COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2016-011

In the Matter of	)	**FINAL DECISION AND ORDER**
HEIDI W. ASHIH, M.D.	)	

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's Recommended Decision on the Statement of Allegations ("Recommended Decision"), dated November 9, 2016, which attaches and incorporates by reference the Parties' April 29, 2016 Proposed Stipulation of the Facts ("Stipulation"). In his Recommended Decision, the Administrative Magistrate adopted the Stipulation and the factual admissions contained therein. After full consideration of the Recommended Decision, the Parties' Stipulation, which are attached hereto and incorporated by reference, Complaint Counsel's Memorandum on Disposition and Respondent's Memorandum on Disposition, the Board ADOPTS the Recommended Decision in its entirety, imposing the following sanction:

Sanction

Through her admission that she committed non-sexual boundary violations with a patient, the Respondent engaged in conduct that places into question her competence to practice medicine, committed misconduct in the practice of medicine, and engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Given the findings of fact and conclusions of law set forth by the Recommended Decision, the Board hereby INDEFINITELY SUSPENDS the Respondent's license to practice medicine. Any stay of the suspension will be at the Board's discretion and will be contingent

upon the Respondent: completing a clinical skills assessment by a Board-approved program to assess the Respondent's ability to practice medicine and, more specifically, psychiatry, and her ability to maintain boundaries; and entering into a five-year Probation Agreement following completion of clinical skills assessment. The Probation Agreement shall include all conditions that the Board deems appropriate at the time including, but not limited to: any recommendations made by the clinical skills assessment entity concerning the Respondent's safe return to practice; and a practice plan that includes worksite monitoring by a Board-approved psychiatrist who is certified by the American Board of Psychiatry and Neurology in adult, child, and adolescent psychiatry. On a monthly basis, the worksite monitor will review ten of the Respondent's cases at random and meet with the Respondent regarding those cases in order to ensure that the Respondent is maintaining proper boundaries and providing her patients with adequate care. The monitor will file monthly reports with the Board and make any recommendations to the Board regarding the Respondent's practice that he or she deems necessary. There shall be no provision for early termination of the Probation Agreement.

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 which 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 with which he has any kind of license to practice medicine; 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 for the duration of this suspension. 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 independently notify, at any time, any of the entities designated above, or any other affected entity, of any action taken.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A §§14 and 15, and G.L. c. 112, § 64.

DATE: April 27, 2017

Kathleen Sullivan Meyer

Kathleen Sullivan Meyer, J.D.
Acting Chair

SENT CERTIFIED MAIL 4/28/17

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-16-67

Heidi Ashih, M.D.,
Respondent

Appearance for Petitioner:

Gloria Brooks, Esq.
Board of Registration in Medicine
200 Harvard Mill Square
Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Jennifer Boyd Herlihy, Esq.
Adler Cohen Harvey Wakeman Guekguezian
75 Federal Street, 10th Floor
Boston, MA 02110

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION ON THE STATEMENT OF ALLEGATIONS

The respondent, Dr. Heidi Ashih, has admitted to violating boundaries with a patient. She engaged in conduct that places into question her competence to practice medicine; committed misconduct in the practice of medicine; and has engaged in conduct that undermines confidence in the integrity of the medical profession. The Board of Registration in Medicine may discipline her.

RECOMMENDED DECISION ON THE STATEMENT OF ALLEGATIONS

On February 11, 2016, the petitioner, the Board of Registration in Medicine (BRM), issued a Statement of Allegations against the respondent, Dr. Heidi Ashih, M.D. It also moved to summarily suspend Dr. Ashih. In an undated document, Dr. Ashih responded to the Statement of Allegations.

On February 18, 2015, I held a non-evidentiary hearing. On March 3, 2016, I issued a recommended decision, recommending that that Dr. Ashih not be summarily suspended as a threat to the public health, safety, or welfare.

That left to be decided the Statement of Allegations against Dr. Ashih. On May 2, 2016, I issued the following order:

> ...The parties have agreed to and I have granted an appeal based on submission of documents, including stipulations, rather than an evidentiary hearing.
>
> The Board of Registration in Medicine has dropped from the Statement of Allegations paragraphs 19, 36, and 37, and will not try to prove them. It has also dropped the allegation that Dr. Ashih had a sexual relationship with Patient A and will not try to prove it.
>
> As agreed, the parties will submit briefs and joint exhibits on or before June 17, 2015.

The parties did not submit joint exhibits. I make this recommended decision based on the parties' stipulations and briefs.

Findings of Fact

The parties stipulated to the following:

1. Dr. Ashih was born on June 10, 1974. She graduated from the University of North Carolina School of Medicine in 2006. She is certified in psychiatry by the American Board of Psychiatry and Neurology. She has been licensed to practice medicine in Massachusetts under certificate number 239386 since 2009. She does not have hospital privileges at this time. Dr.

Ashih is currently not working.

2. Dr. Ashih was employed at the Massachusetts General Hospital (MGH) Psychiatry Service Depression Clinical and Research Program (the clinic) from July 2010 until July 2015, when she resigned.

3. In August 2015, the clinic reported to the Board that Dr. Ashih had resigned after an investigation into allegations that Dr. Ashih had a patient, Patient A, living in her home and that she took the patient, Patient A on a family vacation.

4. Dr. Ashih began treating Patient A, a male, in early 2012 in a group session within the clinic.

5. Patient A was in Dr. Ashih's group consistently until early 2013, when he suffered some personal losses.

6. Patient A was in distress and needed weekly follow-up appointments.

7. The dean of student services at Patient A's college reached out to Dr. Ashih to ask if she could help Patient A.

8. Patient A's psychiatrist and therapist had left the clinic suddenly.

9. In the summer of 2013, Dr. Ashih began seeing Patient A exclusively for individual therapy, group therapy and for psychopharmacology.[1]

10. Dr. Ashih told Board staff that she reached out to her colleagues in the clinic to find a new treatment team for Patient A.

11. In the fall of 2014, two of Dr. Ashih's colleagues, one a therapist and one a psychopharmacologist, offered to take on Patient A's care if it was an emergency case although neither had an opening in their respective schedules to see Patient A.

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[1] I'm adopting the parties' language and assume that this means that Dr. Ashih was Patient A's exclusive treatment provider.

12. Dr. Ashih did not tell either colleague that Patient A's case was an emergency case and continued as Patient A's sole provider until May 2015.

13. Over approximately six months, Dr. Ashih asked a resource specialist within the clinic to research whether Dr. Ashih could legally adopt Patient A.

14. On or about the summer of 2014, Dr. Ashih asked her colleagues during a peer group meeting to opine on whether it was a sound decision to adopt Patient A, although he was an adult.

15. Some of Dr. Ashih's colleagues expressed strong feelings against Dr. Ashih's interest in adopting Patient A.

16. Between December 2014 and March 2015, office staff at the clinic observed Dr. Ashih having appointments with Patient A after clinic hours.

17. Dr. Ashih was seeing Patient A three times per week, including group therapy.

18. Patient A's sessions with Dr. Ashih were sometimes longer than any other patient.

19. On at least three occasions, Dr. Ashih had food delivered to her sessions with Patient A after clinic hours.

20. An office staffer would take the food from the delivery person and knock on Dr. Ashih's door to give it to her.

21. On two occasions, Dr. Ashih answered the door immediately to accept the food.

22. On the last occasion, Dr. Ashih took 50 seconds to open the door; Dr. Ashih opened the door, and stuck only her head and her hand out to receive the food.[2]

23. Patient A moved into Dr. Ashih's home in January 2015.

24. Dr. Ashih did not notify anyone at MGH that Patient A had moved into her home.

[2] The parties do not argue the significance, if any, of Stipulated Facts 18 through 22.

25. In March 2015, Patient A was seen by support staff getting into Dr. Ashih's car with Dr. Ashih and her family after a therapy session at the clinic.

26. In April 2015, Dr. Ashih and her family were scheduled to go on a Disney vacation.

27. On or about April 2015, an office staffer arrived at work to find what appeared to be a Disney vacation printout of four beach chairs with the names of Dr. Ashih, her husband, her child and Patient A.

28. The staffer reported her findings to her supervisor.

29. MGH conducted an investigation into the allegations.

30. After a number of meetings with MGH administrators, Dr. Ashih still seemed to lack insight into the gravity of her boundary violations with Patient A.

31. Dr. Ashih was told not to discuss the MGH investigation with her patients.

32. Dr. Ashih nonetheless discussed the MGH investigation and her feelings of being treated unfairly by MGH with patients other than Patient A during at least one of her group therapy sessions.

33. In July 2015, Dr. Ashih resigned from MGH.

34. Patient A resided in Dr. Ashih's home from January 2015 until November 23, 2015, the same day Dr. Ashih was interviewed by Board of Registration in Medicine staff regarding the above allegations.

35. A psychiatrist shall not gratify his or her own needs by exploiting the patient. The psychiatrist shall be ever vigilant about the impact that his or her conduct has upon the boundaries of the doctor-patient relationship, and thus upon the well-being of the patient. These requirements become particularly important because of the essentially private, highly personal,

and sometimes intensely emotional nature of the relationship established with the psychiatrist. *See* American Psychiatric Association, *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* Section 1(1).

Discussion

According to the Statement of Allegations, Dr. Ashih engaged in conduct that places into question her competence to practice medicine, G.L. c. 112, § 5, 9th ¶ (c) and 243 CMR 1.03(5)(a)3; committed misconduct in the practice of medicine, CMR 1.03(5)(a)18; lacks good moral character and has engaged in conduct that undermines confidence in the integrity of the medical profession. *Levy v. Board of Registration in Medicine*, 378 Mass. 519, 528 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982); and *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 343-44 (1996).

By having Patient A live and vacation with her family, Dr. Ashih crossed a boundary that must be maintained between a doctor and her patient. There is no need to belabor this point, because Dr. Ashih has acknowledged that she violated a boundary and did so egregiously. See Dr. Ashih's brief, p. 2, and my Recommended Decision on Dr. Ashih's temporary suspension. As for why this boundary violation matters, *The Principles of Medical Ethics* states, "the boundaries of the doctor-patient relationship" are "particularly important because of the essentially private, highly personal, and sometimes intensely emotional nature of the relationship" with a psychiatrist. Section 1, annotation 1. Boundaries are not simply theoretical. They maintain "the well-being of the patient." *Id.*

By having Patient A live and vacation with her family, Dr. Ashih engaged in conduct that places into question her competence to practice medicine, G.L. c. 112, § 5, 9th ¶ (c) and 243 CMR 1.03(5)(a)3; committed misconduct in the practice of medicine, CMR 1.03(5)(a)18; and

engaged in conduct that undermines confidence in the integrity of the medical profession. *Levy*, 378 Mass. at 528; *Raymond*, 387 Mass. at 713; and *Sugarman*, 422 Mass. 343-44.

There is no evidence that Dr. Ashih lacks good moral character. That allegation may be left over from before the BRM narrowed its allegations against Dr. Ashih. I recommend that the BRM not discipline Dr. Ashih on this ground.

The following is not conduct that places into question Dr. Ashih's competence to practice medicine; misconduct in the practice of medicine; or conduct that undermines confidence in the integrity of the medical profession: considering adopting Patient A or discussing being treated unfairly at one or more of her group therapy sessions.

There is no evidence that Dr. Ashih advanced beyond discussing adopting Patient A. There is no evidence that Dr. Ashih discussed it with Patient A. "*[C]onsidering* adopting Patient A" (Pet. br. 8) s not *conduct* or *misconduct*; it is a thought process. If Dr. Ashih had adopted Patient A or discussed adopting him with him, I would recommend that the BRM discipline her. However, the former didn't happen, and the latter is not in evidence.

The BRM alleges that Dr. Ashih "discussed Patient A's case in group session after Patient A was no longer a patient in the group." (Pet. br. 8.) That is not in evidence; Stipulated Fact 32 states something similar, but not what the BRM alleges. I have only a bare-bones stipulation about this issue. How many times it happened, how long Dr. Ashih discussed Patient A, what Dr. Ashih said and how much detail she went into, why Dr. Ashih did so, her effect on the group or individual members, and why this would be disciplinable conduct are not in evidence. The BRM argues that it is misconduct, but not why. It is not self-evident, and I recommend that the BRM not discipline her on this ground.

There is no evidence that Dr. Ashih "gratif[ied]...her own needs" during her conduct with

Patient A or exploited him. *The Principles of Medical Ethics*, Section 1, annotation 1.

Conclusion and Order

I recommend that the BRM discipline Dr. Ashih as it sees fit.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

Dated: NOV - 9 2016

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

Division of Administrative Law Appeals
Docket No. RM-16-67

In the Matter of

HEIDI W. ASHIH, M.D.

Proposed Stipulation of Facts

1. The Respondent was born on June 10, 1974. She graduated from the University of North Carolina School of Medicine in 2006. She is certified in psychiatry by the American Board of Psychiatry and Neurology. She has been licensed to practice medicine in Massachusetts under certificate number 239386 since 2009. She does not have hospital privileges at this time. The Respondent is currently not working.

2. The Respondent was employed at the Massachusetts General Hospital (MGH) Psychiatry Service Depression Clinical and Research Program (the clinic) from July 2010 until July 2015, when she resigned.

3. In August 2015, the clinic reported to the Board that the Respondent had resigned after an investigation into allegations that the Respondent had a patient, Patient A, living in her home and that she took the patient, Patient A on a family vacation.

4. The Respondent began treating Patient A, a male, in early 2012 in a group session within the clinic.

5. Patient A was in the Respondent's group consistently until early 2013, when he suffered some personal losses.

6. Patient A was in distress and needed weekly follow-up appointments.

7. The dean of student services at Patient A's college reached out to the Respondent to ask if she could help Patient A.

8. Patient A's psychiatrist and therapist had left the clinic suddenly.

9. In the summer of 2013, the Respondent began seeing Patient A exclusively for individual therapy, group therapy and for psychopharmacology.

10. The Respondent told Board staff that she reached out to her colleagues in the clinic to find a new treatment team for Patient A.

11. In the fall of 2014, two of the Respondent's colleagues, one a therapist and one a psychopharmacologist, offered to take on Patient A's care if it was an emergency case although neither had an opening in their schedules to see Patient A.

12. The Respondent did not tell either colleague that Patient A's case was an emergency case and continued on as Patient A's sole provider until May 2015.

13. Over a period of approximately six months, the Respondent asked a resource specialist within the clinic to research whether the Respondent could legally adopt Patient A.

14. On or about the summer of 2014, the Respondent asked her colleagues during a peer group meeting to opine on whether it was a sound decision to adopt Patient A, although he was an adult.

15. Some of the Respondent's colleagues expressed strong feelings against the Respondent's interest in adopting Patient A.

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19. On at least three occasions, the Respondent had food delivered to her sessions with Patient A after clinic hours.

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22. On the last occasion, the Respondent took 50 seconds to open the door; the Respondent opened the door, and stuck only her head and her hand out to receive the food.

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Respectfully submitted,

Dated: April 29, 2016

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