STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
BOARD OF MEDICAL LICENSURE AND DISCIPLINE
THREE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	
Sarah Boyle, M.D.	:	**BMLD Case File C14-451**
Respondent.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before a hearing committee ("Committee") of the Board of Medical Licensure and Discipline ("Board")[1] pursuant to a Summary Suspension of Physician License and Controlled Substances Registration ("Summary Suspension")[2] issued on October 8, 2014 to Dr. Sarah Boyle ("Respondent"). A hearing was initially held on whether the Summary Suspension should have been issued with the Committee conditionally lifting the Summary Suspension on December 3, 2014. A hearing was then held on the Notice of Charges and Time of Hearing and the Specification of Charges.[3] It was agreed that the hearings held for the Summary Suspension would be included for consideration of the hearing on the merits. The parties were both represented by counsel. Hearings were held on October 14, and November 3, 2014, December 1 and 3, 2014, January 29 and 30, February 2 and 12, March 18, 23, and 27, and April 10, 2015. All briefs were timely filed by September 8, 2015.

[1] On October 10, 2014, pursuant to R.I. Gen. Laws § 5-37-5.2, Michael Fine, M.D., the then Director of the Department of Health ("Department") designated three (3) members of the Board to act as the Committee for the purposes of adjudicating and issuing a final decision in this matter. The Committee members are Jennifer Barry, Esquire, Joan Crawley, and Stephen Fanning, DO. See Department's Exhibit 19.
[2] See Department's Exhibit 18 (Summary Suspension).
[3] See Department's Exhibits 20 and 21 (Notice of Charges dated October 10 and 28, 2014) and 22 (Specification of Charges dated October 22, 2104).

II. JURISDICTION

The Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, *Rules and Regulations for the Licensure and Discipline of Physicians*, and *Rules and Regulations of the Department of Health Pertaining to Practices and Procedures Before the Department of Health.*

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-37-5.1 and if so, what is/are the appropriate sanction(s)?

IV. MATERIAL FACTS AND TESTIMONY

The Respondent treated a married couple who eventually divorced and is currently in a romantic relationship with the now ex-husband of the married couple. During the hearing, the husband of the couple who is now in the relationship with Respondent was referred to as former patient husband ("FPH") and his ex-wife was referred to as former patient wife ("FPW"). The allegations against Respondent included engaging in unprofessional conduct relating to her relationship with the FPH as well as her transfer of the FPW's records and the Respondent's appearance at a Family Court hearing with the FPH.

Linda Julian, Health Policy Analyst, testified on behalf of the Department. She testified that a complaint was received from the FPW about the Respondent and it was sent to the Respondent in June, 2014 but it was returned as the Respondent had moved, but the Respondent was notified and attended the investigating committee meeting on October 2, 2014.

Dr. Patricia Recupero ("Recupero") testified on behalf of the Respondent. It was agreed that she is a psychiatrist and an expert witness. See Respondent's Exhibits One (1) (her *curriculum vitae*) and Two (2) (her report). She testified that she performed a psychiatric evaluation of Respondent in regard to general psychiatry and specifically about the allegations

against her. She testified that she did not think that the Respondent posed an immediate threat to the public. She testified that the Respondent and FPH had a medication-management relationship so that the standard to apply for judging their "extra treatment relationship" following the close of treatment was the traditional medical standard rather than the psychotherapy standard. She testified that the standard is not based on a number of years but rather the circumstances. She testified that in psychotherapy as compared to a traditional doctor-patient relationship, a patient's feelings about the doctor is very important and it would be more difficult to assure those feelings had been extinguished prior to beginning a relationship.

On cross-examination, Recupero testified that she had not reviewed the FPH's medical records. She testified that she was not aware that the Respondent prescribed for the FPW in 2009. She testified that she understood from Respondent that she did not change diagnoses in the FPW's records but rather added provisional diagnoses. She testified the Respondent told her that she and FPH went over the relevant factors for a relationship that the Respondent gleaned from her reading. She testified that she believed that the Respondent showing up at the FPH's Family Court hearing in 2014 was appropriate as the hearing was solely pecuniary. She testified that she understood the Respondent's sessions with FPH to be mostly medication-management since the Respondent would assess the FPH regarding stress, work, etc.

The Committee requested that Recupero review the medical records of FPH and FPW and make a further report. Recupero then testified that she spoke to the Respondent and the FPH and reviewed the records given to her. See Department's Exhibit 13 (Respondent's records for FPH and FPW). She testified that the Respondent's 2009 prescriptions to the FPW did not change her opinion that the Respondent had not breached her duty to the FPW. She testified that she knew about the Respondent's 2010 prescription to the FPH and felt that was an

emergency situation. She testified that she thought that the additional diagnoses in the treatment summary were consistent with the FPW's medical notes. She testified that the records reflect that the Respondent "was engaged with the former patient husband primarily in a medication management relationship." 12/1/14 Tr. 29.[4]

On cross-examination, Recupero testified that the Respondent's January 10, 2005 notes indicated a struggle by the FPH with vulnerability and embarrassment and discussion of stressors on a marriage. She testified that the March 23, 2005 notes that indicated an immediate confrontation between the couple was an assessment. She testified that the May 2, 2005 notes indicated exploration and assessment and the patients might think of it as therapy. She testified that the May 6, 2006 notes made a therapeutic statement but it is not psychotherapy which is getting into intimate thoughts and details. She testified that a sufficient time had elapsed between FPH's treatment and starting a relationship so that there was a possibility of a nontherapeutic social or romantic relationship. She testified that she was satisfied that a good faith effort had been made by Respondent and FPH over whether there was any other impediment to a relationship besides the passage of time.

The Respondent was called to testify by the Department. She testified that she began to treat the FPW and FPH in May 2001 when both were referred to her by a therapist due to stress. She testified that they moved to Pennsylvania in 2007 and intermittently between 2001 and 2007, she treated both of them. She testified that she last saw the FPH for treatment about nine (9) months before he moved. She testified she saw them together starting in 2005 but also separately. She testified on January 10, 2005, she indicated in her notes the husband was struggling with vulnerability and significant stressors impacting the marriage and strategized

[4] 12/1/14 refers to the date of the hearing and Tr is the transcript of that hearing and "29" is the page of the transcript on which the testimony can be found.

protections for marriage and setting limits for family. She testified that the March 23, 2005 notes indicated that the FPW refused to initiate couples treatment elsewhere and she would see them for medications. She testified that her May 2, 2005 notes indicated that they were both externalizing issues. She testified they were supposed to be seeing a couples' therapist. She testified that supporting counseling is not the same as "therapy." She testified that she cannot evaluate how someone responds to medication without knowing current functionality so she dealt with current functioning rather than assessing past contributing factors. She testified that intermittently between January 2005 and May 2006, she provided treatment to the FPH and FPW as a couple. She testified that her role required analysis but not therapy. 1/30/15 Tr. 34.

The Respondent testified that between August 9, 2007 and March 11, 2008, she did not see the FPW. She testified that on March 11, 2008, the FPW called her about anxiety and came to see her with her lunch and toddler and treated it as a social visit so she tried to redirect the FPW. She testified that they scheduled an appointment for March 13, 2008 and she called the FPW the next day to confirm the new appointment and spoke to the FPH. She testified that the FPW then called to say she would not make the appointment. She testified that after that, she would telephone the FPW and sometimes reach her and sometimes not and that the FPW would telephone her as well. She testified that she believed she wrote notes for some of those telephone calls. She testified that she usually kept her notes at the office but if she took notes outside of the office, she would bring them to the office. She testified that in March, 2010 she had a flood in her home and her records were saturated. She testified that she cannot remember if the FPW's notes were at her house, but if there were notes, they were destroyed.

In looking at FPW's prescription records, the Respondent testified that on March 14, 2008, the FPW filled a prescription for 40 milligrams of citalopram, an anti-depressant, that

allowed four (4) refills that she (Respondent) wrote for the FPW when she came to the office (on March 11, 2008). She testified the records indicated a one-time prescription on February 20, 2008 of citalopram. She testified that felt the pharmacy records cannot be relied on. However, she testified that the FPW would call her and be in a crisis so she would help her even though the FPW would not come in and see her. She testified that she prescribed citalopram in April 14, 2009 for FPW with two (2) refills and she testified to a pharmacy confirmation with her office fax number and her signature and also identified a confirmation from her for a July 13, 2009 clonazepam (anti-anxiety) prescription. See Department's Exhibit 14.

The Respondent testified that she was dubious of the pharmacy records that show her prescribing for the FPH in 2007 and 2008. See Department's Exhibit 26. She testified that she gave the FPH a prescription for Ativan in December, 2010 as a one-time urgent prescription and told him to make other arrangements. She testified that she was worried about his physical manifestations of anxiety and he did not have another provider. She testified that she gave him a 30 day prescription and was thinking of it as a bridge to alternative care.

The Respondent testified that in 2009, the FPH started mentoring her son for his high school senior year project as they had accidentally met previously and the FPH had given his card to the son who reached out to the FPH for mentoring. She testified that she began to see the FPH while he was working with her son. She testified that her son graduated from high school in June, 2010 and she saw the FPH after that. She testified that the FPW and FPH divorced in 2010. She testified that prior to her July, 2011 cruise, she had major spine surgery so sometimes was using a wheelchair. She testified that for the cruise to be alone in a room, one needed to be 21 years old. She testified that she was worried about being able to handle all

the events so knowing about the stressors in FPH's life, she asked him if he wanted to come on the cruise which also would help her with her two (2) sons.

The Respondent testified that at some point she had a conversation with the FPH where he expressed a romantic interest, but she did not think he was being honest so she laughed. She testified she does not think the conversation was before the cruise. She testified that they started their relationship at the end of 2011. She testified that for her treating notes, she keeps the initial diagnoses from note to note but for the transfer of records, she provides a summary of what she learned over treatment and what she thinks should be considered by the provider. She testified that she could not initially make a personality disorder diagnosis as that takes much information but she forwarded information of the FPW's personality patterns [Cluster B personality traits] as well as diagnoses of an eating disorder and mood disorder not otherwise specified. 1/30/15 Tr. 119-126. See Department's Exhibit Seven (7) (treatment summary).

On cross-examination by her own attorney, the Respondent testified that the FPW and FPH were seeing a therapist who referred them to her for medication to improve functioning. She testified that medication management is a brief appointment that focuses on a patient's functioning and medication and how the medication helps and how a patient is functioning. She testified she did not engage in psychotherapy with the FPW or FPH. She testified that she only saw the FPH for approximately 24 appointments over five (5) years. She testified that when she saw him, he was also seeing someone else for therapy so she encouraged him to continue with therapy. She testified that the references in her notes to individual psychotherapy with the FPH and FPW (Department's Exhibit 13 pp. 263, 273) were due to inconsistencies between what each was telling her about their therapy so she wanted clarification. She testified her goals were to get their medication working and ensure functioning. She testified that the

FPW did not want to go to another therapist and wanted to only go to her (Respondent). 2/12/15 Tr. 33. The Respondent testified that she did not see FPW and FPH together after they moved.

The Respondent testified that when the FPH initially expressed a romantic interest in her, she investigated whether it would violate ethical boundaries. She testified that she looked into the law, read, and spoke to some friends and family. She testified that she explained to the FPH that his feelings for her might be the result of their treatment relationship and explained about transference and other issues. She testified that they discussed the issue several times.

The Respondent testified that she went with the FPH to his 2014 child support hearing for "emotional support." 2/12/15 Tr. 62. She testified that she entered the courtroom, but did not speak but the FPW screamed that she wanted her (Respondent) removed. The Respondent testified that she left the courtroom and waited outside and went back inside when they moved to another courtroom. She testified that "I sat next to him. I never spoke to her. I never looked in her direction." 2/12/15 Tr. 63. She testified that she did not speak during the proceedings.

The Respondent testified she does not have records for the FPW for 2008 to 2009 and does not remember writing prescriptions for the FPW for 2008 through 2009, but it is possible. She testified that she may have written prescriptions for FPW in 2009, but she had a lot going on her life - deaths, gravely ill son, back surgery, husband leaving, and March 2010 house floods – that might explain her lack of records. She testified that she usually does not send a letter terminating treatment since that would be hard for a former patient. She testified that she does not immediately stop medications as that could be harmful but tries to ensure transition.

On redirect examination, the Respondent testified that she never worked with a psychiatrist or other health professional to process the issues of such a romantic relationship. She testified that she checked with family and friends and some of her friends were psychiatrists

or mental health providers. She testified that she did not speak with a psychologist but spoke with a psychiatrist but did not remember who or if the person was male or female. 2/12/15 Tr. 82. She testified that she weighed all the facts about dating.

The Respondent testified that at the Family Court hearing, she did not leave the courtroom at her own volition when the FPW started screaming, but rather a court officer asked her to do him a favor and step outside to avoid the issue and she told him she would go outside for a few minutes, but then go back in. 2/12/15 Tr. 86. She testified that she knew the FPW was present in the courtroom, but went back in even though the FPW had been screaming. She testified that "I didn't believe my actions had anything to do with her behavior. I had not even seen her when she started screaming." 2/12/15 Tr. 86-7. She testified that the FPW would have been upset at anyone showing up with FPH. 2/12/15 Tr. 92.

Dr. Brandon Krupp ("Krupp") testified on behalf of the Department.[5] It was agreed he is a psychiatrist and an expert witness. See Department's Exhibits 5A (*curriculum vitae*) and 27 (his report). He testified that he reviewed records including the medical records of the FPW and FPH. He testified that based on the FPW and FPH notes, the relationship was not purely medication management and that he identified in his report where it appeared to in the records to be therapeutic in a large part. He testified that with psychotherapy, there is a greater chance of transference or unconscious interactions. He testified that one session indicated the checking for signs of depression. See Department's Exhibit 13 (p. 6). He testified that other sessions (1/27/05; 3/23/05) indicated some couples' therapy. He testified that the couple would talk about the state of the marriage and issues involved and the Respondent commented on what they were doing as a couple (e.g. surrendering facades).

[5] The summary of his testimony relates to the testimony he gave for the full hearing and not as related to the Respondent's request to lift the Summary Suspension.

Krupp testified that for a physician to make an ethical decision, he or she must consider patient autonomy, beneficence, non-malfeasance, and justice. He testified that a physician may not be able to ensure that all principles are simultaneously experienced as there might be conflict but one needs to make decisions after considering the relevant facts. He testified that patient autonomy refers to the patient making decisions about treatment and beneficence refers to doing good; providing a helpful service. He testified that non-malfeasance is to do no harm and justice means to fairly apply resources and decision making is done with fairness in mind. He testified that a physician is expected to establish professional boundaries and respect the principles and put the patient's needs above the physician's. He testified that with psychiatry, parties speak of things that are emotionally laden and sometimes very difficult and the principles apply to all medicine but there might be an extra expectation of these boundaries because of what happens in a psychiatric-patient relationship.

Krupp testified that idealization – a kind of transference - is common. He testified that it is common for a patient to see a psychiatrist in an idealized fashion since she or he may be having difficulties in their own relationships and then enter into a treatment relation with someone who is caring, straightforward, and honest which he or she may not have experienced before so the patient sees the psychiatric as an ideal man or woman. He testified there is a boundary violation when the behavior could or actually does harm a patient or seriously disrupts the physician patient-alliance which in the end harms the patient. He testified that in a treatment relationship, patients and physicians do not enter in positions of equality. He testified that transference is an unconscious direction or redirection of feelings that the patient has toward someone in his or her life so that a patient may transfer these feelings onto the psychiatrist. He testified that these type of feelings could disrupt the nature of the treatment relationship. He

testified that a psychiatrist having a relationship with a former patient has the opportunity for exploiting the patient. He testified that one would also need to be careful regarding a relationship with a former patient if the psychiatrist also treated the former patient's spouse. He testified that an obvious harm in this case is that the FPW would have entered treatment expecting the psychiatrist not to have a relationship with a spouse and to have it happen could make it harder to trust another therapeutic relationship.

Krupp testified that the standard of care in psychiatry is that intimate relations between parties and psychiatrists do not exist. 2/12/15 Tr. 123. He testified that the idea behind the idea of allowing a psychiatrist to date a former patient would be that at some point in the future, the psychiatrist and patient would be able to have to a relationship free of unconscious feelings and there can be some kind of equal relationship between the doctor and former patient. He testified that those who advocate this possibility say that the former relationship has to be addressed or processed so that the physician can be certain that this new relationship is not exploitative of the patient. He testified that it is hard to imagine that this can actually be done and a physician should err on the side of caution.

Krupp testified that the Respondent's relationship with FPH was a boundary violation and an ethical violation. He testified that the descriptions of the Respondent's sessions with FPH and FPW were more than medical management. He testified that whether intentional or not, the sessions involved psychotherapy. He testified that the prescriptions for the FPW in 2008 and 2009 after Respondent had last seen the FPW were not on an emergency basis. He testified for emergency prescriptions, one can provide them with counseling and a session, if possible, and one fills the prescription for the least amount possible in order to bridge the gap. He testified that the Respondent prescribed refills which indicated an ongoing relationship.

Krupp testified that it would have been reasonable of the Respondent to expect that her attendance at the Family Court hearing involving divorce or custody or child support would be difficult, painful, and traumatic for the FPW. 2/12/15. Tr. 133. He testified that the Respondent should have reasonably anticipated the effect that such a relationship in a variety of settings might have on the FPW. Krupp testified that the adding of a diagnosis – even if one was considered at one point during treatment - to a treatment summary some years after one has seen the patient and one is in or anticipating being involved with the FPH looks like a countertransference; however unintentional it may be. 2/12/15 Tr. 134. He testified that psychiatrists have an obligation to do no harm to former patients.

On cross-examination, Krupp testified that an intimate relationship between a psychiatrist and a former patient were boundary violations and unprofessional conduct in any instance. He testified that the standard of care is based upon community standards that is expected of practicing physicians. He testified that he believes the guidelines by the American Psychiatric Association ("APA") represent the standard of care.[6] He testified that regardless of what the session was labeled or any other therapy the FPW and FPW had, the Respondent's notes show therapy. He testified one note (3/23/05) stated, "issues of trauma for both members. Wife admits difficulties tolerating husband's vulnerability. Husband initially guarded, resistant, very defensive regarding tardiness. Communications discussed with couple. Each acceptance of the other's interpretation of responses in therapy" and in regard to that note, he testified, "that is therapy." 3/18/15 Tr. 26. See Exhibit 13 (p. 134). He testified that couples' therapy like work was done which implies a connection other than a medication management only

[6] American Psychiatric Association Principles of Medical Ethics 2013 states that sexual activity with current or former patients is unethical. See Department's Exhibit One (1).

relationship. Krupp testified that even if the FPH was committed to staying in the marriage that does not mean he did not idealize and develop an attachment for the Respondent.

Krupp testified that patient autonomy does not always trump the other considerations since physicians have to balance justice, autonomy, beneficence, and non-malfeasance. He testified that just because a patient wants to enter a relationship with a current or former psychiatrist does not mean it is appropriate. He testified that there are so many things in play and it could be detrimental to the former patient and the patient is simply not aware. He testified that a patient's desire could just be a reflection of the pathological attachment that has come over the years, but he does not know what the FPH was thinking in 2011.

Krupp testified that it is common practice to provide treatment summaries, but indications of the diagnoses added by the Respondent would have shown up in the notes. He testified that if the FPW had a borderline personality disorder, it would have shown up earlier and it did not. Thus, he testified that the additional diagnoses gives the appearance of being other than dispassionate type diagnoses. He testified that a crisis situation is three (3) or five (5) pills without a refill with a note that says the patient will see a certain provider.

The FPW testified on behalf of the Department. She testified she began treatment with the Respondent in 2001 and had sessions once or twice a week mostly for anxiety. She testified that she and her husband initially saw another therapist, but when that therapist moved, they stayed with the Respondent. She testified that she and the FPH were married in April, 2001. She testified that the Respondent sometimes saw them separately and sometimes together. She testified that the Respondent was her main doctor and she did not seek another couples' therapist because she had the Respondent. She testified that during 2007 when they were in Pennsylvania, she spoke with the Respondent over the telephone. The FPW testified that after

her last office visit, she spoke by telephone to the Respondent and received prescriptions from her including in 2009. She testified that the Respondent stopped taking her telephone calls and she never got a letter from the Respondent saying treatment had ended and she should seek another psychiatrist. She testified that she filed for divorce in April 2010, but that prior to that in 2009, she found the Respondent's telephone number all over the husband's cell phone bill. She testified that in 2014, she had a Family Court hearing with her ex-husband and the Respondent was there with her son and she (FPW) told the court officer that she wanted the Respondent removed. She testified that the Respondent never told her that she was dating FPH. On cross-examination, the FPW testified the Respondent did not speak at the court hearing and she thought that the FPH and Respondent were having an affair in 2009 but he did not admit it.

The FPH testified on behalf of the Respondent. He testified that prior to his marriage to the FPW, he and his ex-wife were both suffering from anxiety and saw a therapist who recommended that they see the Respondent. He testified that they continued to see the other therapist but stopped when he moved. He testified that the Respondent's sessions were about what he was feeling such as whether there was anxiety or depression which she evaluated and suggested a prescription. He testified that they did see a second therapist for couples' therapy. He testified that the Respondent had them come in together a few times since she was hearing inconsistencies from them separately. 3/27/15 Tr. 24-25. He testified that while he was treating with the Respondent, he did not have any romantic feelings for her as he was trying to get his relationship with his ex-wife moving in the right direction. He testified that he received a job offer in Pennsylvania and moved there in January 22, 2007.

The FPH testified that in 2006 he recognized the Respondent's dog when he saw the Respondent's son walking the dog so he spoke to the son and gave him his business card, but

did not have contact with him until 2009. He testified that he was back in Rhode Island, when the son called to see if he would be interested in mentoring him. He testified he showed the son how to use a computer program and they spent many hours on the project. He testified that the son got tired easily because of health issues so it took him longer to do the project so he would telephone or text or email items. He testified that he mentored the son from 2009 to 2010 and the FPW was aware of it and accused him of infidelity. He testified that he kept in contact with the son because he wanted to know how he did on the project and he got to know the other family members. He testified that he developed a social relationship with the Respondent and offered to help her with anything he could. He testified he felt they were going through a lot and the son had health issues and got very tired. He testified that in the first-half of 2010, his wife filed for divorce. He testified that the FPW asked him about the telephone calls to Respondent's house and he explained that they were to the son.

The FPH testified that in 2011, he asked the Respondent if they could move it to the next level and she told him there were a lot of things going on and he said he understood. He testified that they then went on the cruise to which she invited him and told him that it would helpful for her because she would be in a wheelchair and he would be able to go on excursions with her sons. He testified that he spoke to her again after the cruise about having a relationship. He testified that she spoke about transference and cross transference and he assured her there was no transference, but that this was respect and felt there was a mutual feeling. He testified that they did not start a true romantic relationship until the holidays when she spoke to her sons. He testified that he feels this is his personal life so he can make his own choices.

The FPH testified that in 2014, he approached his ex-wife to reduce his child support because he had been laid off. He testified that there was a Family Court hearing in August,

2014 and the Respondent came with him. He testified that when they went into the courtroom, the FPW started screaming at them. He testified that the Respondent told the court officer that she was not doing anything and the officer said that he knew she was not, but to ease the tension she could go outside. He testified that she did, but when they switched courtrooms, the Respondent came into the courtroom.

The FPH testified that toward the end of 2010, the Respondent prescribed him Ativan since he was having panic attacks and losing weight and told him he needed to find a doctor. He testified that he filled the prescription and after a month felt a lot better. He testified that at that time, he did not have a primary doctor. The FPH testified that the Respondent wrote a letter to his employer in Pennsylvania to explain his condition which he thought might help his employer understand his condition. He testified that on reviewing Krupp's report he felt insulted since it is his life and his own autonomy and Krupp never interviewed him.

On cross-examination, the FPH testified that after the son went to college, he continued to visit Respondent and helped her move. He testified that when he was there in December, 2010, she suggested that she prescribe something for him because of his anxiety attack but only for a month and he needed to find a doctor. He testified that he was not in a situation to go to another doctor and she gave him a 30 day prescription but no refills. He testified that the first time he talked about a romantic relationship was before the cruise.

The Respondent's youngest son testified on her behalf He testified that he went on a cruise with the FPH and his mother and brother. He testified that he went with his mother to the Family Court hearing to give moral support for the FPH and went into the courtroom with his mother and the FPH. He testified the FPW approached the Court Officer and asked that they be escorted out because they were there to harass her and he testified his mother had not

spoken to the FPW. He testified the Court Officer took them outside and his mother told the Officer that it is a public court and anyone could be there. He testified that his mother went back into a different courtroom to support the FPH but he stayed out in the waiting area.

The Respondent's older son testified on her behalf. He testified that before he was in high school, one day he was walking the dog and met the FPH who recognized the dog and told him he was a graphic designer and gave him his business card. He testified that when he was in high school and had to do a senior project, he called the FPH to be a mentor. He testified he started his project in 2009 and that the FPH became involved in the winter. He testified he would meet the FPH at the house and talk on the telephone to schedule meetings. He testified that the FPH would call to check how he was doing because the FPH knew about his health issues. He testified that they worked on it approximately 30 hours. He testified that he graduated from high school in 2010 and went to college. He testified they went on the cruise in the summer of 2011 and his brother was in a cabin with his mother and he was in a cabin with the FPH. He testified he found out during winter break of 2011-2012 that his mother was involved with the FPH when his mother asked him and his brother if it was OK that she dated the FPH.

On direct testimony, the Respondent testified that prior to this complaint, she has never been a subject to any disciplinary complaint before the Board. She testified she did not begin an affair with the FPH in 2009. She testified that the treatment of the FPW tapered off when the couple moved to Pennsylvania, but she came back in crisis and spoke to her by telephone. She testified when she called the FPW on March 12, 2008 to confirm the next day's appointment, the FPW told her she would not come in and they were conspiring against her and she did not have any office visits with the FPW after that (March, 2008). She testified that when she begins seeing a patient, she puts down a diagnosis but would not change it until she writes

a summary about her thoughts. She testified that she does not usually change the diagnosis between when she starts and when she ends. She testified in terms of patients she does worry about withdrawal so she could have prescribed for the FPW for that reason.

On cross-examination, the Respondent testified that she obtained an attorney in September, 2014 about this complaint and discussed with her the right to present her case to the Board in an open meeting. She testified that she indicated to the FPH in December, 2010 that he should go on medication as she did not like the way he looked. She testified that when she prescribed the medication she did not consider she was re-starting a physician patient relationship as it was a one-time situation.

V. DISCUSSION

A. Arguments

The parties' arguments will be addressed in the course of the decision. Briefly, the Department sought revocation of the Respondent's License and the imposition of an administrative fee of $10,000 to recoup costs of the hearing. The Department argued that the Respondent's unprofessional conduct relating to her intimate relationship with the FPH and her unprofessional conduct and violation of the standard of the care toward her patient, the FPW, support revocation. Briefly, the Respondent argued that the Department is attempting to impose a blanket rule barring romantic relationship between a psychiatrist and a former patient when there is no statutory prohibition or case law to support such a prohibition. The Respondent argued that the APA guidelines are not binding on the Board. The Respondent argued that in the context of the medical treatment by the Respondent of the FPH, the relationship was ethical to FPH and FPW.

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, Administrative Law Treatise § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statute

R.I. Gen. Laws § 5-37-6.3 provides that the Board may impose a variety of discipline on a physician's license for "unprofessional conduct." R.I. Gen. Laws § 5-37-5.1 defines "unprofessional conduct" to include as follows:

> Unprofessional conduct. – The term "unprofessional conduct" as used in this chapter includes, but is not limited to, the following items or any combination of these items and may be further defined by regulations established by the board with the prior approval of the director:
>
> ***
>
> (19) Incompetent, negligent, or willful misconduct in the practice of medicine which includes the rendering of medically unnecessary services, and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board. The board does not need to establish actual injury to the patient in order to adjudge a physician or limited registrant guilty of the unacceptable medical practice in this subdivision.

D. Chronology

Based on the testimony and the exhibits, the following chronology can be ascertained -

1. The FPW and FPH started seeing the Respondent in 2001.

2. The FPW and FPH saw the Respondent together for nine (9) sessions between 2005 and 2006. See Department's Exhibit 13.

3. The FPW and FPH moved to Pennsylvania for the FPH's new job in January, 2007 and returned in late 2007 after the FPH lost his job.[7]

4. On March 11, 2008, the FPW saw the Respondent. The FPW made an appointment for March 13, 2008.

5. On March 12, 2008, the Respondent called to confirm the appointment for the next day. The Respondent did not go to her March 13, 2008 appointment. The FPW did not see Respondent in her office after March 11, 2008. The Respondent's last note for FPW is from March 12, 2008. See Department's Exhibit 13.

6. In 2008 and 2009, the Respondent prescribed the following for the FPW.[8]

   a. February 20, 2008, citalopram (anti-depressant) 45 quantity, no refill.

   b. March 6, 2008 clonazepam (anti-anxiety) 60 quantity, four (4) refills.

   c. March 14, 2008 citalopram (anti-depressant) 45 quantity, four (4) refills.

   d. October 28, 2008 citalopram 45 quantity, two (2) refills.

   e. January 13, 2009 clonazepam 60 quantity, two (2) refills.

   f. March 14, 2009 citalopram 45 quantity, (2) refills.

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[7] See FPH's testimony. 3/27/15 Tr. 90, 111.

[8] This is from testimony and pharmacy records and the prescription dates refer to date that the prescription was first filled by the FPW. This list refers to prescriptions for anti-depressants and anti-anxiety medicine given by the Respondent to FPW after her return to Rhode Island, but the records also indicate that the Respondent prescribed antibiotics and medicine for pain and inflammation for the FPW in 2008 and 2009. See Department's Exhibit 14 (pharmacy records). See also Department's Exhibits 24 and 25 which are two (2) facsimiles from Respondent to the pharmacy confirming refills of her prescriptions to the FPW.

g. March 26, 2009 clonazepam 60 quantity, two (2) refills.

h. July 14, 2009 clonazepam 60 quantity, two (2) refills.

7. In December 2010, the Respondent gave the FPH a 30 day Ativan prescription.

8. The Respondent forwarded the summary of the FPW's records to her new provider on July 20, 2011.

9. The Respondent, her two (2) sons, and the FPH took a seven (7) day cruise starting on July 24, 2011.

10. In the summer of 2014, the Respondent and her son attended the FPH's Family Court hearing with the FPH when the FPH had a hearing with the FPW in an effort to have his child support payments reduced.

E. Experts

Both parties presented expert witnesses that were highly credentialed. Recupero was retained by Respondent to evaluate her after the emergency suspension of her License. See Respondent's Exhibit Two (2) (initial report). She initially testified and her initial report found that Respondent's License should not have been summarily suspended since she did not present a danger to the public. During her initial testimony when she testified that the Respondent and FPH and FPW had a medical management relationship, she had not reviewed any of the medical notes for the FPW and FPH. She was asked to review those notes and answer certain questions. She reviewed the notes and testified that they were medical management notes, but admitted that some notes made therapeutic statements but felt enough time had elapsed so that there was a possibility of nontherapeutic relationship. On the basis of that further review, Recupero concluded that there was still no evidence that warranted an emergency suspension of the License. See Respondent's Exhibit Three (3) (supplemental report).

In contrast, Krupp was not retained to evaluate Respondent's danger to the public, but rather was retained to provide the standard of care regarding intimate relationships between doctors and former patients and the applicability of that standard to the Respondent and to discuss the kind of treatment being provided by the Respondent to FPH and FPW. See Department's Exhibit 27 (his report). His testimony and report were based on his expert knowledge as well as his review of the FPW's and FPH's medical notes.

Krupp's testimony was more relevant and credible as it went to the substance of the Department's allegations. Recupero's initial testimony related to whether the Respondent posed a danger to the public and even after reviewing the medical records, her report still addressed the issue of danger. While she concluded the Respondent's treatment was medical management, her first conclusion about medical management was without benefit of seeing the medical notes. Her second conclusion after seeing the notes was that it was medical management, but was more directed at the danger posed by Respondent and whether such a romantic relationship could ethically exist. Her focus was narrower – the public danger - than Krupp's testimony regarding the allegations of unprofessional conduct.

F. Whether Respondent Violated R.I. Gen. Laws § 5-37-5.1

The Committee considered the testimony of the witnesses and exhibits and voted unanimously to find that the Respondent violated R.I. Gen. Laws § 5-37-5.1 by engaging in unprofessional conduct for the following reasons:

a. The Respondent Failed to Discharge the FPW as a Patient

The FPW testified that after March 11, 2008, she spoke to the Respondent in 2008 a lot by telephone and did not come in for office visits but was able to obtain prescriptions by telephone. The Respondent testified that if she provided prescriptions to FPW in 2008 and

2009 – which the records show she did – that any notes that she had taken must have been destroyed in the flood in her home in 2010.[9] The Respondent testified that the last time she saw the FPW after March 11, 2008 was as follows:

> The only time I saw her was when she pulled into my parking lot one day beeping her horn and calling the office and wanted to be seen, but I was with a patient.
>
> ***
>
> It was definitely after that [March 12, 2008]. I just really have no concept of when. I think it was 2009 but I don't know. 2/12/15 Tr. 57.

The FPW testified that the last time she had a telephone call in terms of a treatment relationship with the Respondent was the summer of 2009. She testified that she was depressed and in bed and the Respondent wanted her to come to the office. She testified that she asked Respondent to change her medication but the Respondent "[w]ouldn't accept my phone calls. She wouldn't accept my text messages. She just like cut me off, that was it, one day." 2/3/15 Tr. 21. She further testified after that telephone call, the Respondent would not return her telephone calls and that "she cut me off." 2/3/15 Tr. 23. She then testified that since the Respondent was not returning her calls, she went to the Respondent's office:

> Yeah, I drove by [the office]. I was going to come in, and still like really wasn't getting the full picture of her not – of her like cutting my treatment off, I didn't understand, and I texted her from outside, you know, but she was with a patient. She said, no, no. But, I mean, I can't like walk into the office with a patient there and knock on the door, you know, but I only went once. . . . I guess I realized at that point that she wasn't going to treat me anymore. 2/3/15 Tr. 25-26.

The FPW testified that the Respondent never sent her a letter ending her treatment or suggest that she see another psychiatrist. She testified that she went to another psychiatrist in

[9] The Respondent testified that there was some telephone contact after March, 2008, but testified that she did not remember giving the prescriptions to the FPW. While she testified that she found the pharmacy records to be dubious, she offered no reason not to rely on them. In her summary of the FPW's medical records, she wrote "[u]pon returning to RI, she (FPW) refused to return to treatment, but continued to seek 'special' treatment in the form of telephone communications and prescriptions." See Department's Exhibit Seven (7). This description confirms that the Respondent continued to prescribe for the FPW after the FPW's return to Rhode Island.

2010 because she needed her prescriptions. The Respondent prescribed for the FPW in 2008 and 2009 and only saw her once during that time period – at which time the Respondent testified that the FPW treated the office visit as a social visit – and then just stopped returning the FPW's calls and stopped prescribing. While the Respondent seemed to think that such prescribing could be considered emergency prescriptions for the FPW, she did not prescribe a short-term amount for the FPW but rather full amounts with refills so that the Respondent was engaging in an ongoing psychiatric relationship with the FPW. And then without any explanation, the Respondent stopped communicating with the FPW and stopped prescribing.

While the Respondent questioned the FPW's credibility, they both testified that in 2009, the FPW drove to the Respondent's office in order to see Respondent but did not see her. Both testified that they had telephone calls after March, 2008.[10] The Respondent argued that there is no standard of care that requires discharge letters. Indeed, the Respondent argued that it is justifiable not to send such a letter because the Respondent's testimony was that she avoids "at all costs" sending a letter to a patient formally ending a treatment relationship "because of the nature of the relationship and the fragility of a lot of my patients, that I think that's detrimental and perhaps could have an unfortunate outcome, and I can't contribute to that in good faith." 2/12/15 Tr. 74.

The Respondent thinks it is better to stop treating a patient – no matter how fragile - and never to explain why. The Respondent testified that the FPW showed up at her office looking for her. Instead of speaking or writing to the FPW after that, the Respondent ignored her. She felt that it was better for the FPW – a fragile patient based on testimony by FPW and Respondent

[10] The FPW's testimony indicated longer telephone calls and the Respondent's testimony was more like they tried to connect by telephone. However, as noted in the Respondent's own summary of her treatment of the Respondent, she spoke by Respondent by telephone and she continued to prescribe for her after the last session.

- to be ignored rather than explaining to the FPW that she, the Respondent, no longer could treat the FPW, etc. At the very minimum, the Respondent owed the FPW a discharge letter.[11] The Respondent failed to properly terminate her treatment relationship with the FPW. Such behavior fails to conform to the minimal standards of acceptable and prevailing medical practice in her area of expertise (psychiatry).

b. The Respondent Failed to a Have a Conversation with the FPH about Having Relationship with him

The Respondent and FPH both testified that their relationship began in December, 2011, but prior to then, the FPH had indicated that he would like a romantic relationship and the Respondent had demurred. The FPW testified that she thought their relationship began in 2009 when she noticed many telephone calls between the FPH and Respondent. The FPH testified that the FPW questioned him about said telephone calls and he explained them to be due to his mentoring of the son. Certainly a friendship had developed between the FPH and Respondent prior to 2011 based on the Respondent's and FPH's testimony. The FPH helped the Respondent move in 2010 and the Respondent felt comfortable enough with the FPH to invite him on a cruise and act as a caretaker for her sons including one who shared a cabin with the FPH. Nonetheless, for the purposes of this decision, it will be assumed that the romantic relationship between the Respondent and FPH started in late 2011.

The Respondent's testimony regarding her research on having a relationship with a former patient and who she spoke to on that topic lacked any specificity or any details. She testified that she did not consult with a professional, but consulted with friends and family but

[11] The Respondent testified that in 2009, she suggested to the FPW to see another psychiatrist. She also testified that she could not communicate much with the FPW by telephone as the FPW would hang up. 2/12/15 Tr. 96. Suggesting a patient see another psychiatrist on the telephone is not the same as terminating treatment of a patient by letter and including an explanation of the end of the treatment relationship.

did not remember who. She could not point to any literature that she read on the subject or discussed with the FPH. She testified as follows:

> Q. And at some point you investigated whether or not you were violating any ethical boundaries by becoming romantically involved with him; correct?
> A. Yes.
> Q. And how did you go about doing that?
> A. Well, when he followed through, persisted, and I realized that he was serious about it, I looked into the laws, and I did some reading and spoke to some friends, family, but I also had a lot going on, so it didn't happen right away.
> Q. And did you consider any harm to the ex-patient/ex-wife?
> A. I am not sure how to answer that. I certainly considered how it would impact her, if it would impact her?
> Q. Did you draw any conclusions about whether or not it would impact her?
> A. Yes, it was my belief that she had, as I guess I've already said, she had moved on and she was involved in a number of other relationships. She had filed for divorce, and she had made it very clear that she wasn't going to be happy if he was involved with anybody, so I knew that there would be some issues. But as far as related more specifically to me, I felt that as a person who was divorced, that the former patient husband had the right to his own autonomy as a single person, I think removed from that relationship or having been removed from that relationship really.
> 2/12/15 Tr. 53-54

At hearing, the Respondent tried to justify her relationship by pointing to ethical guidelines of professions of which she is not like marriage counselors.[12] While she is not a member of the APA, the APA's guidelines forbid sexual relationships with current and former patients. Certainly the guidelines of her own profession are more applicable. She also argued that somehow her relationship for the FPW and FPW was medical management so she would

[12] The American Association for Marriage and Family Therapy bars sexual intimacy with former patients for two (2) years after the termination of treatment and then states that after two (2) years after treatment, sexual intimacy should be avoided but if engaged in the therapist has the burden to show there has been no exploitation of the former client. The Ethical Principles of Psychologists and Code of Conduct from the American Psychological Association forbids sexual intimacy with a former client for two (2) years from the termination of treatment and then after the said two (2) years indicates that sexual intimacy should be avoided unless in unusual circumstances and the therapist bears the burden to show there has been no exploitation of the former client. See Respondent's Exhibits 29 and 30. The Respondent is not a family therapist and is not a psychologist. Nonetheless, even if she was, neither would be helpful to her situation as she prescribed to the FPH in December, 2010 on her own initiative because she recognized his anxiety. She did not prescribe for five (5) days as might be considered appropriate for an emergency prescription as testified to by Krupp, but instead she gave a 30 day prescription. Accepting the FPH and Respondent's testimony, their romantic relationship started in December, 2011, it only started one (1) year from the Respondent's last prescription for the FPH.

arguably have a lower standard to meet for a sexual relationship with a former patient than if she was providing psychotherapy. As detailed in the testimony above, her notes indicate that she was providing more than prescriptions to both patients and indeed she cannot evaluate how they worked without some kind of psychiatric relationship. However, the type of topics covered in her sessions with them jointly and separately demonstrate that she provided therapy about communication, relationships, etc. Indeed, in her summary of the FPW's medical records provided to the FPW's new provider in 2011, the Respondent wrote that she provided to the FPW "supportive and psychodynamic, insight-oriented psychotherapies, as well as psychopharmacology. Pt was also seen with husband briefly for couples' therapy." See Department's Exhibit Seven (7). Krupp's testimony also supports a finding that her treatment was more than medical management and included providing therapy to the FPH and FPW. However, whether her treatment was more medical management or more therapy or even more analytical,[13] she still owed a duty of care to both of her former patients.

The Respondent also tried to justify her relationship with the FPH by blaming the FPW for not wanting him to have any girlfriends. Whatever the FPW's attitude was to the FPH's dating, such an attitude would never relieve the Respondent of her professional responsibilities as a psychiatrist to both FPW and FPH. The Respondent further argued that the FPH was autonomous and it seemed unfair to question his choice of relationships. Again, the FPH's choices does not relieve the Respondent of her professional responsibilities as a psychiatrist to both FPW and FPH. The Respondent also had a duty to engage in beneficence, non-malfeasance, and justice for both of her former patients. Such arguments cannot obscure the

[13] The Respondent admitted she provided analysis to the FPW and FPH but denied it was therapy.

fact that the Respondent's own testimony (and the FPH) indicated that very little was actually discussed by the FPH and the Respondent in terms of the issues of such a relationship.

The Committee is not finding that if such an "unpacking" of this relationship took place, the relationship would have been appropriate in this situation. But the fact is that Respondent never even tried to unpack the issues that such a relationship entailed and instead tried to blame the FPW for any issues and hide behind the FPH's choices. Such behavior fails to conform to the minimal standards of acceptable and prevailing medical practice in her area of expertise (psychiatry).

c. The Respondent Failed to a Have a Conversation with the FPW about Having Relationship with the FPW

The Respondent apparently forgot that she was the psychiatrist for both the FPW and FPH and that her moving into a romantic relationship with her former patient was not just a relationship between her and the FPH but also impacted the FPW who the Respondent had treated along with the FPH. There was no evidence that the Respondent ever reached out to the FPW in terms of the Respondent's relationship with the FPH. In fact, the evidence makes it appear that the FPW was only seen has a hindrance to their romance. This is not a romance novel, but rather a situation where a psychiatrist chose to engage in a romantic relationship with a former patient when she had treated that former patient and his wife. Again the Committee is not finding that if the Respondent had reached out to the FPW to discuss the issue of a romantic relationship with the FPH, the relationship would have been appropriate in this situation. But the fact is that Respondent never even tried to speak to the FPW prior to initiating the relationship with the FPH and even during the Board hearing, the Respondent blamed the FPW for her negative reactions (see discussion below on Family Court). Such behavior fails to

conform to the minimal standards of acceptable and prevailing medical practice in her area of expertise (psychiatry).

d. The Respondent Made Inappropriate Additions to the Respondent's Medical Records

The Respondent provided a summary of the FPW's medical records to her new provider on July 20, 2011. See Department's Exhibit Seven (7). The July, 2011 cruise taken by the Respondent, her two (2) sons, and the FPH was a seven (7) day cruise that started on July 24, 2011. See Respondent's Exhibit 24. The FPH testified that he told the Respondent of his romantic interest in her prior to the cruise. The Respondent testified that she did not remember when the FPH told her of his romantic interest but she did not think it was before the cruise.

It was undisputed that right before the Respondent went on a cruise with the FPH, she sent medical records for the FPW to FPW's new provider and added new diagnoses for FPW without having seen the FPW in person for over three (3) years or having any medical notes on the FPW since March 12, 2008. At that time, the Respondent was in such a close friendship with the FPH that she invited him on a cruise and trusted him to share a cabin with her son and to care for her sons as she was partially in a wheelchair. Indeed, she most likely was aware that the FPH was romantically interested in her prior to the cruise. Knowing all this, she added diagnoses including indications of borderline personality disorder and mood disorder and an eating disorder to the FPW's summary of medical records. She testified that she observed these symptoms during treatment but did not include them in her notes but felt they should be considered by the new provider. Krupp testified there was no basis in the notes regarding borderline personality disorder. While Krupp testified that a summary of medical records was adequate, he testified that Respondent's added diagnosis were inappropriate in the circumstances where she was sending a summary of medical records two (2) years after

apparently stopping treatment of the FPW[14] and was now in close relationship with the FPH where most likely that FPH has expressed romantic interest to her. Such behavior fails to conform to the minimal standards of acceptable and prevailing medical practice in her area of expertise (psychiatry).

e. The Respondent Failed to Appreciate Boundaries for her and the FPW

In August, 2014, the Respondent chose to attend a Family Court hearing with the FPH when the FPH was attempting to have his child support payments to the FPW reduced. The Respondent did not reach out to her former patient to let her know that she would be attending the hearing with the FPH. The Respondent explained that she went to Family Court with the FPH in order to support him because he was stressed. At the Board hearing, she took great pains to point out that she was not at court to testify and that the FPW started screaming as soon as the FPW saw her (Respondent). After upsetting her former patient in the courtroom, the Respondent was asked to leave by the court officer in order to stabilize the situation. By her own admission, the Respondent told the court officer she would come back to the courtroom. When the hearing was moved to another courtroom, the Respondent went into the second courtroom despite what already happened in the first courtroom.

When asked at hearing, why she thought the FPW was upset with her attending the hearing, the Respondent testified as follows:

> She was upset that – if you want to ask me – I agree that she was upset that I was there to support her former husband, but it had nothing to do with who I was.
>
> Q. How do you know that?
>
> Well, I don't know that at the moment. I'm saying that's the part that I would agree to, but based on what she has said even before they divorced, she made it clear she was going to make sure he had nobody and wasn't happy.
>
> ***

[14] The Respondent did not see the FPW in person after March, 2008, but continued to treat her until the summer of 2009 when the Respondent stopped treatment despite never sending a discharge letter.

> And the same answer is that she had made it abundantly clear that she would destroy anything that her ex-husband got. She wanted him to be miserable. . . . I know that whoever it was [at Court], this would have been a similar event.
> 2/12/15 Tr. 90-91.

When the Respondent was faced with the choice of whether or not to go with the FPH to the Family Court hearing, she chose to go. When she chose to go, she chose not to reach out to her former patient to explain why she was attending the hearing. When the Respondent was faced with the FPW being upset in the first courtroom, the Respondent did not choose to leave but was asked to leave by a court officer. When she was faced with a choice of whether to go to another courtroom, she chose – despite the reaction of her former patient – to go to the second courtroom. When asked at the Board hearing whether she would attend another Family Court hearing, she testified "I don't even know at this point." 2/12/15 Tr. 93.

The Respondent tried to justify her attendance at the hearing on the basis that the FPW would have been upset if the FPH had showed up with any girlfriend. However, the Respondent is not just any girlfriend, but rather was the FPW's psychiatrist and as such had statutory and regulatory obligations – including not to engage in malfeasance - to the FPW regardless of whether or not the FPW expressed displeasure at the Respondent's attendance at the hearing. Once again, the Respondent minimized and excused her behavior by blaming others. Even if the FPW had not expressed displeasure in court, it does not mean that the Respondent should attend such hearings. By showing up at a contested court matter between two (2) former patients where the Respondent is in a sexual relationship with one of the parties (who had been married to the other party) demonstrates on the part of the Respondent an extreme lack of understanding and appreciation for her role as the former psychiatrist for the FPW. The fact that at the Board hearing, the Respondent could not even acknowledge or admit to an error in judgment, but rather sought to blame her former patient is more than troubling but demonstrates serious issues about

the Respondent's understanding of boundaries between herself and the FPW and FPH. Such behavior fails to conform to the minimal standards of acceptable and prevailing medical practice in her area of expertise (psychiatry).

F. Financial Relationship and Transfer of Records

The Committee considered the testimony of the witnesses and exhibits and voted unanimously to find that the Respondent did not violate R.I. Gen. Laws § 5-37-5.1 in terms of having a financial relationship with the FPH or R.I. Gen. Laws § 5-37-5.1(10) in terms of the actual transfer of the medical records.

G. Administrative Fees

The Department sought the imposition of administrative fees pursuant to R.I. Gen. Laws § 5-37-6.3.[15] Dr. James McDonald ("McDonald"), Chief Administrative Officer for the Board of Medical Licensure and Discipline, testified on behalf of the Department. He testified that State law allows for the charging of administrative fees for administrative hearings against licensed physicians. He testified that two (2) years ago, he developed certain baseline fees that are charged. He testified that he has kept track of the number of hours that staff put into this case which as of January 29, 2015 was 92 hours. He testified that there is an hourly rate for each staff member which is determined by taking each staff member's salary and dividing it by the work week for an hourly rate. He testified there are basic fees for opening a case and copying. He testified that hearing transcripts are part of the fees as are Krupp's services at $125 an hour which is the State rate and there is a partial invoice for his services as of January 25,

[15] R.I. Gen. Laws § 5-37-6.3 provides in part as follows:

> Sanctions. – If the accused is found guilty of unprofessional conduct as described in § 5-37-6.2, the director, at the direction of the board, shall impose one or more of the following conditions:
>
> ***
>
> (8) Assess against the physician the administrative costs of the proceedings instituted against the physician under this chapter; provided, that this assessment does not exceed ten thousand dollars ($10,000).

2015 and so far all fees so far totaled $9,133.93. See Department's Exhibit 28 (staff, transcript, and Krupp's fees). On cross-examination, he testified that there are basic administrative fees for administrative assistance preparing files, IT, and office supplies.

The maximum amount allowed to be imposed is $10,000. The evidence was as of March 23, 2015, the fees totaled $9,133. Those fees reflected hours spent by Department staff as of January 29, 2015 and Krupp's fees as of January 25, 2015. Krupp testified on February 12 and March 18, 2015 so incurred more fees. The total fees did not include the transcript costs for the hearings on February 3 and 12, March 18, 23, 27, and April 10. Clearly based on the further transcript, expert, and staff fees after January 29, 2015, the total fees will exceed $10,000. The Board voted unanimously to impose an administrative fee of $10,000 for the cost of this hearing as the Respondent was found to have violated R.I. Gen. Laws § 5-37-5.1 (as provided by R.I. Gen. Laws §5-37-6.2).

H. Conclusion

The Board voted unanimously to revoke the Respondent's License due to her violations of R.I. Gen. Laws § 5-37-5.1. R.I. Gen. Laws § 5-37-6.3[16] provides that revocation of license is a sanction for unprofessional conduct. Section 10.2 of *Rules and Regulations for the Licensure and Discipline of Physicians* provides that licenses that have been revoked "shall not be eligible for consideration for re-instatement for a period of five (5) years. Re-instatement of revoked licenses shall be at the discretion of the Board."

[16] R.I. Gen. Laws § 5-37-6.3 provides in part as follows:

> Sanctions. – If the accused is found guilty of unprofessional conduct as described in § 5-37-6.2, the director, at the direction of the board, shall impose one or more of the following conditions:
> ***
> (4) Revoke indefinitely his or her license or limited registration to practice medicine.

VI. FINDING OF FACTS

1. Pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, the Respondent is licensed as a physician in the State of Rhode Island and was at the time of said incident.

2. On October 8, 2014, the Department summarily suspended Respondent's License. On December 3, 2014, the Summary Suspension was conditionally lifted.

3. On October 9 and 28, 2014, Notices of Charges and Time of Hearing were issued by the Department to the Respondent.

4. On October 28, 2014, a Specification of Charges was issued to the Respondent by the Department.

5. A hearing was held on October 14, and November 3, 2014, December 1 and 3, 2014, January 29 and 30, February 2 and 12, March 18, 23, and 27, and April 10, 2015. All briefs were timely filed by September 8, 2015.

6. The facts contained in Section IV and V are reincorporated by reference herein.

VII. ORDER

Based on the forgoing, the Committee found that the Respondent violated R.I. Gen. Laws § 5-37-5.1 by engaging in unprofessional conduct and pursuant to R.I. Gen. Laws § 5-37-6.3, her License is revoked.

Entered this 9th day of December, 2015.

Jennifer Barry, Esquire
Board Member

Joan Crawley
Board Member

Stephen Fanning, DO
Board Member

Ratified and approved by the Director of the Department of Health:

Nicole Alexander-Scott, M.D.
Director

Jennifer Barry, Esquire, hereby represents that she read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as her own.

Jennifer Barry, Esquire

Joan Crawley hereby represents that she read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.

Joan Crawley

Stephen Fanning, DO, hereby represents that she read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.

Stephen Fanning, DO

NOTICE OF APPELLATE RIGHTS

PURSUANT TO R.I. GEN. LAWS § 5-37-7, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT WITHIN THIRTY (30) DAYS AFTER THE DECISION OF THE DIRECTOR BY SERVING THE DIRECTOR WITH A NOTICE OF APPEAL AND FILING SUCH NOTICE IN SUPERIOR COURT. APPEALS ARE GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT, R.I. GEN. LAWS § 42-35-1 *et seq.*

CERTIFICATION

I hereby certify on this 5th day of ~~December~~ January, 2016, 2015 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to Vicki Bejma, Esquire, Robinson & Clapham, 123 Dyer Street, Providence, RI 02903 and by hand-delivery to Thomas Corrigan, Esquire, Department of Health, Three Capitol Hill, Providence, ~~RI 02908~~.