

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Department of State
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PROTHONOTARY

Commonwealth of Pennsylvania :
Bureau of Professional and :
Occupational Affairs : Docket No.: 1261-49-11
vs. :
Satyendra Kumar Diwan, M.D. :
Respondent : File No.: 11-49-01746

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and **Satyendra Kumar Diwan, M.D.** ("Respondent") stipulate as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Medicine ("Board") pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, ("Act"), 63 P.S. §§ 422.1 to 422.53 and the Medical Care Availability and Reduction of Error (MCARE) Act, Act of March 20, 2002, P.L. 154, No. 13, 40 P.S. §§1303.101-1303.910, 63 P.S. §§ 422.1 - 422.53 & 40 P.S. §§ 1303.101-1303.910, *as amended*; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), 63 P.S. §§ 2201-2207, *as amended*.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania: license no. MD035387L, which was originally issued on August 14, 1974, and which is currently set to expire on December 31, 2012.

STATEMENT OF ALLEGED FACTS

3. The Commonwealth has alleged the following:

a. Respondent's license was originally issued on August 14, 1974, is current through December 31, 2012, and may be renewed, reactivated, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.

b. At all times pertinent to the factual allegations, Respondent held a license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania.

c. Respondent's last known address, as on file with the Board is: 34 Springton Pointe Drive, Newtown Square, PA 19073.

d. On or about May 12, 2011, an investigator from the Department of State, Bureau of Enforcement and Investigation (BEI) interviewed the Respondent.

PATIENT L.W.

e. The Respondent admitted to BEI that on or about 1988 through 1991, the Respondent treated Patient L.W.

f. Respondent admitted to BEI that he engaged in inappropriate touching, kissing, exposing himself and, on one occasion, ejaculating on Patient L.W.

PATIENT J.S.

g. Beginning in June 2009, the Respondent began treating Patient J.S. for bipolar and anxiety disorders.

h. In late July 2010 to the beginning of August 2010, Patient J.S. was suffering from severe depression.

i. The Respondent saw Patient J.S. on a weekly basis in late July 2010 to the beginning of August 2010 to address her depression.

j. On three weekly consecutive visits, on July 22, 2010, July 29, 2010 and August 5, 2010, the Respondent asked Patient J.S. unrelated sexual questions.

k. On or about August 5, 2010, the Respondent kissed Patient J.S. and touched her right breast.

l. The Respondent admitted to BEI Investigator Sherilyn Gillespie that he kissed Patient J.S. on the forehead and face.

PATIENT R.S.

m. On or about 1988, the Respondent began treating Patient R. S. for marital and sexual abuse issues.

n. The Respondent diagnosed Patient R.S. with schizophrenic and medicated her with thorazine, lithium and cogentin.

o. The Respondent admitted to BEI that he placed his hand(s) inside of Patient R.S.'s bra and her pants and exposed himself.

p. On one occasion, the Respondent sat on the couch beside Patient R.S., pulled out his penis, placed her hand on it and covered her hand with his and then moved their hands up and down.

q. Respondent admitted to BEI that he continues to feel the urge to have inappropriate contact with some patients.

r. The Respondent admitted to BEI that he continues to kiss patients.

ALLEGED VIOLATIONS

4. The Commonwealth alleges that the Board is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.39-

422.42; and/or impose a civil penalty upon Respondent under Sections 39 through 42 of the Act, 63 P.S. §§ 422.39-422.42, and /or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at:

a. 63 P.S. 422.41(6) violating a lawful regulation promulgated by the Board through 49 pa. code 16.110 (a) in that the Respondent engaged in unprofessional conduct by sexual exploitation of Patient L.W., Patient J.S., and Patient R.S. and

b. 63 P.S. 422.41 (8) guilty of immoral or unprofessional conduct through 49 Pa. Code 16.110(a) in that the Respondent engaged in unprofessional conduct by sexual exploitation of Patient L.W., Patient J.S., and Patient R.S. and

c. 63 P.S. 422.41 (10) acting outside the scope of a license by engaging in unprofessional conduct by sexual exploitation of Patient L.W., Patient J.S., and Patient R.S.

PROPOSED ORDER

5. The Respondent, in consideration of this Consent Agreement, has chosen not to contest the above allegations, but while admitting no guilt or wrongdoing, agrees that for the sole purpose of this proceeding before the Board, the parties consent to the issuance of the following Order in settlement of this matter:

a. The Board is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.39-422.42; and/or impose a civil penalty upon Respondent under Sections 39 through 42 of the Act, 63 P.S. §§ 422.39-422.42, and/or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent

under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because the facts alleged, which have not been contested for the sole purpose of this proceeding, are sufficient for the Board to find that Respondent violated the Act at:

(1) 63 P.S. §422.41(6) violating a lawful regulation promulgated by the Board through 49 Pa. code 16.110 (a) in that the Respondent engaged in unprofessional conduct by sexual exploitation of Patient L.W., Patient J.S., and Patient R.S. and

(2) 63 P.S. § 422.41 (8) guilty of immoral or unprofessional conduct through 49 Pa. Code 16.110(a) in that the Respondent engaged in unprofessional conduct by sexual exploitation of Patient L.W., Patient J.S., and Patient R.S. and

(3) 63 P.S. § 422.41 (10) acting outside the scope of a license by engaging in unprofessional conduct by sexual exploitation of Patient L.W., Patient J.S., and Patient R.S.

PERMANENT VOLUNTARY SURRENDER

b. In consideration for not imposing other disciplinary sanctions, the Parties propose, and the Board hereby accepts, the **PERMANENT VOLUNTARY SURRENDER** of Respondent's license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations to practice the profession") issued by the Board to Respondent at the time this Consent Agreement is adopted

by the Board. Respondent acknowledges that with the permanent voluntary surrender of his authorizations to practice the profession, Respondent is surrendering any and all property rights he may have in those authorizations to practice the profession and will no longer be eligible to renew those authorizations to practice the profession. As further stated consideration for the Commonwealth not seeking other disciplinary sanctions against Respondent, Respondent agrees to:

(1) cease practicing as a medical physician and surgeon in the Commonwealth on and after the effective date of this Consent Agreement, and shall not indicate any ability to practice the profession in the Commonwealth in any manner whatsoever in the future,

(2) Unless otherwise specified in this agreement, Respondent agrees to not apply, at any time in the future, for the reactivation, reinstatement, reissuance, or the issuance of any authorization to practice issued by the Board and further directs that the board should not consider, and may deny without hearing, any application for an authorization to practice filed with the Board,

(3) not work as an unlicensed assistant to any person holding an authorization from the Board to practice the profession,

(4) not possess a controlling interest in any organization requiring an authorization from the Board to practice the profession,

(5) not possess a controlling interest in any organization whose employees require an authorization from the Board to practice the profession when conducting the business of the organization,

c. For purposes of this paragraph, the term 'controlling interest' shall include being an owner, officer, director, partner, or associate, as well as owning any quantity of outstanding corporate stock sufficient to control or direct the actions of the firm.

d. Respondent shall, within ten (10) days of adoption of this Consent Agreement and Order, surrender Respondent's authorizations to practice the profession (or notarized affidavit of their loss or destruction) by mailing them to:

Joan J. Miller
Prosecuting Attorney
Bureau of Professional and Occupational Affairs
P.O. Box 2649
Harrisburg, PA 17105-2649

or by delivering them in person at:

Bureau of Professional and Occupational Affairs
One Penn Center
2601 North 3rd St.
Harrisburg, Pennsylvania

e. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

f. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

8. Respondent acknowledges that he is aware that he has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement. To the extent that Respondent is not represented by legal counsel, Respondent has knowingly elected to proceed without the assistance of legal counsel.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

9. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may not be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

10. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

11. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT

12. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

ENTIRE AGREEMENT

13. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

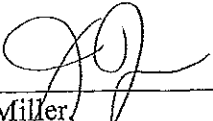
AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

14. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

VERIFICATION OF FACTS AND STATEMENTS

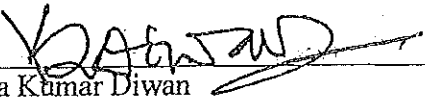
15. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent

understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



Joan J. Miller
Prosecuting Attorney
Department of State

DATED: 11/16/11



Satyendra Kumar Diwan
Respondent

DATED: 11/15/11

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DEPARTMENT OF STATE
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Commonwealth of Pennsylvania
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vs.

Satyendra Kumar Diwan, M.D.
Respondent

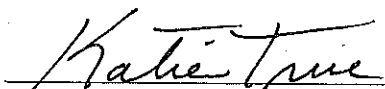
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ORDER

AND NOW, this 27th day of December 2011, the STATE BOARD OF MEDICINE ("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 5, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



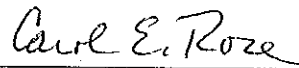
Katie True
Commissioner

For the Commonwealth:

Respondent:

Date of mailing: 11/04/12

BY ORDER:
STATE BOARD OF MEDICINE



Carol E. Rose, M.D.
Chairperson

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