR 1.03(5)(a)(3). Furthermore, the record demonstrates that he engaged in conduct that undermined public confidence in the integrity of the medical profession. Therefore, it is proper for the Board to impose

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

The Respondent's conduct involved sexual misconduct with a patient. Specifically, the Respondent inappropriately touched the breasts of a patient during knee surgery. While the Respondent's conduct occurred out-of-state, he maintains an inchoate right to renew his license in Massachusetts, and therefore could apply to renew his license in Massachusetts. As a function of its obligation to protect the public health, safety and welfare, it is proper for the Board to impose sanction on the Respondent. See *Levy, supra* and *Raymond, supra*.

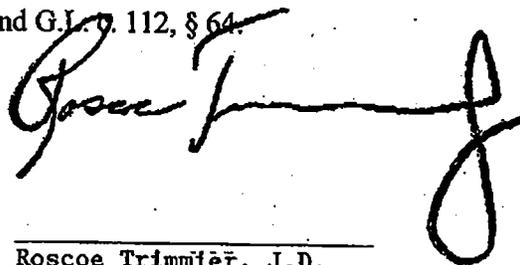
In the past, the Board has dealt strictly with cases involving sexual misconduct, frequently determining that revocation of the physician's license is necessary to protect the public and to uphold the integrity of the medical profession. The Board has found that such conduct warrants a serious departure from good and accepted medical practice, and further, that such conduct demonstrated a complete abuse of patient trust. See *In the Matter of Richard B. Hawkins, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 03-12-DALA (Final Decision and Order, December 15, 2004); and *In the Matter of David P. Ingalls, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 02-01-DALA (Final Decision and Order, November 13, 2003). Moreover, the Board has revoked the license of a physician who had been disciplined in another jurisdiction for engaging in such conduct. See *In the Matter of Richard D. Salerno, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 96-26-DALA (Final Decision and Order, July 17, 1996) (physician's license had been revoked by the state of New York for engaging in sexual misconduct.)

The Board finds this matter to be on par with the *Hawkins, Ingalls* and *Salerno* matters. In light of his conduct, and the Board's precedent, the Respondent's inchoate right to renew his license to practice is hereby REVOKED.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments, within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: the Drug Enforcement Administration, Boston Diversion Group; any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this revocation. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§ 14 and 15, and G.L. c. 112, § 64.

DATE: March 21, 2007



Roscoe Trimmer, J.D.
Vice Chairman