

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2008-040

In the Matter of)
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Dennis Matthew Kim, M.D.

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine ("Board") has reason to believe that Dennis Matthew Kim, M.D. ("Respondent") has violated professional boundaries, has exhibited behavior which calls into question his mental stability while he was continuing to practice medicine, and engaged in behavior that undermines the public's confidence in his ability to practice medicine.

BACKGROUND

1. The Respondent was born on February 6, 1971. He is a 1996 graduate of Duke University School of Medicine, South Carolina. He has been licensed to practice medicine in Massachusetts under registration number 156065 since 1998. He practiced psychiatry at McClean Hospital, Waltham Massachusetts until December 2006.
2. On December 14, 2006, the Board accepted the Respondent's Voluntary Agreement Not to Practice Medicine.

FACTUAL ALLEGATIONS

3. Patient A is thirty-two year old female who was diagnosed as bipolar when she was approximately eighteen years old.

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4. From in or about November 2000 to May 2002, Patient A saw the Respondent for psychiatric treatment approximately two times per week.
 5. In or about May 2002, the Respondent informed Patient A that his clinical responsibilities had changed and that he would no longer be treating patients. Patient A was referred to another psychiatrist for treatment.
 6. In or about Spring (March) 2004, Patient A telephoned her treating psychiatrist and learned that her psychiatrist was on vacation and that the Respondent was the covering psychiatrist.
 7. Patient A scheduled an appointment with the Respondent at McClean Hospital. At that appointment, Patient A reported feeling depressed, and the Respondent made an adjustment to Patient A's medications.
 8. At that same appointment, Patient A asked the Respondent if he could be her psychiatrist.
 9. The Respondent told Patient A that she should remain with her treating psychiatrist if things were good.
 10. As Patient A was leaving the Respondent's office, the Respondent told Patient A that they should see each other again and "maybe do lunch."
 11. On or about March 15, 2004, Patient A informed her psychiatrist that the Respondent asked her to lunch.
 12. On or about Friday, October 27, 2006, Patient A received a voice mail message from the Respondent. In that message, the Respondent told Patient A that he was thinking of leaving McClean Hospital and moving to New York.

13. In that voice message, the Respondent provided Patient A with his cell phone number.
14. On or about Saturday, October 28, 2006, the Respondent left a second voicemail message on Patient A's cell phone requesting that Patient A call the Respondent.
15. On Sunday, October 29, 2006, the Respondent called Patient A's cell phone. Patient A was on another call and told the Respondent that she would call him back.
16. At approximately 9:35 PM, Patient A called the Respondent back. The Respondent and Patient A spoke to one another for approximately three hours and twenty-one minutes. During their cell phone conversation, service was interrupted several times.
17. During the conversation referred to in paragraph number 16, the Respondent shared personal information with Patient A.
18. The Respondent told Patient A that he questioned his life and his career choices.
19. The Respondent told Patient A that his brother died of cancer at twelve years-old and the Respondent donated bone marrow to his brother.
- 20.. The Respondent told Patient A that when he was a nineteen year old camp counselor, he had a sexual relationship with a fifteen year-old female camper.
21. The Respondent told Patient A that illicit relationships are more of a fantasy to him and that once a relationship becomes normal, the sex is no good.
22. The Respondent told Patient A that she is smart, beautiful, hot, and sexy.
23. The Respondent also told Patient A that if he could have it his way, he would have her [Patient A] as his fantasy, which would lead to great sex and that maybe they could get married.

24. The Respondent told Patient A that if they got married that they would have to move away and change their names.
25. The Respondent also told Patient A that she could not tell anyone about how they met because all of the Respondent's friends are psychiatrists.
26. The Respondent told Patient A that she was smart and that he wanted to go to lunch with her so that she [Patient A] could analyze the Respondent.
27. The Respondent told Patient A that he felt that she was misdiagnosed.
28. The Respondent told Patient A it would be inappropriate to tell her what her correct diagnosis is.
29. The Respondent told Patient A that he did not believe in medication or therapy.
30. Patient A informed the Respondent that she was in a committed relationship with her baby's father and that she was not the same person she was when the Respondent was treating her.
31. The Respondent told Patient A that if they went to lunch together and he felt that Patient A was too vulnerable that he would not pursue her, but that if he felt she was not vulnerable, then he would pursue her.
32. The Respondent ended the conversation by telling Patient A that if she needed to talk again that she could call him.
33. The Respondent also stated that if he initiated the call to her then it would only be to pursue a relationship with her.
34. Patient A informed the Respondent that she would have to tell someone about the telephone conversation.
35. The Respondent replied by telling Patient A that she had a big responsibility.

36. The Respondent told Patient A that that she could sue the Respondent.
37. The Respondent also told Patient A that he hoped he would not be getting a telephone call from Patient A's current therapist.
38. During the conversation as outlined in paragraphs 16 through 37, the Respondent was laughing in a nervous manner.
39. The Respondent called Patient A a week later but did not leave a message.
40. On December 7, 2006, Patient A told her current psychiatrist about the Respondent's telephone contact with her.
41. The Respondent submitted to a Board-approved independent psychiatric evaluation and the Respondent was diagnosed with an adjustment disorder.
42. The American Psychiatric Association's *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* states, "A psychiatrist shall not gratify [his] own needs by exploiting the patient. The psychiatrist shall be ever vigilant about the impact that [his] conduct has upon the boundaries of the doctor-patient relationship, and thus upon the well-being of the patient."

LEGAL BASIS FOR PROPOSED RELIEF

A. Pursuant to G.L. c. 112, § 5 (c) and 243 C.M.R. 1.03 (5) (a) 3, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician engaged in conduct which places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.

B. Pursuant to G.L. c. 112, § 5 (d) and 243 C.M.R. 1.03 (5) (a) 4, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has practiced medicine while his ability to practice is impaired by disability or mental instability.

C. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

D. Pursuant to 243 CMR 1.03(5)(a)17, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician is guilty of malpractice, within the meaning of G.L. c. 112, § 61.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §5, 61, and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 C.M.R. 1.01.

NATURE OF RELIEF SOUGHT

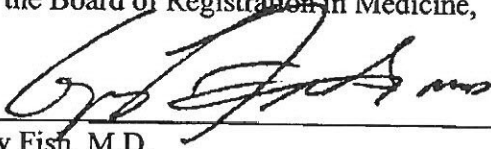
The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

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ORDER

Wherefore, it is hereby **ORDERED** that the Respondent show cause why he should not be disciplined for the conduct described herein.

By the Board of Registration in Medicine,



Guy Fish, M.D.
Secretary

Dated: November 5, 2008

SENT CERTIFIED MAIL

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

BOARD OF REGISTRATION
IN MEDICINEADJUDICATORY CASE NO.
2008-040 (RM-08-778)_____
IN THE MATTER OF)
)
)Dennis Matthew Kim, M.D.)
_____))**Final Decision & Order**

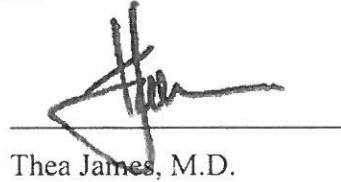
This matter came before the Board for consideration of the Administrative Magistrate's Recommended Decision, dated January 20, 2012. That Recommended Decision adopted the Findings of Fact and Conclusions of Law set forth in a joint Stipulation by the Parties, and incorporated them by reference. After full consideration of the Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Recommended Decision, and also adopts the Recommended Sanction proposed by the Parties.

The Recommended Sanction is consistent with Board precedent, and takes into account, as mitigation, that the Respondent has completed an intensive course in medical ethics, boundaries and professionalism. Therefore, the Board hereby ADMONISHES the Respondent.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments, within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal

facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he has any kind of license; the Drug Enforcement Administration – Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated in the year following the date of imposition of this Order. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to notify independently, at any time, any of the entities designated above, or any other affected entity, of any action taken.

Date: June 20, 2012

A handwritten signature in black ink, appearing to read 'Thea James', is written over a horizontal line.

Thea James, M.D.
Acting Chair

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioners

v.

Docket No. RM-08-778

Dennis Matthew Kim, M.D.,
Respondent

Appearance for Petitioner:

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

Appearance for Respondent:

Alan K. Posner, Esq.
Paul G. Gitlin, Esq.
Rubin & Rudman, LLP
50 Rowes Wharf
Boston, MA 02110

Administrative Magistrate:

Kenneth J. Forton, Esq.

RECOMMENDED DECISION

On November 5, 2008, the Petitioner, Board of Registration in Medicine issued a Statement of Allegations ordering the Respondent, Dennis Matthew Kim, M.D., to show cause why he should not be disciplined for engaging in conduct which calls into question his competence to practice medicine, practicing medicine while his ability to practice medicine was impaired by disability or mental instability, engaging in conduct that

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Dennis Matthew Kim, M.D.

RM-08-778

undermines the public confidence in the integrity of the medical profession, and committing malpractice within the meaning of G.L. c. 112, § 61. On November 5, 2008, the matter was referred to the Division of Administrative Law Appeals (DALA). On November 10, 2008, the Board issued an amended Statement of Allegations.

On May 28, 2008 DALA held a pre-hearing conference. After a status conference and the resolution of several complicated discovery motions, DALA held further prehearing conferences on March 10, 2011 and May 18, 2011. A hearing was scheduled for October 24 and 25, 2011. At the request of the parties, the hearing was rescheduled for January 5 and 6, 2012. On January 4, 2012, Board counsel reported that the parties were close to agreeing on a Stipulation and requested that the hearing be postponed.

On January 18, 2012, the parties notified the Division that they have agreed to resolve this matter, and on the same date they jointly filed a Stipulation. In the Stipulation, the parties have agreed to certain Findings of Fact and Conclusions of Law. The Stipulation is incorporated herein by reference and is attached to this recommended decision. Other than the Stipulation and the admissions of fact contained therein, I have not taken evidence with respect to the facts of this matter. Based on the facts as stipulated, I conclude that the Conclusions of Law set forth in the Stipulation are warranted and I hereby adopt them.

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Dennis Matthew Kim, M.D.

RM-08-778

Based on the foregoing I recommend that the Board impose such discipline on Dr. Kim as it deems appropriate in light of the facts and conclusions of law as stipulated by the parties.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

DATED: JAN 20 2012

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Docket No. RM-08-778

BOARD OF REGISTRATION IN MEDICINE)
v)
DENNIS MATTHEW KIM, M.D.)
Respondent)

STIPULATION

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

FINDINGS OF FACT

1. The Respondent was born on February 6, 1971. He is a 1996 graduate of Duke University School of Medicine, North Carolina. He has been licensed to practice medicine in Massachusetts under registration number 156065 since 1998. He practiced psychiatry at McLean Hospital, Waltham, Massachusetts until December 2006.
2. On December 14, 2006, the Respondent signed a Non-Disciplinary Voluntary Agreement Not to Practice Medicine, which was accepted by the Board on December 14, 2006.

3. Patient A is a thirty-five year old female.
4. From in or about November 2000 to May 2002, Patient A saw the Respondent for psychiatric and psychopharmacological treatment, first monthly, then later twice per week by May 2002. Patient A believed the Respondent's treatment of her during this period of time was helpful to her, and that the Respondent did not act inappropriately throughout this treatment period.
5. In or about May 2002, the Respondent informed Patient A that his clinical responsibilities had changed and that he would no longer be treating patients. The Respondent referred Patient A to another psychiatrist for treatment, and mentioned to Patient A that they could meet for lunch sometime in the future.
6. In or about the Spring of 2004, Patient A telephoned her treating psychiatrist and learned that her psychiatrist was on vacation and that the Respondent was the covering psychiatrist.
7. Patient A saw the Respondent in or about March 2004 on one occasion because he was the covering psychiatrist for Patient A's therapist. This meeting resulted in an adjustment to Patient A's medications.
8. At that same appointment, Patient A asked the Respondent if he could resume being her psychiatrist, which he declined.
9. The Respondent indicated at that appointment that he would be available to her as a consultant if she needed his assistance in the future. He said that they could meet in the cafeteria at McLean Hospital.
10. On or about March 15, 2004, Patient A informed her psychiatrist of her conversation with the Respondent.

11. On or about Thursday, October 26, 2006, Patient A received a voice mail message from the Respondent. In that message, the Respondent told Patient A that he was thinking of leaving McLean Hospital and moving to New York.
12. In that voice message, the Respondent provided Patient A with his cell phone number.
13. On or about Friday, October 27, 2006, the Respondent left a second voicemail message on Patient A's cell phone requesting that Patient A call him; Patient A returned the Respondent's telephone call and left her cell phone number for him to reach her, and suggested he call her over the weekend.
14. On Sunday, October 29, 2006, the Respondent called Patient A's cell phone. Patient A was on another call and told the Respondent that she would call him back.
15. At approximately 9:35 PM, Patient A called the Respondent back. The Respondent and Patient A spoke to one another for approximately three hours and twenty-one minutes. During their cell phone conversation, service was interrupted several times.
16. During the conversation referred to in paragraph number 15, the Respondent shared personal information with Patient A, including that his brother died at fourteen years-old and the Respondent donated bone marrow to his brother prior to his death.
17. As a result of the telephone calls, Patient A believed that the Respondent intended to, or sought to, pursue a sexual or romantic relationship with Patient A, which made her feel uncomfortable.
18. On December 7, 2006, Patient A told her current psychiatrist about the Respondent's telephone contact with her.

19. The Respondent submitted to a Board-approved independent psychiatric evaluation, and the Respondent was diagnosed as suffering from an Adjustment Disorder at the time of the telephone call. His Adjustment Disorder was successfully treated thereafter.

20. The Respondent completed an intensive course in Medical Ethics, Boundaries and Professionalism in March 2007.

21. The Respondent has obtained reviews and analysis from three independent Forensic Psychiatrists, who each questioned the wisdom of sharing personal information with a former patient; but found no clear boundary violation:

22. The Respondent crossed professional boundaries and inadequately handled transference/counter-transference with a former patient.

23. The American Psychiatric Association's *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* states, "A psychiatrist shall not gratify [his] own needs by exploiting the patient. The psychiatrist shall be ever vigilant about the impact that [his] conduct has upon the boundaries of the doctor-patient relationship, and thus upon the well-being of the patient."

CONCLUSIONS OF LAW

A. The Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession. See *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

SANCTION

The Respondent, the Respondent's attorney and Complaint Counsel expressly acknowledge that the Board may impose sanctions against the Respondent based upon the above Findings of Fact and Conclusions of Law. The Respondent, the Respondent's attorney

and Complaint Counsel jointly agree to recommend to the Board that it impose the sanction set forth below. The parties hereto understand that the recommended sanction is not binding on the Board, and that the Board may wish to impose a different sanction on the Respondent.

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

The parties jointly agree to recommend to the Board that it impose the following: The Respondent be admonished.

EXECUTION OF THIS STIPULATION

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

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

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

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

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

11/11/2012
Date

1/13/2012
Date

1/18/12
Date

Dennis Matthew Kim, M.D.
Dennis Matthew Kim, M.D.

Paul G. Gitlin, Esq.
Paul G. Gitlin, Esq.

John Costello
John Costello
Complaint Counsel

RECEIVED

JAN 23 2012

Board of Registration
in Medicine