

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2011-034

SI 11 10/26/11

In the Matter of)

HANS R. AGRAWAL, M.D.)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Hans R. Agrawal, M.D. (Respondent) has practiced medicine in violation of law, regulations, and/or good and accepted medical practice, as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 11-371.

Biographical Information

1. The Respondent was born on April 5, 1969. He graduated from Yale University School of Medicine in 1998. He has been licensed to practice medicine in Massachusetts under certificate number 219366 since 2003. His 2010 Renewal Application lists his specialty as Psychiatry but he is not certified by the American Board of Psychiatry and Neurology. He has a private practice in Cambridge.

2. According to his website, www.hansragrawal.com, he is a clinical instructor in psychiatry at Harvard Medical School, has taught in the departments of anthropology and economics at Harvard University, and is on the psychotherapy faculty of the Boston Psychoanalytic Society and Institute (BPSI).

3. According to the BPSI website, Dr. Agrawal is a member of the Board of Trustees.

Factual Allegations

- 4. Patient A is a 32 year-old female.
- 5. Prior to September 1, 2011, Patient A received mental health treatment.
- 6. From September 1, 2011 to October 7, 2011, Patient A sought psychotherapy treatment from Dr. Agrawal.
- 7. From September 1, 2011 to October 7, 2011, Patient A saw Dr. Agrawal at his Cambridge office for approximately 14 visits.
- 8. From September 1, 2011 to approximately September 23, 2011, Patient A saw Dr. Agrawal twice a week.
- 9. During the week of September 26, 2011, Patient A had three appointments with the Respondent.
- 10. During the week of October 3, 2011, Patient A had four appointments with the Respondent.
- 11. On October 7, 2011, the Respondent and Patient A exchanged emails and the Respondent informed Patient A that he had a cancellation at 5:45 p.m. that day.
- 12. On October 7, 2011, Patient A went to her 5:45 p.m. appointment with the Respondent.
- 13. During the October 7, 2011 appointment, the Respondent suggested to Patient A that they have a drink at a nearby restaurant, as friends.
- 14. After the October 7, 2011 appointment, Patient A and the Respondent went to a nearby restaurant and consumed alcohol at the bar.

15. Patient A was unsure about what she wanted to drink and left the choice up to the Respondent.

16. The Respondent ordered a Manhattan for Patient A and a martini for himself.

17. Patient A ate the olives out of the Respondent's martini but did not consume any other food while at the bar.

18. The Respondent and Patient A were at the bar from approximately 6:45 to 9 p.m.

19. From approximately 6:45 to 9:00 p.m., the Respondent consumed two martinis.

20. From approximately 6:45 to 9:00 p.m., Patient A consumed three Manhattans.

21. The Respondent used his credit card to purchase to purchase two martinis and three Manhattans.

22. Upon leaving the bar, Patient A and the Respondent went to a nearby Dunkin' Donuts.

23. The Respondent purchased a bottle of water for Patient A and a coffee for himself.

24. Patient A used the water to take her medication.

25. After leaving the Dunkin' Donuts, the Respondent and Patient A went to Patient A's office and engaged in sexual intercourse on the floor.

26. On October 8, 2011, the day after they had sexual intercourse, the Respondent told Patient A that the previous evening had been a big mistake.

27. On the evening of October 8, 2011, Patient A contacted the police and reported that she and her therapist had sexual intercourse.

28. On October 12, 2011, Patient A filed a complaint with the Board.

29. On October 12, 2011, the Board notified the Respondent of Patient A's complaint.

30. On October 13, 2011, the Respondent provided a copy of Patient A's medical record to the Board.

31. According to an addendum in Patient A's medical record, dated October 8, 2011:

- a. Dr. Agrawal went to the restaurant around 8 or 9 p.m.;
- b. Patient A entered the restaurant after Dr. Agrawal; and
- c. Dr. Agrawal left the restaurant in an effort to avoid Patient A.

32. On October 14, 2011, the Respondent contacted Patient A.

33. On October 14, 2011, the Respondent asked Patient A to recant.

34. According to the American Psychiatric Association's *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatrists*, Section 2, ¶ 1, "Sexual activity with a current or former patient is unethical."

Legal Basis for Proposed Relief

A. Pursuant to G.L. c. 112, §5, ninth par. (c) and 243 CMR 1.03(5)(a)3, the Board may discipline a physician upon proof satisfactory to a majority of the Board that he engaged in conduct that places into question the Respondent'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 243 CMR 1.03(5)(a)18, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician committed misconduct in the practice of medicine.

C. Pursuant to 243 CMR 1.03(5)(b), the Board may adopt of policies and grounds for discipline through adjudication. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), and

Sugarman v. Board of Registration in Medicine, 422 Mass. 338 (1996), the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

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 CMR 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.

Order

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

By the Board of Registration in Medicine,



Peter Paige, M.D.
Chairman

Date: October 24, 2011

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
 IN MEDICINE

Adjudicatory Case No. 2011-034
 (Docket No. RM-11-371)

 In the Matter of)
)
 Hans R. Agrawal, M.D.)
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Final Decision and Order

This matter came before the Board of Registration in Medicine (“Board”) for final disposition on the basis of the Administrative Magistrate’s Recommended Decision, dated May 22, 2012. After full consideration of the Recommended Decision, which is attached hereto and incorporated by reference, the Board hereby adopts the Recommended Decision, amending it by:

(1) Correcting the following scrivener’s errors:

- Docket No. RM-11-613 should be replaced by RM-11-371;
- The date of Complaint Counsel’s Motion to Dismiss should be changed from May 2, 2011 to May 2, 2012; and

(2) Adding the following paragraph:

Pursuant to M.G.L. c. 30A, § 11(2), agencies need not observe the rules of evidence observed by courts. Rather, administrative agencies shall admit and give probative effect to evidence “only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.” The present matter is being dismissed given that Patient A was unavailable to testify at the administrative hearing concerning the allegations

set forth in the Statement of Allegations. Without Patient A's testimony, the Board has no ability to gather any credible evidence, namely sworn testimony that has been subject to cross-examination, to support its allegations against the Respondent.

The Board **adopts** the Recommended Decision, as amended, and **dismisses** this matter without prejudice.

DATE: July 11, 2012



Hon. Herbert H. Hodos
Acting Chair

SENT CERTIFIED MAIL 7/11/12 LMF

STATE 558

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
98 North Washington Street, 4th Floor
Boston, MA 02114
617-727-7060
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Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-11-613

Hans Agrawal, M.D.,
Respondent

Date: May 22, 2012

RECOMMENDED DECISION

On Oct. 24, 2011, the Board of Registration in Medicine issued a State of Allegations against Dr. Hans Agrawal. On the same date, the matter was referred to the Division of Administrative Law Appeals. On May 2, 2011, the date scheduled for the first day of hearings in this matter, the Board filed Petitioner's Motion to Dismiss, and Attorney Tracy Morong, representing the Board, explained that Patient A was not available to testify. I heard no testimony in the case and did not accept any exhibits into evidence. Based on the Board's written and oral representations, I recommend that the Board dismiss this matter without prejudice.

To the extent that it is necessary to withdraw my Order of Dismissal dated May 2, 2012, I do so.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth Bresler
Administrative Magistrate

Notice sent to: Tracy Morong, Esq.
David Meier, Esq.; Melinda L. Thompson, Esq.