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

GEORGIA COMPOSITE MEDICAL BOARD,	:	
Petitioner,	:	Docket No.: OSAH-CSBME-PHY-1304265-69-Howells
	:	
v.	:	Agency Reference No.: 10120043
	:	
GEORGE C. JOHNSON, M D,	:	
Respondent.	:	

INITIAL DECISION

The Georgia Composite Medical Board (“Petitioner” or “Board”) initiated this matter for the purpose of sanctioning Respondent’s medical license. Specifically, Petitioner seeks the suspension of Respondent’s medical license until such time that Respondent complies with the Board’s Order for Mental/Physical Examination, and thereafter that any terms or conditions indicated by the results of the examination be reduced to writing as requirements to lift the suspension. The hearing was conducted on September 19, 2012 and September 21, 2012. The record was held open until October 12, 2012, to allow the parties to submit written closing arguments. For the reasons stated below, this tribunal finds that Respondent’s medical license should be **SUSPENDED indefinitely**.

Findings of Fact

1.

Respondent George C. Johnson is licensed to practice medicine in the State of Georgia. He has been licensed in this state since April 6, 1983. (Ex. P-1.)

2.

Respondent graduated from Emory University Medical School. He completed an internship and residency at the Medical University of South Carolina. (Tr. 261-262). Currently, Respondent has a solo psychiatry practice that he has operated in Gainesville, Georgia, for approximately thirty years. (Tr. 15-16).

3.

Respondent began treating patient D.B. for bipolar disorder in February 2009. (Tr. 17, 117; Ex. P-6.) The sessions lasted for 30 minutes to one hour. (Tr. 101, 120.) His treatment encompassed medication management and counseling regarding various issues, including D.B.'s relationships with men. D.B. frequently had inappropriate relationships with men, particularly during times of mania. At one point in time, D.B. was simultaneously married to more than one man. There were other times that she would meet men via the internet and go off with them for days at a time. (Tr. 17, 19, 54-57, 132, 308; Exs. R-1, R-2, R-3, R-5, P-12.)

4.

Respondent acknowledged that D.B. was fragile when she was manic or depressed. (Tr. 19.)

5.

When D.B. arrived for her sessions, Respondent would put his arm around her and hug her. (Tr. 121.) When D.B. wore a particular pair of blue jeans that had holes around the knees, Respondent told D.B. "you look good in those holey jeans." (Tr. 123-24.) On several occasions, Respondent asked D.B. to go to the movies with him.¹ (Tr. 124, 145.) D.B. did not accept any of

¹ Respondent did not deny that he asked D.B. to go to the movies with him. Rather, he testified that he was "teasing her about that." (Tr. 48.)

Respondent's offers to go to the movies. Instead she told him that she did not feel comfortable going to the movies with him. (Tr. 152-53.) On one occasion, Respondent told D.B. that she could come to his home and clean for him.² (Tr. 124-25.) D.B. did not accept Respondent's offer. (Tr. 125.)³

6.

On more than one occasion, Respondent showed D.B. his on-line profile on various dating websites and pictures of the women with whom he was chatting. (Tr. 126, 152.) On occasion, Respondent would call D.B. on the telephone. Some of the phone calls related to D.B.'s treatment, but others were personal phone calls where they would discuss what Respondent was doing at home (e.g., watching television, or feeding his dog). (Tr. 127.) Some of the phone calls were after 9:00 p.m. (*Id.*)

7.

On one occasion, Respondent physically picked up D.B. in the waiting room and carried her back to his office. (Tr. 125, 159.) At the time D.B. was having some muscle weakness that was possibly related to one of her medications. (*Id.*) It appears that it was unnecessary for Respondent to carry D.B. into his office, as D.B. had walked into the waiting room on her own accord. (Tr. 148-49.)

² Respondent did not clearly deny asking D.B. to be his housekeeper. Instead, he testified that he did not think he did or that he "[didn't] recall doing that." (Tr. 49.)

³ In closing argument, counsel for Respondent argues that D.B. is wholly lacking in credibility. It is true that both D.B.'s mother and her current psychiatrist testified that D.B. has a history of not being entirely truthful. However, D.B.'s mother testified that D.B. was not always truthful about where she had been or with whom she had been. It is clear that these instances coincided with the times that D.B. stopped taking her medications and left for days at a time. (Tr. 163-65, 243.) At the hearing, D.B. testified that she had taken her medications that morning. Her testimony was cogent, logical, consistent, and corroborated by other testimony and evidence. Furthermore, in many instances, Respondent did not directly contradict D.B.'s testimony. Instead, he simply testified that he did not recall, or attempted to characterize the exchange in a different light. For these reasons, the undersigned found D.B.'s testimony to be credible.

8.

On June 29, 2012, D.B. saw Respondent for a routine visit. (Tr. 29, 129; Ex. P-12.) During that session, Respondent and D.B. had a discussion about the two of them dating. (Tr. 26, 130, 132; Ex. P-4.) It was Respondent who broached the subject of dating.⁴ (*Id.*)

9.

On June 30, 2009, at 12:03 a.m., Respondent sent D.B. an email. In the email, Respondent stated that D.B. was “probably sleeping in the woods with [her] family,” and that he “always enjoys camping, especially sitting by the fire and talking.” (Ex. P-4.) He further stated:

[D.B.,] why don't we both think about my comments to you earlier today. You could even have deep thoughts about this while watching the fire. After one or two weeks, if we both want to go forward, we can. I do have some reservations because of my concern for your medical care. I would not want this to be adversely effected [sic], since you have come such a long way and are doing so well, including being able to now see your son.

Also, I feel it is important for you to handle your relationship with the man you previously dated independent of a relationship with any other man. This is something which would be good for you to do for yourself, and especially for your self-esteem.

[D.B.] I feel you and your mother have a good deal of trust in me regarding your care. I do not want to do anything which would undermine [sic] this trust between us.

I realize it was me, not you, who brought this topic up and so you need time to think about this, if indeed it is something you want to pursue. If you would prefer not to do this, then I will understand and no further explanation to me will be needed. I would still want to be your physician for as long as you want me to be.

Let me emphasize again how important your wellbeing is to me. I cannot start a relationship with someone like this without this being the starting point. Actually this should be the way we approach any new relationship, but we so often think more about ourself [sic] than the other person.

⁴ Respondent's testimony on this point was wholly inconsistent. At times, he testified that he could not recall who first raised the subject about dating. (Tr. 26, 37.) Other times he appeared to assert that it was D.B. who brought up the subject. (*See* Tr. 27, 37.) Yet, in his email to D.B., Respondent clearly states that he was the one to bring up the topic. (Ex. P-4.) At the hearing, Respondent asserted that he made the statement in the email, in an effort to make D.B. more comfortable. (Tr. 96.) In other words, he claims that he did not want to place blame on D.B. for raising the subject. The undersigned does not find Respondent's testimony on this point to be credible. Other testimony by Respondent and the Board's investigator, Ms. Adrienne Baker, make it clear that Respondent was considering a relationship with D.B. (Tr. 27, 28, 93, 178.)

(*Id.*)

10.

After D.B. received the June 30, 2009 email from Respondent, she felt uncomfortable attending the sessions with Respondent alone. She did not show the email to her mother, but she asked her mother to attend the sessions with her because she felt uncomfortable attending them on her own. (Tr. 133, 150, 157-58.)

11.

D.B. continued to see Respondent for approximately one year after Respondent sent the June 30, 2009 email. (Tr. 133.) During that time, Respondent did not discuss transferring her care to another psychiatrist. (Tr. 135.) Nor did D.B. and Respondent ever discuss the email. (Tr. 133.)

12.

On one visit, Respondent told D.B.'s mother that she had a nice butt. (Tr. 135, 160.) D.B.'s mother did not like the comment. (Tr. 160.)

13.

On July 14, 2010, Respondent opined that D.B. had cycled into mild to moderate depression. (Ex. R-4.) He prescribed the antidepressant Zoloft. This medication was in addition to the medications that D.B. was already taking. Respondent directed D.B. to take 50mg of Zoloft once per day for one week, and then increase the dose to 100mg per day. (Ex. R-4; Tr. 104, 106, 109.)

14.

The July 14, 2010 visit was D.B.'s last visit with Respondent. (Tr. 107.) Prior to that date, D.B. and her mother had been considering finding a new psychiatrist for D.B. After Respondent's comment about her rear end and his prescription of what D.B.'s mother considered to be a large dose

of Zoloff, D.B.'s mother became convinced that D.B. should see a new psychiatrist. (Tr. 160-61.) Thereafter, she contacted Dr. Martha Little's office and D.B. began seeing Dr. Little as of July 15, 2010. (Tr.160, 213.)

15.

During her initial visit with Dr. Little, D.B. and her mother told Dr. Little that D.B.'s previous psychiatrist (i.e., Respondent) called D.B. late at night, emailed her, and offered to date her. Because of D.B.'s past history, Dr. Little had no way to judge the accuracy of what D.B. was saying. (Tr. 215.) Nonetheless, Dr. Little told D.B. to bring in one of the emails for her to see. (Tr. 215-216.)

16.

D.B. did, in fact, bring Dr. Little a copy of the June 30, 2009 email from Respondent to D.B. (Tr. 216.) The email raised several concerns in Dr. Little's mind. (*Id.*) In particular, given D.B.'s diagnoses and vulnerabilities, Dr. Little felt that D.B. was especially vulnerable to boundary breaches. (*Id.*) For this reason, she felt that it was her duty to turn this information over to the Board. (Tr. 217.)

17.

Patients reveal intimate details of their lives to their psychiatrists, including their medical history, relationship history, and sexual history. (Tr. 218.) Psychiatrists have a duty to not exploit their patients. (*Id.*)

18.

D.B. has bipolar disorder and Munchausen Syndrome. (Tr. 220-221.) Both diagnoses make her particularly susceptible to boundary breaches. (*Id.*) The bipolar disorder carries with it chaotic

relationships, hyper-sexuality, and poor boundaries when it comes to sexual activity. (Tr. 220.) The Munchhausen Syndrome causes D.B. to seek treatment and attention from physicians. (Tr. 221.)

19.

D.B. had a history of inappropriate relationships with men. (Tr. 225.) At a young age she married and had a child with her step-brother. (*Id.*) Later she married another man, before she divorced her first husband. Subsequently, she married another man. (*Id.*) When D.B. first began seeing Dr. Little, she was married to two men. (*Id.*) Because of her diagnoses, D.B. does not readily recognize red flags or commonly accepted boundaries. (Tr. 220-222, 225.)

20.

When a psychiatrist finds himself attracted to a patient, he should get clinical supervision. In other words, he should consult with another psychiatrist to review his plans for the patient. (Tr. 230-32.) Then he should transfer the patient's care to another psychiatrist. (*Id.*)

21.

In Dr. Little's opinion, Respondent's email to D.B. and his efforts to pursue a dating relationship with D.B. were inappropriate, unethical, and constituted boundary violations. (Tr. 231-34.) Additionally, even though Respondent never saw D.B. outside of the office, in light of the email, it was inappropriate for Respondent to continue treating D.B. (Tr. 232-33.) It was Dr. Little's opinion about the boundary violations that caused her to notify the Board about her concerns. (Tr. 231.)

22.

Upon receiving the complaint from Dr. Little, the Board initiated an investigation. Adrienne Baker was assigned to investigate the complaint. (Tr. 171-72.) Ms. Baker first interviewed Respondent in December of 2010. (Tr. 172.) During the interview, Respondent admitted that he was attracted to D.B., and that he wanted a relationship with her.⁵ (Tr. 173-74, 178.) He further admitted that he sent the email and that it was inappropriate. (*Id.*) On that same day, Ms. Baker served Respondent with a subpoena for D.B.'s medical records. (Tr. 174.) Respondent did not comply with the subpoena. (Tr. 79; Ex. P-2.)

23.

Between February 21, 2012 and March 1, 2012, the Board and Respondent communicated about Respondent meeting with the Board to discuss this case. (Exs. P-8, P-9.) On February 21, 2012, the Board's Enforcement Unit Supervisor notified Respondent that the meeting was scheduled for March 1, 2012, at 10:00 a.m..⁶ (Ex. P-9.) On February 22, 2012, Respondent requested that the

⁵ At the hearing, Respondent attempted to avoid answering whether he was attracted to D.B. while he was treating her. He testified as follows:

Q All right, and my question is did you find yourself attracted to her when you were treating her?

A She's an attractive woman.

(tr. 38.) When required to answer the question, Respondent testified as follows:

THE WITNESS: No, I was attracted to her in the same way you'd be attracted to a woman that you felt was pretty. Yeah, I was attracted to her in that way.

Q Attracted enough to discuss dating her.

A After it came up, yes.

(Tr. 38.)

⁶ It appears that this was the second time a meeting had been scheduled. It was previously scheduled for a different date, and then rescheduled to the March 1, 2012 date, at Respondent's request. (Ex. P-9.)

Board postpone the meeting for one month because he was in the process of moving his office and he did not want to get mentally distracted. (*Id.*) On February 23, 2012, the Enforcement Unit Supervisor notified Respondent that the meeting could not be rescheduled. (*Id.*) On the day before the meeting, Respondent notified the Board that he may be late to the meeting because he had to bring his dog to veterinarian. (*Id.*) On the morning of the scheduled meeting, Respondent notified Board personnel that he would not be coming to the meeting because he was sick. (Ex. P-8.)

24.

On March 26, 2012, Ms. Baker served Respondent with an Order for Mental/Physical Examination (“Order”). (Exs. P-2, P-3.) The Order required Respondent to “submit to a ninety-six (96) hour residential or inpatient mental/physical examination by Gene G. Abel, M.D., Behavioral Medicine Institute of Atlanta, or other Board approved physician/facility with expertise in the area of professional boundary violations and psychiatric evaluation within seven (7) days from the date of service of [the] Order.” (Ex. P-2.) Respondent has not submitted to the mental/physical examination, and he has no intention of doing so.⁷ (Tr. 78, 82.)

25.

Respondent currently has approximately three to four hundred patients. (Tr. 290.) Approximately seventy-five percent of his patients are female. (*Id.*)

⁷ Respondent testified that he did not want to submit to an examination by Dr. Abel, because Dr. Abel’s principal area of practice was in the field of sexual deviations. (Tr. 82.) However, he did acknowledge that the Board gave him the option to be examined by other experts at facilities out of state. (Tr. 82-83.) Respondent did not avail himself of that option either. (*Id.*) Additionally, Respondent took issue with the fact that the examination was to take place on an inpatient basis over several days. (Tr. 83.)

At the hearing, Respondent denied that the June 30, 2009 email to D.B. was inappropriate. (Tr. 23.) When asked if he did anything inappropriate in his dealings with D.B., Respondent testified that could have handled it better, but that he did not think the “gist of it was inappropriate.” (Tr. 84.) Further, he acknowledged that he did not know what a professional boundary violation was. (Tr. 83-84.) Finally, Respondent acknowledged that he had a “friendly relationship” with the patient and her mother, and he did not see anything wrong with that. (Tr. 23-24.)

Conclusions of Law

1.

Petitioner seeks the indefinite suspension of Respondent’s medical license. Accordingly, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

Georgia Code section 43-1-19 is the general licensing and disciplinary statute that pertains to professional licensing boards.⁸ It states, in pertinent part, that the Board has the authority to discipline a licensee, upon a finding that the licensee has:

* * *

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be

⁸ Although the Board is an independent agency and not under the jurisdiction of the Secretary of State, Georgia Code section 43-34-6(a) grants the Board the powers, duties and functions of state licensing boards. O.C.G.A. § 43-34-6(a). Accordingly, the provisions of section 43-1-19 are also applicable to the Board’s licensees.

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 untrustworthiness; unprofessional conduct 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;

* * *

(8) Violated a statute, law, or any rule or regulation of this state, . . . , the professional licensing board regulating the business or profession licensed under this title, . . . , which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee . . . knows or should know that such action is violative of such statute, law, or rule

O.C.G.A. § 43-1-19(a)(6), (8).

3.

Similarly, Georgia Code section 43-34-8, which is the specific licensing and disciplinary statute for the medical profession, states, in pertinent part, that the Board has the authority to discipline a licensee, upon a finding that the licensee has:

* * *

(7) Engaged in any unprofessional, unethical . . . , or deleterious conduct or practice harmful to the public, which conduct or practice 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 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;

* * *

(10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority . . . , which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee . . . knows or should know that such action is violative of such law, rule, or regulation; . . . ;

* * *

(15) Committed an act of sexual abuse, misconduct, or exploitation of a patient including guardians and parents of minors;⁹

* * *

(17) Entered into conduct which discredits the profession.

O.C.G.A. § 43-34-8(a)(7), (10), (15), (17).

4.

Furthermore, “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)(A); *see also* Ga. Comp. R. & Regs. r. 360-3-.04(1). Physicians are “deemed to have given [their] consent to submit to such [examinations].” O.C.G.A. § 43-34-8(a)(13)(A). If a licensee does not submit to the examination when properly directed to do so, the Board may enter a final order after a hearing, unless the failure was due to circumstances beyond the licensee’s control. *Id.*

Unprofessional Conduct

5.

Respondent’s efforts to have a personal relationship with his patient D.B., including asking her to the movies, asking her to go camping, engaging in personal telephone calls, and sending her the June 30, 2009 email, amount to unprofessional and unethical conduct. This is particularly true, in light of the patient’s diagnoses and her own difficulties with boundaries. Respondent further compounded the problem when he did not transfer her care, but rather continued to treat her. Accordingly, Petitioner proved by a preponderance of the evidence that Respondent violated Georgia Code sections 43-1-19(a)(6) and 43-34-8(a)(7).

⁹ *See also* Ga. Comp. R. & Regs. r. 360-3-.02(8) (defining unprofessional conduct to include acts of “sexual intimacy, abuse, misconduct, or exploitation of any individual related to the physician’s practice of medicine regardless of consent.”)

6.

Furthermore, Respondent's actions in pursuing a personal relationship with his patient while she was still under his care and discussing such matters during sessions, after knowing significant information about the patient's difficulties with male relationships, amount to exploitation of the patient's trust. When a patient is seeking mental health treatment, she should not be put in the position of having to respond to dating inquiries. Accordingly, Petitioner proved by a preponderance of the evidence that Respondent exploited his patient's trust in violation of Board Rule 360-3-.02(8) and Georgia Code sections 43-34-8(a)(10), 43-34-8(a)(15), and 43-1-19(a)(8). Further, such conduct discredits the profession of psychiatry. O.C.G.A. § 43-34-8(a)(17).

Mental/Physical Examination

7.

Respondent asserts that the Board did not have reasonable grounds to require him to submit to a 96-hour inpatient evaluation. At the time it ordered the mental/physical evaluation, the Board had evidence of inappropriate conduct and boundary violations in the form of the June 30, 2009 email and Respondent's interview statements. Further, Respondent failed to respond to the Board's subpoena for the patient's records and failed to attend a Board meeting to discuss the complaint. Based upon this information, this tribunal concludes that the Board had reasonable grounds to order the mental/physical evaluation. Respondent has refused to submit to the evaluation. Accordingly, Petitioner has proven by a preponderance of the evidence that Respondent violated Georgia Code section 43-34-8(a)(13)(A).¹⁰

¹⁰ Other statutes and regulations cited by the Board in its "Statement of Matters Asserted and Statutes and Rules Involved" were considered and rejected because the Board failed to present sufficient evidence to establish violations.

Sanction

8.

Georgia Code section 43-34-8(b) authorizes the Board to discipline a licensee upon a finding that the licensee has engaged in unprofessional conduct or has violated the Boards rules. When the Board finds that a physician should be disciplined, it may suspend (for a definite or indefinite period), revoke, limit, or restrict a license; administer a public or private reprimand; make an adverse finding but withhold imposition of judgment; or impose the judgment but suspend the enforcement of such judgment and place the physician on probation. Further, the Board may vacate any probation if the physician fails to comply with reasonable terms imposed by the Board. O.C.G.A. § 43-34-8(b); *see also* O.C.G.A. § 43-1-19(d), (e). Finally, the Board may impose a fine of up to \$3000.00 for each violation of law, rule or regulation, or in a reasonable amount to reimburse the Board for administrative costs. O.C.G.A. § 43-34-8(b)(1)(G), (H).

9.

Respondent engaged in unprofessional behavior in violation of Georgia Code sections 43-1-19(a)(6), (8), 43-34-8(a)(7), (10), (15), (17), and Board Rule 360-3-.02(8). Additionally, he refused to submit to a mental/physical evaluation in violation of Georgia Code section 43-34-8(a)(13)(A). This conduct constitutes sufficient grounds to sanction Respondent's medical license. Furthermore, Respondent failed to cooperate with the Board during its investigation and failed to be entirely forthright during the hearing. At times, his answers were flippant, equivocal, and evasive. Finally, he refused to acknowledge or failed to understand that his conduct was inappropriate. For these reasons, the undersigned concludes that Respondent's license should be sanctioned as stated below.

ORDER

10.

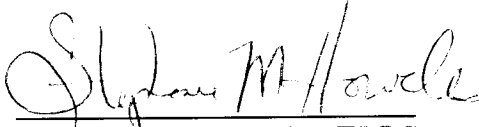
This Tribunal finds that Respondent's license to practice medicine in the State of Georgia should be **SUSPENDED indefinitely**. Respondent shall not be eligible to petition for lifting of the suspension until he complies with the following terms and conditions:

- (a) Respondent shall fully comply with the Board's Order for Mental/Physical Examination.
- (b) Respondent shall complete a course in medical ethics. This course shall be in addition to the required hours of continuing medical education for license renewal for all Georgia physicians. Respondent shall submit proof of completion of the course prior to or with any petition to lift the indefinite suspension.
- (c) Respondent shall pay the Board a fine to reimburse the Board's administrative costs including, but not limited to, costs for the hearing at the Office of State Administrative Hearings, the court reporter, and the transcript.

Should the Board decide to lift the indefinite suspension, it shall do so in writing and may impose such terms and conditions upon his license to practice medicine as it deems appropriate, in light of the recommendations and results of the mental/physical examination. Upon lifting of the indefinite suspension, Respondent's license shall be placed on **PROBATION** for a period of three years.

Furthermore, this Order shall be considered a **PUBLIC REPRIMAND** of Respondent by the Board, and may be disseminated as such.

SO ORDERED, this 29th day of October, 2012.


STEPHANIE M. HOWELLS
Administrative Law Judge