

May 2018 Public Board Actions List

Georgia Composite Medical Board
Attn: **Ms. Latisha Bias**, Public Records Unit
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Atlanta, Georgia 30303-3465
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The Board issued **three** public orders in **May 2018**. To view each Board order, click on the licensee's name below.

1. Ingrid Renee Burton, MD

050694

Physician

Public Consent Order

2. Keith R. Jackson, MD

027575

Physician

Public Consent Order

3. Peter John Ulbrich, MD

028696

Physician

Final Decision and Order

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD

STATE OF GEORGIA

GEORGIA COMPOSITE
MEDICAL BOARD

IN THE MATTER OF:

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MAY 03 2018

INGRID RENEE BURTON, M.D.,
License No. 050694,

DOCKET NO. _____

DOCKET NUMBER:

2018 0048

Respondent.

PUBLIC CONSENT ORDER

By agreement of the Georgia Composite Medical Board ("Board") and Ingrid Renee Burton, M.D., Respondent, the following disposition of this disciplinary matter is entered pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-13 as amended.

FINDINGS OF FACT

1.

Respondent is licensed to practice as a physician in the State of Georgia and was so licensed at all times relevant to the facts stated herein.

2.

On or about August 16, 2017, in Coffee County, Georgia Superior Court Case No. 2016F-08-196, Respondent entered an Alford plea to five separate counts of O.C.G.A. § 43-26-10, resulting from Respondent employing non-licensed registered professional nurses to engage in nursing at her practice.

3.

Respondent does not contest the above findings of fact and waives any further findings of fact.

CONCLUSIONS OF LAW

Respondent's conduct constitutes sufficient grounds for the Board to exercise disciplinary authority over Respondent's licensee under O.C.G.A. Chs. 1 and 34, T. 43, as amended, and the Rules of the Georgia Composite Medical Board. Respondent hereby waives any further conclusions of law with respect to the above-styled matter.

ORDER

The Board having considered the particular facts and circumstances of this case, it is hereby ordered, and Respondent hereby agrees to the following:

1.

This Consent Order and dissemination thereof shall be considered a PUBLIC REPRIMAND of Respondent by the Board.

2.

Approval of this Order by the Board shall in no way be construed as condoning Respondent's conduct and, except as provided herein, shall not be construed as a waiver of any of the lawful rights of the Board.

5.

Respondent acknowledges that she has read and understands the contents of this Consent Order. Respondent understands that she has the right to a hearing in this matter, and Respondent freely, knowingly and voluntarily waives such right in accordance with the terms set forth herein by entering into this Consent Order. Respondent further understands and agrees that a representative of the Department of Law may be present during the presentation of this Consent Order and that the Board shall have the authority to review the investigative file and all

relevant evidence in considering this Consent Order. Respondent further understands that this Consent Order, once approved and docketed, shall constitute a public record and may be disseminated as such. However, if the Consent Order is not approved, it shall not constitute an admission against interest in the proceeding, or prejudice the right of the Board to adjudicate the matter. Respondent understands that this Consent Order will not become effective until approved and docketed by the Georgia Composite Medical Board. Respondent consents to the terms contained herein.

Approved, this 3rd day of May, 2018.



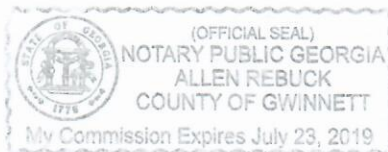
GEORGIA COMPOSITE MEDICAL BOARD

BY: E. D. DeLoach MD
E. DANIEL DELOACH, M.D.
Chairperson

ATTEST: L. Lasharn Hughes
LASHARN HUGHES, MBA
Interim Executive Director

CONSENTED TO: Ingrid R. Burton Hiko MD
INGRID RENEE BURTON, M.D.
Respondent

AS TO RESPONDENT
Sworn to and subscribed
before me this 3rd day
of May, 2018
NOTARY PUBLIC
My commission expires: 7/23/2018



BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD

GEORGIA COMPOSITE
MEDICAL BOARD

IN THE MATTER OF:

KEITH R. JACKSON, MD
License No. 027575,

Respondent.

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DOCKET NO.:

MAY 03 2018

DOCKET NUMBER:

2018 0047

PUBLIC CONSENT ORDER

By agreement of the Georgia Composite Medical Board ("Board") KEITH R. JACKSON ("Respondent"), the following disposition of this disciplinary matter is entered pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A § 50-13-13(a)(4), as amended.

FINDINGS OF FACT

1.

Respondent is licensed to practice medicine in the State of Georgia and was licensed at all times relevant to the matters asserted herein. The Respondent license was issued on June 11, 1985, and will expire on November 30, 2019.

2.

On or about March 18, 2015, Respondent preformed a surgical procedure on three-year old patient K.D. to remove induced lesions from her throat, at an out-patient surgical center. During the procedure, Respondent was unable to obtain an airway and patient K.D. went into cardiac arrest. Patient K.D. was flown to Children's Healthcare of Atlanta, where she later expired.

3.

A Board approved peer reviewer reviewed Respondent's care of Patient K.D. and concluded that Respondent departed from and failed to conform to the minimum standard of acceptable and prevailing medical practice in the areas of treatment due to the following reasons:

- a. Because of the risk of airway complications during surgery, the surgical procedure should have been performed at a facility capable of providing high level emergency surgical care. An outpatient surgical center that primarily serves adult patients is unlikely to have the appropriate training, equipment, or protocols to handle a catastrophic pediatric airway event.
- b. Patient K.D. would have been best served by having a pediatric trained anesthesiologist.

4.

Respondent agrees to the above findings of facts and waives any further findings of fact with respect to the above-styled matter.

.CONCLUSIONS OF LAW

Respondent's conduct constitutes sufficient grounds for the imposition of discipline upon his license to practice as a physician in the State of Georgia under O.C.G.A. Title 43, Chapters 1 and 34, as amended. Respondent hereby waives any further conclusions of law with respect to the above-styled matter.

ORDER

The Board, having considered all the facts and circumstances of this case, hereby orders, and Respondent hereby agrees, that the following sanctions shall be imposed upon Respondent's license to practice as a physician in the State of Georgia:

1.

Respondent shall submit to the Board a fine in the amount of five thousand dollars (\$5,000.00) to be paid in full by cashier's check or money order payable to the Board within three hundred ninety (90) days of the effective date of this Consent Order. Said fine shall be submitted to the attention of the Executive Director, Composite State Board of Medical Examiners, 2 Peachtree Street, N.W., 6th Floor, Atlanta, Georgia, 30303. Failure to pay the entire amount of the fine by the 90th day shall be considered a violation of this Order and shall result in further sanctioning of Respondent's license, including revocation, upon substantiation thereof.

2.

Respondent shall abide by all state and federal laws regulating the practice of medicine, the Rules and Regulations of the Board, and the terms and conditions of this Consent Order. Respondent further agrees that any violation of this Consent Order shall be deemed to be sufficient to authorize the Board to order summary suspension of Respondent's license, pending further proceedings, pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-18(c)(1), or any other statute authorizing emergency action, but Respondent understands that Respondent shall be entitled to an expedited hearing to substantiate such violation, if the Board exercises such right.

3.

This Consent Order and dissemination thereof shall be considered a PUBLIC REPRIMAND of Respondent by the Board.

4.

Respondent also understands that pursuant to O.C.G.A. Title 43, Chapter 34A, the

contents of this order shall be placed on Respondent's Physician Profile. Furthermore, by executing this Consent Order, Respondent hereby agrees to permit the Board to update the Physician's Profile reflecting this Consent Order.

5.

Respondent acknowledges that Respondent has read this Consent Order and understands its contents. Respondent understands that she has the right to a hearing in this matter and freely, knowingly and voluntarily waives that right by entering into this Consent Order. Respondent understands and agrees that a representative of the Department of Law may be present during the Board's consideration of this Consent Order and that the Board shall have the authority to review the investigative file and all relevant evidence in considering this Consent Order. Respondent further understands that this Consent Order will not become effective until approved and docketed by the Board. Respondent understands that this Consent Order, once approved and docketed, shall constitute a public record, evidencing disciplinary action by the Board that may be disseminated as such. However, if this Consent Order is not approved, it shall not constitute an admission against interest in this proceeding, or prejudice the right of the Board to adjudicate this matter. Respondent hereby consents to the terms and sanctions contained herein.

(SIGNATURES APPEAR ON NEXT PAGE)

Approved this 3rd day of May, 2018.

GEORGIA COMPOSITE MEDICAL BOARD



BY: E.D. DeLoach, MD
E. DANIEL DeLOACH, MD
Chairperson

ATTEST: LaSharn Hughes
LaSHARN HUGHES, MBA
Interim Executive Director

CONSENTED TO:

Keith R. Jackson, MD
KEITH R. JACKSON, MD
Respondent

As to the signature of KEITH R. JACKSON, MD ,
Sworn to and Subscribed before me
this 24 day of April, 2018.

Deoki Jaiprakash
NOTARY PUBLIC
My commission expires:



BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD

STATE OF GEORGIA

GEORGIA COMPOSITE MEDICAL BOARD,)		
)	
Petitioner,)	BOARD DOCKET NO:
)	
v.)	OSAH Docket No.: 1811290
)	1811290-OSAH-GCMB- PHY-
PETER JOHN ULBRICH, M.D.,)	56 WALKER
License No. 028696,)	
Respondent.)	

FINAL DECISION AND ORDER

An Initial Decision was docketed by the Office of State Administrative Hearings in the above matter on February 9, 2018 and a review hearing was held on April 12, 2018. Allen Meadors was the appointed hearing officer. At the review hearing, the Board was represented by Betsy D. Cohen, Assistant Attorney General, and the Respondent, Peter John Ulbrich, M.D., was represented by Colette Resnick Steel, Esq. After hearing argument and considering the matter, the Board finds as follows:

FINDINGS OF FACT

The Findings of Fact entered by the Administrative Law Judge in the Initial Decision are adopted and incorporated by reference herein.

CONCLUSIONS OF LAW

The Conclusions of Law entered by the Administrative Law Judge in the Initial Decision are adopted and incorporated by reference herein.

DECISION AND ORDER

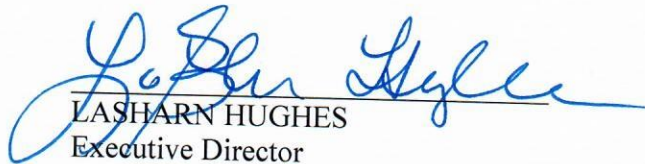
Based on the foregoing Findings of Fact and Conclusions of Law as set forth in the Initial Decision, the Board upholds the Initial Decision of the Administrative Law Judge, Ronit Walker, and ORDERS that the Respondent's license to practice medicine in the State of Georgia be INDEFINITELY SUSPENDED, and that after two (2) years the Respondent may request lifting of suspension following treatment by a Board-approved physician and advocacy from a physician. Should the Board decide to lift the indefinite suspension, Respondent's license to practice medicine in Georgia may be placed on probation under such terms and conditions as the Board deems necessary for the protection of the public. Furthermore, this Order shall be considered a Public Reprimand of Respondent by the Board, and may be disseminated as such. The effective date shall be the docketing date of this Order.

IT IS SO ORDERED this 17th day of May, 2018.

GEORGIA COMPOSITE MEDICAL BOARD



E. DANIEL DELOACH, M.D.
Chairperson



LASHARN HUGHES
Executive Director

(BOARD SEAL)

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA COMPOSITE
MEDICAL BOARD,
Petitioner,**

v.

**PETER J. ULBRICH, M.D.,
Respondent.**

: Docket No.: 1811290
: 1811290-OSAH-GCMB-PHY-56-Walker

: Agency Reference No.: 20180201



FEB 09 2018


Kevin Westray, Legal Assistant

INITIAL DECISION

I. Procedural History

On August 22, 2017, the Georgia Composite Medical Board (hereinafter “Petitioner” or “Board”) issued an Order of Summary Suspension, suspending Peter J. Ulbrich’s (hereinafter “Respondent”) license to practice medicine in the State of Georgia. On September 20, 2017, the Board issued a Statement of Matters Asserted seeking final disciplinary action against Respondent’s license to practice medicine. An evidentiary hearing took place on November 14, 2017, before the undersigned administrative law judge. Betsy Cohen, Assistant Attorney General, represented the Board. Respondent was represented by Colette Steel, Esq. Following the hearing, both parties submitted written closing arguments.¹

After consideration of the evidence presented and for the reasons stated below, the undersigned **RECOMMENDS** that Respondent’s license to practice medicine in Georgia be **INDEFINITELY SUSPENDED** under the conditions set forth in Section IV of this Initial Decision.

¹ The record in this matter closed on January 12, 2018. See Ga. Comp. R. & Regs. 616-1-2-.16(2); Petitioner’s Brief of Closing Argument at 15.

II. Findings of Fact

A. Background

1.

Respondent holds a license to practice as a physician in the State of Georgia, and held such license at all times relevant to the issues presented for hearing. Respondent's license was originally issued on August 6, 1986, and is scheduled to expire on February 28, 2019. His license currently is suspended. (Statement of Matters Asserted ¶ 1; Exhibits P-1, P-6).

2.

In February 2010, the Board received reliable, confidential information that Respondent had engaged in conduct that was unprofessional and/or sexual misconduct or exploitation of patients. The Board required him to obtain a mental/physical examination pursuant to Georgia Code Section 43-34-8(a)(13)(A). (Exhibits P-2, P-3).

3.

During the mental/physical examination, Respondent, an obstetrician-gynecologist, admitted that he had had sexual relationships with two of his current patients, and violated professional boundaries with a third patient. Based on Respondent's disclosures, the examiner submitted a report to the Board indicating that before returning to the practice of medicine, Respondent required an intensive program of treatment in a facility familiar with professionals who have engaged in sexual misconduct. (Exhibits P-2, P-3).

4.

On or about April 1, 2010, the Board docketed a Consent Order ("April 2010 Order"), *In the Matter of Peter John Ulbrich, M.D., License No. 028696, Before the Georgia Composite Medical Board, Docket No. 10100039*, regarding the Respondent. In the April 2010 Order, the Board exercised its power to impose sanctions on the Respondent's license to practice medicine.

The parties agreed that Respondent's license to practice medicine would remain suspended until the Board consented to the Respondent's return to the practice of medicine. By the terms of the April 2010 Order, Respondent could petition the Board to lift the suspension after he: 1) completed a treatment program for professionals who have engaged in sexual misconduct at a Board-approved facility, and 2) received professional advocacy to return to the practice of medicine from an advocate acceptable to the Board. (Exhibit P-2).

5.

Respondent underwent inpatient treatment at the Professional Renewal Center in Lawrence, Kansas. He subsequently received treatment at Behavioral Medicine Institute of Atlanta ("BMI"). After completing treatment, he enrolled in BMI's maintenance program. All told, Respondent completed 197 hours of therapy while in treatment at BMI. (Transcript at pp. (hereinafter T.) 23, 36, 48).

6.

Respondent petitioned the Board to lift the suspension of his license. On March 10, 2011, Respondent and the Board entered into a second public Consent Order *In the Matter of Peter John Ulbrich, M.D., License No. 028696, Before the Georgia Composite Medical Board, Docket No. 10100039, (March 10, 2011)* ("March 2011 Order"). In the March 2011 Order, the Board lifted Respondent's license suspension and placed his license on probation, subject to the following conditions: 1) his continued participation in outpatient treatment at BMI, 2) his designation of an acceptable supervising physician and an acceptable monitoring physician with whom he would continue therapeutic care, 3) his submission of quarterly reports from his supervising and monitoring physicians, 4) specific work restrictions including having a female chaperone present in examination rooms while examining female patients, limiting his work hours, submitting employee affidavits and staff surveillance forms, 5) obtaining additional hours

of continued medical education in the area of medical ethics, 6) he refrain from employing and/or supervising physician assistants and nurse practitioners, 7) he notify the Board regarding periods of residency outside of Georgia or periods when he was not actively practicing as a physician, 8) he abide by all laws and rules and regulations relating to his practice as a physician or relating to drugs, including the terms of the Second Consent Order, 9) he agree to undergo further physical or mental examinations as required by the Board, 10) he advise the board of any change in his address of record or employment status, and 11) he provide copies of the March 2011 Order to each hospital, other institution or physician with whom he associated in practice. (Exhibit P-3).

7.

On February 15, 2015, Respondent petitioned the Board to terminate his term of probation.² The Board determined that Respondent had complied with all of the terms and conditions of probation from the March 2011 Order. On May 8, 2015, the Board docketed a Public Order Terminating Probation, *In the Matter of Peter John Ulbrich, M.D., License No. 028696, Before the Georgia Composite Medical Board, Docket No. 10100039*, regarding Respondent. (Exhibit P-4).

8.

According to BMI's records, while undergoing treatment Respondent told BMI staff that he would voluntarily continue to attend group therapy and undergo monitoring even if the Board acted to terminate his probation. (T. 41-42). Nonetheless, following the termination of his probation, Respondent failed to maintain any contact with the facility. (T. 42; Exhibit P-8).

² The March 2011 Order allowed Respondent to petition the Board for termination of this probationary period five years from the effective date of the March 2011 Order, March 10, 2011. (Exhibit P-3).

9.

On or about September 6, 2016, Respondent saw a female patient, P.R., at Skin Matters, a medical spa, for a Xeomin injection. P.R. later filed a complaint with the Board, alleging Respondent made inappropriate comments, touched her thighs and pressed his crotch against her knee while administering the Xeomin injection. On or about June 21, 2017, the Board issued a second Confidential Order for Mental/Physical Examination to Respondent. *In the Matter of Peter John Ulbrich, M.D., License No. 028696, Before the Georgia Composite Medical Board, Docket No. 10170034, (June 21, 2017).* (Exhibit P-5).

10.

Dr. Funmilayo Rachal M.D. performed the mental/physical examination.³ Dr. Rachal currently practices with the Atlanta Psychiatric Consultation Center. Prior to performing the mental/physical examination, Dr. Rachal was familiar with the Respondent because she had supervised his participation in BMI's maintenance program. (T. 23, 35, 85; Exhibits P-6, P-7, P-8).⁴

11.

The Board received a report of the mental/physical examination on or about August 11, 2017. While conducting the mental/physical examination, Dr. Rachal learned that since the Board terminated Respondent's probation on May 8, 2015, Respondent had engaged in sexual relationships with former patients, and provided medical care to his prior sexual partners. Dr. Rachal expressed "high concern" regarding Respondent's interactions with two of the women

³ The terms examination, evaluation and assessment are used interchangeably. (T. 23).

⁴ Dr. Rachal determined that she had conducted approximately 16-20 individualized or group therapy sessions with Respondent while at BMI. (T. 84). Notwithstanding this extensive contact, she did not disclose her previous treatment in the assessment. (T. 95).

whom Respondent continued to actively treat, and opined that his behavior, in light of his prior sexual misconduct, was a relapse. She concluded that with a reasonable degree of medical and psychiatric certainty, Respondent posed a significant safety threat to his patients and/or staff. (Exhibits P-6, P-8).

12.

On or about August 22, 2017, finding that Respondent's continued practice of medicine posed a threat to the public health, safety and welfare and imperatively required emergency action, the Board issued an order summarily suspending Respondent's medical license pursuant to Georgia Code Section 50-13-18(c)(1). *In the Matter of Peter John Ulbrich, M.D., License No. 028696, Before the Georgia Composite Medical Board, Docket No.220180008, (August 22, 2017)* (Exhibit P-6). Respondent requested an administrative hearing. (Court File).

B. Evaluation.

13.

Dr. Rachal graduated from Case Western Reserve University School of Medicine in 2005. She completed a residency in psychiatry at the Baylor College of Medicine, and a fellowship in forensic psychiatry at the Emory University School of Medicine. She is certified by the American Board of Medical Specialties in adult psychiatry and forensic psychiatry. (T. 15; Exhibit P-7).⁵ Approximately fifteen (15) to twenty (20) percent of her practice consists of performing forensic evaluations. (T. 16).

⁵ Dr. Rachal testified as an expert regarding professional sexual boundaries and forensic psychiatry. (T. 20). "[F]orensic psychiatry is a subspecialty of general psychiatry which entails the interface of mental health in the law." (T. 14). The instant case marks the first time Dr. Rachal has been qualified as an expert in the field of "professional sexual misconduct of forensic psychiatry." (T. 22).

14.

On or about July 31, August 1 and August 2, 2017, Dr. Rachal, Sarah Gregg, R.N., C.A.R.N., and Ron Herndon, Ph.D., (also “the multidisciplinary team”) performed Respondent’s mental/physical examination. (T. 23, 31; P-8). The assessment included a full psychiatric history, assessment for psychiatric impairments or mental health comorbidities, and psychological testing. (T. 32).

15.

The multidisciplinary team administered various clinical instruments to assess Respondent’s overall psychological and intellectual functioning.⁶ Dr. Rachal did not personally administer any psychological tests to Respondent, but met with the other members of the multidisciplinary team to discuss test findings and interpretation. (T. 79, 81). Considering the results of the assessments “in tandem with other clinical information gathered from clinical interviews and supplemental information,” Dr. Rachal developed independent conclusions regarding Respondent’s ability to practice with reasonable skill and safety. (T. 53, Exhibit P-8).

16.

During clinical interviews, Respondent told the evaluators that he had been working as an independent contractor at multiple local medical offices performing office gynecological and cosmetic procedures. He reported that he only uses a chaperone when a patient undergoes a procedure that requires she undress. (Exhibit P-8).

⁶ Relying on Brown v. State, 206 Ga. App. 800 (1992), Respondent maintains that Dr. Rachal’s testimony relating to the psychological testing is inadmissible. Nonetheless, Dr. Rachal testified that the psychological testing performed during the evaluation was “adjunct,” because she would have reached the same conclusions even without relying on the psychological testing. (T. 67).

17.

Given his history, Dr. Rachal found that Respondent engaged in high risk behavior by treating patients in small rooms, particularly without a chaperone. (T. 39). When an individual has a history of sexual misconduct, the use of a chaperone is recommended for the protection of the patient. The use of a chaperone also protects a physician by decreasing the risk that the physician might be the target of false allegations. (T. 40). BMI specifically had recommended to Respondent that he use a chaperone at all times. (T. 41). Dr. Rachal agreed that Respondent did not violate a Board order by failing to use a chaperone, but still found this failure troubling; “for most individuals who complete such extensive treatment,” using a chaperone is a “first line defense.” (T. 69, 97).

18.

When a physician has multiple roles or relationships with an individual outside of the doctor/patient relationship, the physician engages in a “dual relationship.” (T. 24). Dual relationships are risky because they may compromise a clinician’s objectivity when treating a patient. Even after the doctor/patient relationship has terminated, a patient’s emotional attachment to the physician may linger. (T. 25, 58, 64). Further, having a sexual relationship with a former patient may create a perception that a physician may be “grooming” patients for future sexual relationships. (T. 64, 65).⁷

19.

BMI’s treatment records indicate that Respondent has a history of engaging in dual relationships; “he had lots of patients who he was social with and these social relationships led to

⁷ Dr. Rachal acknowledged that serving both as Respondent’s psychiatrist and forensic evaluator could be considered a “dual relationship,” but noted that relationships in a professional setting were less problematic than dual relationships involving sexual contact. (T. 91-92).

emotional attachments and ultimately led to his being sexual with patients.” (T. 27). Throughout his treatment for professional sexual misconduct, Respondent was instructed to discontinue any social relationships with his patients, and cautioned that he should not engage in sexual relationships with former patients. (T. 28, 64).

20.

During the evaluation Respondent disclosed that after he left BMI’s maintenance monitoring program, he had sexual relationship with at least four women he had provided medical care for either prior to or after the sexual encounter. (Exhibit P-8).

C. Dual Relationships

21.

Respondent has been friends with “A”⁸ for approximately 15 years. Two years ago, their friendship intensified and they engaged in a sexual relationship. According to Respondent, his sexual relationship with A concluded after a few months, and they remained friends. One year after the end of their sexual relationship, A asked Respondent if he could provide her with medical treatment because her physician had recently passed away. After disclosing his previous issues concerning professional sexual misconduct and informing A that they no longer could have any type of intimate relationship, Respondent agreed to administer medical treatment to A. (T. 56-57).

22.

D is an executive administrator at Piedmont Hospital with an undergraduate degree in accounting. (T. 160). Sometime around 2000 D and Respondent engaged in a brief sexual relationship that lasted two to three months. After the Board terminated Respondent’s probation,

⁸ To protect their privacy, these individuals will be referred to herein by the initial of their first name.

D requested that Respondent administer hormone replacement therapy. Following a discussion of his history of professional sexual misconduct with D, Respondent began administering the hormone replacement therapy. (T. 59).

23.

Dr. Rachal found these relationships problematic because Respondent's objectivity as a physician could be negatively impacted by having had a prior sexual relationship with the patient. (T. 57). Although Respondent had been cautioned that treating a patient who had previously been a sexual partner created a significant risk of engaging in professional boundary violations, he failed to understand that, in light of past incidents, his behavior was "risky." (T. 58).

24.

G has been a friend of Respondent's since childhood and holds a doctoral degree. Sometime in the late 1990s or early 2000s G became Respondent's patient. After the Board suspended his license, Respondent did not provide G with any further medical care. (T. 63, 151). In 2016 G contacted Respondent because she wanted his opinion regarding a home renovation project. After meeting to discuss the project, G and Respondent became sexually intimate for several months. (T. 63). She testified that she never perceived any power imbalance in their relationship. (T. 155).

25.

Respondent was L's physician until 2010. In 2016 they engaged in an intimate relationship. (T. 63). Dr. Rachal acknowledged that Board rules do not specifically prohibit a physician from having a romantic relationship with former patients, such as G or L. However, because of Respondent's history of sexual misconduct, he had been cautioned not to engage in

sexual relationships with his former patients. (T. 64). Given his extensive treatment, continually engaging in dual relationships demonstrated that Respondent was at “risk for relapse.” (T. 38, 46, 48).

26.

Dr. Rachal also spoke with Respondent’s co-worker at Skin Matters, who indicated that Respondent had gotten positive reports from his patients and staff. (T. 124). Respondent had no history of deviant behaviors or sexual compulsivity. (T. 45). She concluded that the risk that Respondent would touch a patient with whom he has no long term relationship or frequent contact with is low. (T. 21, P-8).

27.

After completing her evaluation, Dr. Rachal found Respondent “was high risk for engaging in sexual misconduct.” (T. 61). She determined, to a reasonable degree of medical and psychiatric certainty, that without further treatment Respondent posed “a significant safety threat to his patients and/or staff related to professional misconduct” (P-8, T. 23, 68-69). Dr. Rachal recommended intensive treatment to revisit reemerging issues regarding poor boundaries and dual relationships, and reevaluation following treatment. If the Board deemed Respondent fit to practice with reasonable skill and safety, Dr. Rachal advised that the Board reinstitute monitoring. (T. 69).⁹

⁹ Dr. Rachal diagnosed Respondent with other specified personality disorder with mixed personality features including narcissistic, dependent and obsessive compulsive. (Exhibit P-8).

III. Conclusions of Law

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has “all the powers of the referring agency” O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

A. Order of Summary Suspension

3.

Georgia Code Section 43-34-8, which is the specific licensing and disciplinary statute for the medical profession, empowers the Board to discipline a licensee who has “[b]ecome unable to practice . . . with reasonable skill and safety due to illness, use of alcohol, drugs, narcotics, chemicals, or any other types of material, or as a result of any mental or physical condition.” . O.C.G.A. § 43-34-8(a)(13)(A). To facilitate enforcement of this provision, “the [B]oard may, upon reasonable grounds, require a licensee . . . to submit to a mental or physical examination by physicians designated by the [B]oard.” O.C.G.A. § 43-34-8(a)(13)(B). Respondent asserts that the Board did not have reasonable grounds to issue the July 21, 2017 Confidential Order for Mental/Physical examination. In this case, given the allegations of unprofessional comments and sexual misconduct articulated in P.R.’s complaint to the Board, and Respondent’s prior

disciplinary history involving sexual misconduct, the Board had reasonable grounds to order that Respondent undergo a mental/physical examination.

4.

The Board also had good cause to issue the Order of Summary Suspension. Only two years after the Board had terminated his probation, Dr. Rachal's evaluation indicated that Respondent already had had sexual contact with his former or future patients.¹⁰ She concluded that Respondent had "relapsed," and reported that without undergoing further treatment he posed a significant safety threat to his patients and/or staff. Based on the results of the mental/physical examination, the Board had good cause to find that Respondent's continued practice of medicine posed a threat to the public health, safety and welfare and required summary suspension of his license. Accordingly, the Board's action summarily suspending the Respondent's license to practice medicine in the State of Georgia is **AFFIRMED**.

B. Statement of Matters Asserted

5.

Additionally, the Board has the authority to discipline a licensee upon a finding that the licensee has done the following:

- (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public that materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title or is of a nature likely to jeopardize the interest of the public; such conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or

¹⁰ Respondent argues that the evaluation contained "incompetent evidence, unsupported and materially false allegations and gross exaggerations." Respondent's Closing Brief at 10. Albeit the evaluation did contain factual errors, the undersigned finds that these errors were not material and would not have affected the Board's determination.

untrustworthiness. Such conduct or practice shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

...

- (10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness or the use of alcohol, drugs, narcotics, chemicals, or any other type of material public[.]

O.C.G.A. §§ 43-1-19(a)(6), (10).

6.

Under Georgia Code Section 43-34-8(a), the Board also has the authority to discipline a physician upon a finding that the licensee has:

- (7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimum standards of acceptable and prevailing medical practice or by rule of the board;

...

- (11) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

...

- (13) Become unable to practice pursuant to this chapter with reasonable skill and safety to patients by reason of illness or use of alcohol drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition

...

- (15) Committed an act of sexual abuse, misconduct, or exploitation of a patient including guardians and parents of minors;

...

- (17) Entered into conduct which discredits the profession.

7.

The Board defines unprofessional conduct, in part, as follows:

- (8) Committing any act of sexual intimacy, abuse, misconduct, or exploitation of any individual related to the physician's practice of medicine regardless of consent. The rule shall apply to former patients where the licensee did not terminate in writing the physician patient relationship before engaging in a romantic or sexual relationship with the patient and/or where the licensee used or exploited the trust, knowledge, emotions or influence derived from the prior professional relationship. The Board will consider the physician patient relationship terminated if the physician has not evaluated or treated the patient for a period of at least two (2) years.

...

- (18) Any other practice determined to be below the minimal standards of acceptable and prevailing practice.

Ga. Comp. R. & Regs. 360-3-.02(8), (18).

8.

If the Board finds cause for discipline, it may deny, revoke, suspend, fine, reprimand, or otherwise limit the license of a physician. O.C.G.A. § 43-34-8(b)(1); see also O.C.G.A. § 43-1-19(d), Ga. Comp. R. & Regs. 360-3-.02. In the instant case, the Board seeks revocation of Respondent's professional license.

9.

The Board alleges that under O.C.G.A. §§ 43-1-19(a)(6) and 43-34-8(a)(7), (11) Respondent engaged in unprofessional, immoral, and unethical conduct affecting his fitness to practice a profession or conduct falling below minimal reasonable standards of acceptable and prevailing practice. Additionally, the Board asserts that Respondent violated Georgia Code

Section 43-34-8(a)(17), entering into conduct that discredits the profession. See also Ga. Comp. R. & Regs. 360-3-.02(8), (18).

10.

Given the impossibility of articulating every possible instance of misconduct, professional licensing statutes and regulations allow the Board broad discretion in determining whether a physician's behavior has violated professional standards. See Ga. Comp. R. & Regs. 360-3-.02(18) (allowing the Board to discipline a licensee for any practice determined to be "below minimal standards of acceptable and prevailing practice"); Ga. Prof'l Standards Comm'n v. James, 327 Ga. App. 810, 814, 761 S.E.2d 366, 370 (2014) (holding teaching certificate revocation appropriate because of certificate holder's egregious conduct). However, the Board's discretion is not unlimited. In order to find that a physician has engaged in unprofessional conduct, there must be some indication that the physician's conduct would violate professional standards. See Finucan v. Md. Bd. of Physician Quality Assurance, 380 Md. 577, 593, 846 A.2d 377, 386 (2004) (prohibition in engaging in a sexual relationship with current patients is commonly known by physicians and thus constitutes unprofessional conduct in the medical profession) (citations omitted); cf. Thebaut v. Ga. Bd. of Dentistry, 235 Ga. App. 194, 202, 509 S.E.2d 125, 133 (1998) (finding where the issue of professional competence is complicated, expert testimony is required to establish the proper competency standard) (citation omitted).

11.

Respondent argues, correctly, that because he did not engage in a sexual relationship with a current patient he did not violate Ga. Comp. R. & Regs. 360-3-.02(8). In fact, the Board did not identify any statute, rule or regulation prohibiting a physician from having a relationship with a former patient if the physician has not evaluated or treated the patient for a period of at least

two (2) years, or forbidding a physician from treating individuals with whom the physician has had prior sexual contact. Additionally, the Board did not offer evidence that Respondent's conduct is commonly known to be unprofessional conduct falling below minimal standards of accepting and prevailing practice by members of the medical profession. See Richardson v. Fla. State Bd. of Dentistry, 326 So. 2d 231, 233 (Fla. Dist. Ct. App. 1976) (finding that misconduct justifying the suspension or revocation of a professional license includes unlawful acts or conduct that falls below minimal standards of acceptable and prevailing practice) (internal citations omitted). Further, Respondent did not act in violation of any Board order, as the Board fully terminated Respondent's probation on May 8, 2015, when it docketed a Public Board Order Terminating Probation without requiring any continuing conditions on Respondent's license to practice medicine in Georgia.¹¹ The Board did not provide sufficient evidence to prove that Respondent's conduct was unlawful or fell below minimal standards of acceptable and prevailing practice under O.C.G.A. §§ 43-1-19(a)(6) and 43-34-8(a)(7), (11) (17) and Ga. Comp. R. & Regs. r. 360-3-.02.

12.

The Board also argues that Respondent committed an act of sexual abuse, misconduct, or exploitation as prohibited by Georgia Code Section 43-34-8(a)(15) and Ga. Comp. R. & Regs. r. 360-3-.02(8). The undersigned disagrees. It is undisputed that Respondent had sexual contact with four former and current patients: D, G, A, L. Both D and G are well-educated, professional women and credibly testified that they were aware of Respondent's disciplinary history. There is no evidence that Respondent "recruited" or "groomed" these women; D approached Respondent seeking medical treatment and G contacted Respondent seeking advice regarding a potential

¹¹ Although the Statement of Matters Asserted and Statutes and Rules involved charged violations of O.C.G.A. §§ 43-1-19(a)(8) and 43-34-8(a)(10), the Petitioner appears to have abandoned these allegations.

home renovation project. Additionally, the testimony demonstrated that A also initiated contact with Respondent.¹² Neither D nor G testified that they felt Respondent had engaged in any sexual abuse, misconduct or exploitation during the relationship. The Board failed to present sufficient evidence that Respondent's conduct in this case constituted sexual abuse, misconduct or exploitation.

13.

Finally, the Board asserts that Respondent cannot practice medicine with reasonable skill and safety. Georgia Code Sections 43-34-8(a)(13) and 43-1-19(10) allow the Board to discipline a licensee if the licensee becomes unable to practice "with reasonable skill and safety to patients, by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition." Additionally, under Georgia Code Section 43-1-19(10), a licensing board may discipline a licensee if the licensee has "displayed an inability to practice with reasonable skill and safety to public" regardless of the reason. Even if Respondent's behavior did not violate minimal standards of professional conduct, Dr. Rachal established that his "risky" behavior posed a significant safety threat to his patients and/or staff. According to Dr. Rachal's expert testimony, Respondent's history of sexual misconduct, receipt of intensive inpatient and outpatient treatment, "relapse" behaviors, lack of transparency, poor insight and judgement demonstrates that, without further treatment, he cannot practice with reasonable skill and safety. This testimony was unrebutted. Accordingly, the Board presented sufficient evidence that absent further treatment Respondent has displayed an inability to practice with reasonable skill and safety to the public.


¹² Neither A nor L testified at the hearing.

IV. Decision

Based on the aforementioned Findings of Fact, evidence presented at the hearing, and Respondent's prior receipt of intensive inpatient and outpatient treatment, the Board has proven by a preponderance of the evidence that Respondent has displayed an inability to practice with reasonable skill and safety in violation of O.C.G.A. § 43-1-19(a)(10). Pursuant to O.C.G.A. § 43-1-19(d), if the Board finds cause for discipline, it may deny, revoke, suspend, fine, reprimand, or otherwise limit the license of a physician. In determining an appropriate sanction, the undersigned considers the fact that Dr. Rachal recommended Respondent undergo intensive treatment, and reevaluation following such treatment. If, after reevaluation, the Board deems Respondent fit to practice medicine with reasonable skill and safety, Dr. Rachal advised that the Board reinstitute monitoring.

Accordingly the undersigned **RECOMMENDS** that Respondent's license to practice medicine in the State of Georgia be **INDEFINITELY SUSPENDED** until Respondent undergoes any treatment ordered by the Board and it is determined that he can practice with reasonable skill and safety. Should the Board decide to lift the indefinite suspension, Respondent's license to practice medicine in Georgia may be placed on probation under such terms and conditions as the Board deems necessary for the protection of the public. Furthermore, this Order shall be considered a **PUBLIC REPRIMAND** of Respondent by the Board, and may be disseminated as such.

SO ORDERED, this 9th day of February, 2018.



RONIT WALKER
Administrative Law Judge