

IN THE MATTER OF

JEFFREY R. BECK, D.O.

License No. H 55156

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BEFORE THE

MARYLAND STATE
BOARD OF PHYSICIANS

Case Number 2006-0292

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FINAL DECISION AND ORDER

Prior Summary Suspension

Jeffrey R. Beck, D.O. ("Dr. Beck") is a licensed Maryland physician who is Board certified in pediatrics and emergency medicine. On July 13, 2006, the Board summarily suspended Dr. Beck based on investigative findings that he attempted to solicit on the internet for sexual purposes a person whom he believed to be fourteen years old and that he traveled a long distance in order to meet this purported fourteen year old in person at a time when this person was not under the supervision of an adult or other responsible adult figure.

Further bases for the summary suspension were the investigative findings that Dr. Beck instructed a nurse to insert a false patient name in the hospital's medication records, prescribed drugs that included benzodiazepines and narcotics to a person with whom he had a close personal relationship and without maintaining any medical records of the prescription, and inappropriately shared vitriolic comments about his personal life with his patients in the hospital and with other health care workers in the hospital work setting. Based on the investigative

evidence in the record at that time, the Board found that the public health, safety or welfare imperatively required the emergency action of summary suspension.

Dr. Beck waived his right to appear before the Board at a hearing scheduled to give him an opportunity to show cause why the order of summary suspension should not be imposed. *See* COMAR 10.32.02.05B (7) and E (setting out the physician's right to a hearing before the Board itself within 15 days). Dr. Beck nevertheless preserved his right to an evidentiary hearing on the issue of whether the public health, welfare or safety imperatively required the summary suspension of his license under Md. Code Ann., State Gov't § 10-226(c)(2), but waived his right to a prompt hearing. *See* COMAR 10.32.02.05 I and J (setting out post-summary suspension hearing rights). No evidentiary hearing was held on the summary suspension issue.

Substantive Charges

The substantive charges were based on the same alleged facts. On September 18, 2006, the Board charged Dr. Beck with unprofessional conduct in the practice of medicine under Md. Health Code Ann., Health Occ. ("HO") § 14-404(a)(3) for attempting to establish a sexual liaison with a person whom he believed to be a fourteen-year-old boy. The Board also charged Dr. Beck with fraudulently or deceptively using his medical license, unprofessional conduct in the practice of medicine and filing a false report in the practice of medicine under HO §§ 14-404(a)(2), (3) & (11), respectively. The latter three charges grew out of Dr. Beck allegedly instructing a nurse to place a false patient's name on the

hospital medication records, remove two Xanax tablets for a person who was not a patient of the hospital or of Dr. Beck, and to falsely list the removed tablets as “wasted.” The Board also charged Dr. Beck under HO § 14-404(a)(3) with unprofessional conduct in the practice of medicine for issuing at least four prescriptions, including at least two prescriptions for benzodiazepines and one for narcotics, to a person with whom he lived and with whom he had a close personal relationship, without properly maintaining medical records. The Board also charged Dr. Beck with unprofessional conduct in the practice of medicine under HO §§ 14-404(a)(3) for insulting patients and for inappropriately repeating vitriolic comments about his personal life to his patients in the hospital and to other health care workers in the hospital setting.

A hearing on these charges took place before an Administrative Law Judge (“ALJ”) who issued a Proposed Decision to the Board. The Proposed Decision of the ALJ is attached to this Final Decision and Order and incorporated herein. Following a written exceptions process and an oral exceptions hearing before the Board, the Board now issues this Final Decision and Order which will affirm in part and reverse in part the decision of the ALJ.

Board’s Decision on the Substantive Charges

Findings of Fact

The Board adopts the findings of fact, including those facts found in the “Discussion” section of the Proposed Decision of the ALJ, on the issue of Dr. Beck’s instructing the nurse to remove two Xanax tablets from the hospital supply

and falsify hospital records. *See* ALJ Proposed Decision at 14-15, 28-29. The Board also adopts the findings of fact, including those facts found in the “Discussion” section of the Proposed Decision of the ALJ, on the issue of Dr. Beck prescribing medications, including benzodiazepines and a narcotic, to a person with whom he lived and with whom he had a close personal relationship, without maintaining medical records. *See* ALJ Proposed Decision at 15-16, 29-31. The Board also adopts the findings of fact, including those facts found in the “Discussion” section of the Proposed Decision of the ALJ, on the issue of Dr. Beck’s insulting patients and inappropriately repeating vitriolic comments about his personal life to his patients in the hospital and to other health care workers in the hospital work setting. *See* ALJ Proposed Decision at 16-17, 31.

The Board adopts the ALJ’s findings of fact regarding Dr. Beck’s conduct over the internet, on the phone and in the house with “Luke,” a supposed fourteen-year-old boy. Dr. Beck’s reprehensible conduct is described by the ALJ at pp. 7-14 of the Proposed Decision and will not be repeated here. The Board rejects Dr. Beck’s exceptions challenging the contents of the e-mails put into evidence as well as his objections to the ALJ’s evidentiary rulings. The Board, like the ALJ, rejects as not credible Dr. Beck’s testimony that he was only expressing a professional interest in an apparently neglected boy. The Board, like the ALJ, finds that Dr. Beck arranged a date with this purported fourteen-year-old boy in an attempt to develop an emotional relationship with “Luke” that could lead to a sexual relationship. Dr. Beck himself described what he wanted with Luke as a “first

date,” said to “Luke” that he would “way rather cuddle you with hugs and kisses.” When this purported fourteen-year-old asked if they might kiss, Dr. Beck replied: “that could be very nice.” Acting on these suggestions, Dr. Beck arranged to meet with “Luke” at a time when “Luke” was alone and in fact entered “Luke’s” house and began to go up the stairs, where “Luke” had just informed him that he was changing his shorts. Dr. Beck actively pursued a dating relationship with “Luke” with the explicit understanding that it could lead to a sexual relationship. A brief excerpt of some of the sexually predatory correspondence that preceded Dr. Beck’s visit to “Luke’s” house is set out below:

Luke: no i think ur hot

[Dr. Beck]: not bad yourself

Luke: i want a real bf

[Dr. Beck]: what are you in to?

Luke: suck fuck what u say

[Dr. Beck]: done it before?

Luke: yup

[Dr. Beck]: what else do you like?

Luke: brews smokes

[Dr. Beck]: like kissing an ashtray

Luke: if u don’t like it i won’t

[Dr. Beck]: i’d paddle you for it if you were my kid or my bf

Luke: LOL

[Dr. Beck]: don’t think you’d be laughing

Luke: u into that kinky shyt

[Dr. Beck]: that’s about as kinky as I get

The entire course of predatory conduct over a 5-day period by a 51-year-old adult towards a person who the predator believes is 14 years old is without a doubt unprofessional and immoral.

Conclusions of Law

The Board adopts the conclusions of law in the Proposed Decision of the ALJ with respect to all of the incidents except the incident of the sexual predation of the supposed fourteen-year-old boy.

Dr. Beck thus committed unprofessional conduct in the practice of medicine in violation of HO § 14-404(a)(3) when he instructed the nurse to remove two Xanax tablets from the hospital supply and falsify hospital records; when he prescribed powerful drugs, including narcotics, without maintaining medical records for a person with whom he lived and with whom he had a close personal relationship; and when he insulted patients and inappropriately repeated vitriolic comments about his personal life to his patients and to other health care workers in the hospital workplace. *See* ALJ Proposed Decision at 14-17, 29, 35. Dr. Beck falsified medical records in violation of HO § 14-404(a)(11) when he instructed a nurse to falsify hospital records in order to dispense the Xanax mentioned above. *See* ALJ Proposed Decision at 15, 29, 35. Dr. Beck fraudulently and deceptively used his license in violation of HO § 14-404(a)(2) when he instructed the nurse to remove the Xanax tablets from the hospital supply and to falsify hospital records. *See* ALJ Proposed Decision at 15, 29, 35.

The Board disagrees, however, with the ALJ's proposed legal conclusions regarding Dr. Beck's unprofessional and immoral conduct in the instance of his sexually predatory conduct with "Luke," the supposed fourteen-year-old boy. The ALJ proposed that Dr. Beck's conduct, although immoral and reprehensible, was not "in the practice of medicine" as that term is used in HO § 14-404(a)(3). *See* pp. 27-28 of the Proposed Decision. The Board does agree with the ALJ that Dr. Beck's conduct towards "Luke" was intentionally sexually predatory and was not initiated because of any genuine medical concern over "Luke." *See* ALJ Proposed Decision at 23. Nevertheless, the Board finds that Dr. Beck identified himself as a physician to "Luke" and then proceeded to give him medical advice in the guise of a concerned physician. In the same e-mail conversation about their "first date," Dr. Beck wrote to "Luke":

[Dr. Beck]: let's see what happens

Luke: that's kewl i could smoke ha ha

[Dr. Beck]: no[t] unless you want to be spanked for real

Luke: ur no fun

[Dr. Beck]: i'm a doctor – I see what cigarettes do to people every day – not gonna let it willingly happen to somebody i care a lot about

Luke: it not like all the time

[Dr. Beck]: it's really bad for you – and i don't like kissing ashtrays

Luke: k i promise i wont

[Dr. Beck]: what do you want to do after we eat?

Luke: kiss

[Dr. Beck]: that could be very nice

Dr. Beck thus identified himself as a doctor, invoked his experience as a doctor (“i’m a doctor – i see what cigarettes do to people every day”) and advised “Luke” to stop smoking because it was harmful to him. Dr. Beck thus used his status as a physician to further his prurient relationship with a person whom he believed to be a fourteen-year-old boy. Dr. Beck thus “abused his status as a physician” in a way that “diminished the standing of the medical profession as caregivers.” *Cornfeld v. Board of Physicians*, 174 Md. App. 456, 478 (2007). His actions were therefore in “the practice of medicine.” The fact that “Luke” was not an actual fourteen-year-old boy does not detract from this conclusion. The fact that Dr. Beck *attempted* to use his status as a physician and to provide medical advice in order to establish a prurient relationship with a juvenile diminishes the standing of the medical profession in itself. The medical advice was immediately, in the State’s words, “sexualized” (“and i don’t like kissing ashtrays”). Dr. Beck, by suggesting sexual activities with a juvenile in the guise of providing medical advice, tainted to some degree the medical advice given every day by all physicians and thus harmed the standing of the medical profession as caregivers. The Board therefore concludes that Dr. Beck’s immoral and unprofessional conduct in this instance also was “in the practice of medicine” as that term is used in HO § 14-404(a)(3).

Sanction

The three charges, other than the charges related to "Luke," are also serious offenses that show a worrisome lack of professional judgment, a lack of honesty and a lack of respect for other health care workers and patients. These offenses call for a serious sanction in and of themselves. The Board will impose a sanction for these offenses and for the much more serious offense of unprofessional conduct in the incident of Dr. Beck's attempted sexual predation against "Luke." Dr. Beck has in the Board's opinion disqualified himself from the practice of medicine. He has abused his status as a physician in an attempt to prey upon a person who he thought was a fourteen-year-old boy for purposes of engaging in a sexual relationship. Dr. Beck's willingness to take advantage of a juvenile in this manner disqualifies him from the profession. Patients must be able to have confidence that their physicians to whom they necessarily grant intimate access will not abuse that access for the physician's own prurient purposes. Dr. Beck has undermined that confidence, and his history of unprofessional conduct in general shows a disregard for professional norms and standards. The Board will revoke Dr. Beck's license, and it will not entertain an application for reinstatement for ten years, a period of time that the Board determines is the minimum necessary. Dr. Beck will not be reinstated unless he has demonstrated that he has made significant changes in his character and conduct over a long period of time. Dr. Beck, of course, must also show that he is otherwise qualified for reinstatement at the time of any future application.

Summary Suspension: Disposition

In light of the revocation that the Board will impose in this case, the Board will vacate its order of summary suspension issued on July 13, 2006, for the sole reason that that summary suspension has now become moot. The Board remains fully convinced that Dr. Beck's continued practice of medicine in this State would constitute a danger to the public health and welfare and that, if he had a license, the public health, safety and welfare would imperatively require summary suspension of that license. Because this order revokes Dr. Beck's license, however, that danger no longer exists and the summary suspension order is moot. The summary suspension order will be vacated for that reason alone.

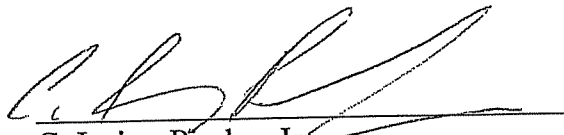
Order

It is therefore **ORDERED** that the license of Jeffrey R. Beck, M.D. be, and it hereby is **REVOKED**. The Board will not entertain any application for reinstatement for a period of ten years from the date of this Order; and it is further

ORDERED that the Summary Suspension of Dr. Jeffrey R. Beck, M.D.'s license to practice medicine in Maryland is **VACATED**, for the sole reason that the Summary Suspension has become moot at this time because Dr. Beck's license has been revoked; and it is further

ORDERED that this is a Final Order of the Board and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2004).

SO ORDERED this 24th day of June, 2008.


C. Irving Pinder, Jr.
Executive Director

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., State Govt § 10-222, Dr. Beck has the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the State Government Article and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Beck files an appeal, the Board is a party and should be served with the court's process at the following address: **Maryland State Board of Physicians, 4201 Patterson Avenue, Baltimore MD 21215.**

In addition, if an appeal is filed, Dr. Beck is requested to send a courtesy copy to the Board's counsel, Thomas W. Keech, Esq. at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201.

The Administrative Prosecutor is no longer a party to this case and need not be served or copied.

MARYLAND BOARD OF
PHYSICIANS

v.

JEFFREY R. BECK, D.O.,
RESPONDENT

License No. H55156

* BEFORE LORRAINE EBERT FRASER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH NO.: DHMH-SBP-71-07-00231

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On September 18, 2006, the Maryland Board of Physicians (Board) issued charges against Jeffrey R. Beck, D.O. (Respondent) for fraudulently or deceptively using a license, engaging in immoral or unprofessional conduct in the practice of medicine, and willfully making or filing a false report or record in the practice of medicine in violation of the Medical Practice Act. Md. Code Ann., Health Occ. § 14-404(a)(2), (3), (11) (2005).

I held a hearing on May 1, 2, 3, and 4, 2007, at the Office of Administrative Hearings in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 14-405(a) (2005). The Respondent was present and was represented by Jack L. B. Gohn, Esquire. Robert J. Gilbert, Assistant Attorney General, represented the Board. The record closed at the end of the hearing on May 4, 2007.

ATTACHMENT A

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for the Board, and the Rules of Procedure for the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2006); Code of Maryland Regulations (COMAR) 10.32.02; COMAR 28.02.01.

ISSUES

The issues in this case are:

1. Whether the Respondent fraudulently or deceptively used his medical license;
2. Whether the Respondent engaged in immoral or unprofessional conduct in the practice of medicine;
3. Whether the Respondent willfully made or filed a false report or record in the practice of medicine; and,
4. If so, what is the appropriate sanction.

SUMMARY OF THE EVIDENCE

Exhibits

The Board submitted the following exhibits, which were admitted into evidence:

- Bd. Ex. 1 - Initial Application for Medical License, dated August 6, 1999
- Bd. Ex. 2 - Renewal Application, dated July 25, 2004
- Bd. Ex. 3 - Perverted-Justice.com web site information
- Bd. Ex. 4 - Transcript of Internet communications, August 14-16, 2005, from Perverted-Justice.com.
- Bd. Ex. 5 - Dateline NBC television program, aired November 4, 2005 (DVD)
- Bd. Ex. 6 - Dr. Beck's response to the Board, dated January 24, 2006
- Bd. Ex. 7 - Interview memorandum, Carol Beck, dated March 31, 2006

- Bd. Ex. 8 - Accusation before the Osteopathic Board of California, dated March 23, 2006
- Bd. Ex. 9 - Petition for Interim Order (with attachments) before the Osteopathic Board of California, dated March 23, 2006
- Bd. Ex. 10 - Memorandum of Points and Authorities in support of the Petition for Interim Order, dated March 23, 2006
- Bd. Ex. 11 - Interim Order, dated March 27, 2006
- Bd. Ex. 12 - Investigative materials compiled by the Maryland State Police
- Bd. Ex. 13 - Psychiatric Records, Stephen R. Schuchter, M.D.
- Bd. Ex. 14 - Transcript of Interview, Jeffrey R. Beck, D.O., held on April 18, 2006
- Bd. Ex. 15 - Report of Investigation (Maryland Board of Physicians), dated June 14, 2006
- Bd. Ex. 16 - Commissioner's Summary Order (New York), dated June 6, 2006
- Bd. Ex. 17 - Order of Summary Decision, issued by the Maryland Board of Physicians, dated July 13, 2006
- Bd. Ex. 18 - Notice of Charges and Allegations (North Carolina Medical Board), dated July 28, 2006
- Bd. Ex. 19 - Order of Summary Suspension of License (North Carolina Medical Board), dated July 28 2006
- Bd. Ex. 20 - Report, dated November 17, 2006, by Craig R. Lareau, J.D., Ph.D.
- Bd. Ex. 21 - Transcript of Hearing before the Osteopathic Board of California: (a) December 4, 2006; (b) December 5, 2006; (c) December 6, 2006; (d) December 7, 2006
- Bd. Ex. 22 - Decision, dated January 17, 2007, by the Osteopathic Medical Board of California, under Case No. 00-2006-1675
- Bd. Ex. 23 - Curriculum Vitae, Gregory K. Lehne, Ph.D.
- Bd. Ex. 24 - Curriculum Vitae, David I. Zolet, M.D.
- Bd. Ex. 25 - Report, dated February 20, 2007, by Gregory K. Lehne, Ph.D.
- Bd. Ex. 26 - Report, dated February 19, 2007, by David I. Zolet, M.D.

- Bd. Ex. 27 - Transcript of Interview, Debra Merceron, R.N.
- Bd. Ex. 28 - Transcript of Interview, Deborah Timms, R.N.
- Bd. Ex. 29 - Transcript of Interview, Tina Brown, LCSW-C
- Bd. Ex. 30 - Transcript of Interview, Vernon Usilton, R.N.
- Bd. Ex. 31 - QA/RM file, Easton Memorial Hospital
- Bd. Ex. 32 - Employment file, Eastern Shore Emergency Medicine Physicians
- Bd. Ex. 33 - Letter of Suspension from Shore Health System
- Bd. Ex. 34 - Pharmacy Surveys
- Bd. Ex. 35 - Pages 566-576 from the DSM-IV-TR, 4th Ed.
- Bd. Ex. 36 - Court of Common Pleas, Division of Domestic Relations, Deposition of the Respondent, dated October 8, 1997

The Respondent submitted the following exhibits, which were admitted into evidence:

- Resp. Ex. 1 - Pages 571-572 from the DSM-IV-TR 4th Ed.
- Resp. Ex. 2 - Code of Medical Ethics of the American Medical Association, 2006-2007 Ed., pages 263 -264, 279-280, 3173-8
- Resp. Ex. 3 - Appendix five, STATIC-99 Coding Form
- Resp. Ex. 4 - Psychopathy Checklist - Revised (PCL-R)
- Resp. Ex. 5 - Respondent's Verizon Wireless Bill, dated August 20, 2005
- Resp. Ex. 6 - E-Z Pass transactions for August 11 through September 1, 2005
- Resp. Ex. 7 - AOL Instant Messenger, Community Chat Guidelines
- Resp. Ex. 8 - Not Admitted
- Resp. Ex. 9 - Not Admitted
- Resp. Ex. 10 - Not Admitted
- Resp. Ex. 11 - Curriculum Vitae, Craig R. Lareau, J.D., Ph.D., ABPP

Resp. Ex. 12 - Letter to Respondent's counsel from John R. LoGalbo, Assistant General Counsel, AOL, L.L.C., dated April 26, 2007

Resp. Ex. 13 - Not Admitted

Resp. Ex. 14 - Static-99 scoring for Respondent

Testimony

The following witnesses testified on behalf of the Board: Thomas Chiccone, M.D.; David I. Zolet, M.D., who testified as an expert in General and Internal Medicine and Professional Ethics; Gregory Brainer, Del Harvey; and Gregory Lehne, Ph.D., who testified as an expert in Psychology with a specialization in sexual disorders.

The Respondent testified on his own behalf and presented the following witnesses: A* B*; Craig R. Lareau, J.D., Ph.D., who testified as an expert in Forensic Psychology; Tina Marie Brown, LCSW-C; and Shawn Brady.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Respondent was a licensed physician in the State of Maryland, practicing under license number H55156.
2. The Respondent is Board-certified in Emergency Medicine and Pediatric Medicine.
3. At all times relevant to this proceeding, the Respondent was working as a physician in the Emergency Department at Easton Memorial Hospital and Dorchester General Hospital, in Easton and Cambridge, Maryland, respectively. He practiced primarily at Easton Memorial Hospital.

4. As of the conclusion of the hearing in this matter, the Respondent's license to practice medicine was suspended by the states of New York and North Carolina, and revoked by the State of California.
5. As of the conclusion of the hearing in this matter, the Respondent was residing in California with Shawn Brady and Cody Ballard.
6. Mr. Brady was born in 1979. Mr. Brady and the Respondent met in an internet chat room, while the Respondent was living in Maryland and Mr. Brady was living in California. Mr. Brady has lived with the Respondent for approximately four or five years, first in Maryland and now in California.
7. Cody Ballard met Mr. Brady when he was fourteen years old through a mentoring program in Anne Arundel County, Maryland. He is now eighteen years old.

Communications with Luke

8. On August 14, 2005, at 11:19 a.m., the Respondent initiated an instant message conversation with another individual in an internet chat room entitled Dads for Sons. Dads for Sons is a gay themed chat room.
9. The individual the Respondent contacted had a profile identifying him as a fourteen-year-old male and used the screen name marlboro20170 (later identified as Luke). In reality, this individual was an adult who volunteers for an organization called Perverted Justice, which describes itself as an on-line watchdog group.
10. On August 14th at 11:19 a.m., the Respondent said to Luke hi and how are you today. Luke replied that he was bored and the Respondent asked him what would make him not bored. Luke asked where he was from; the Respondent said near Washington D.C. Luke said he was from Herndon, Virginia.

11. At 11:21 a.m., the Respondent asked Luke how old he was. Luke responded "14 u?" The Respondent answered "50."¹ Luke then asked if he looked that old and they exchanged pictures at 11:26 a.m.
12. At 11:27 a.m., Luke told the Respondent that he is "hot for a old dude" and asked if he is rich and what he does for "coin." The Respondent stated "medicine," Luke asked "doc?" and the Respondent stated yes.
13. At 11:31 a.m., Luke asked if the Respondent wanted a boyfriend to which he replied he "wouldn't mind." Luke then asked how far the Respondent was from him and if he had a "cool pad." The Respondent replied forty-five minutes.
14. From 11:37 to 11:43 a.m., the following exchange occurred:

Luke: ur not sayin lots

The Respondent: ur only 14 and mostly interested in how rich i am and how cool my pad might be.

Luke: no i think ur hot

The Respondent: not bad yourself

Luke: i want a real bf

The Respondent: what are you in to?

Luke: suck fuck what u say

The Respondent: done it before?

Luke: yup

The Respondent: what else do you like?

Luke: brews smokes

The Respondent: like kissing an ashtray

Luke: if u don't like it i won't

The Respondent: i'd paddle you for it if you were my kid or my bf

Luke: LOL

The Respondent: don't think you'd be laughing

Luke: u into that kinky shyt

The Respondent: that's about as kinky as I get

¹ Board Ex. 4. All quotes in this section of the findings are from this exhibit, unless otherwise noted. The misspellings and incorrect capitalization and punctuation are in the original.

15. At 11:50 a.m., the Respondent asked Luke what he likes sexually, what would get him hot, if he had ever been spanked, and if he would like to spank a dad.
16. At 11:53 a.m., Luke stated that he had to go and this exchange ended.
17. At 2:26 p.m. on August 14th, Luke resumed the conversation with the Respondent. They discussed the Respondent being an Emergency Room doctor, and that Luke wanted to be an actor. At 2:29, the Respondent asked Luke when he will be fifteen and Luke replied that he just turned fourteen and had wanted but did not get a cell phone.
18. At 2:32 p.m., Luke stated that when his dad leaves "it is party central." The Respondent asked where was his mother, to which Luke replied St. Louis. The Respondent then asked who watched him when his father was away and Luke stated no one and that he was left alone all the time.
19. At 2:37 p.m., the Respondent asked Luke what grade in school he would be in the upcoming school year. Luke replied he would be a freshman, in ninth grade. The Respondent then asked him about his grades and Luke said they were good. They discussed Luke's desire to be an actor and that his father was a lobbyist.
20. At 2:40 p.m., the Respondent asked Luke if his father knew that he liked guys. Luke said that his father did not know he was there. The Respondent then said, "sounds like you need a hug badly." Luke replied that he was fine. The Respondent added, "hugs are nice though dude" and asked if his father ever spent any time with him. Luke replied that his father had a girlfriend who lived in Cape May.
21. At 2:44 p.m., the Respondent asked Luke if he had any brothers or sisters and Luke said he had a sister in St. Louis. The Respondent said, "so you're all by yourself wed to sat?" Luke replied

yes. The Respondent then asked Luke if he had ever seen live theater or gone out to dinner.

Luke stated that he has been out to dinner with his dad and senators and their wives and kids but that he is not allowed to talk unless someone asks him a question, and he has to dress up. The Respondent stated that he would not have to dress up for him. The Respondent then asked Luke what he would like to do, to which Luke replied that he would like to go to Washington D.C. and go to "that big museum."

22. At 2:54 p.m., the Respondent stated that he needed to go for a while and asked if Luke would be there later. Luke asked the Respondent if he could call him. The Respondent said he could later. Then, this exchange ended.

23. At 7:38 p.m., the Respondent resumed the conversation with Luke, as follows:

The Respondent: hi

Luke: i was freakin you did not like me

The Respondent: i like you a lot Luke

Luke: i like u lots u got class not like all sex and use me shy

The Respondent: i'd like very much to be your friend. I don't think I even want to have sex with you until you're old enough for us to both not get in trouble over it. Lots more to friendship then sex for sure.

Luke: i would not tell i done it be4

The Respondent: once we know each other well, whatever happens happens -- but I won't meet you for sex

Luke: wow ur nice

The Respondent: Yeah, I am. And you need a friend who won't take advantage of you. And I'd like having you for a friend.

Luke: can we make out?

The Respondent: after we know each other, whatever would happen would happen. I'm not saying no. I'm saying that is not the reason I would meet you.

Luke: thats not sex

The Respondent: I'd like to take you to the Smithsonian which is actually a bunch of museums

...

The Respondent: how close are you to metro?

Luke: its far gotta take a bus

The Respondent: would the maid drop you at the metro?

Luke: nope not for no reason not allowed to go to DC less dad or her goes

The Respondent: which museum are you most interested in?

Luke: smithsonian

The Respondent: Smithsonian is actually 14 different museums in different buildings

Luke: i can walk

The Respondent: and you know your dad –I've never met him. But if you think he'd let me take you to the museums if he met me, I wouldn't have a problem with that – just tell him we met talking about museums or something and not where we met

Luke: nope hed freak

The Respondent: then the choices are to be friends online or for you to get somewhere we can meet without him knowing

Luke: i can do that he is never here

24. The Respondent and Luke continued to discuss which museum Luke would like to visit and

Luke's interest in history.

25. Beginning at 8:23 p.m., the Respondent and Luke had the following exchange:

The Respondent: what would you like to talk about?

Luke: u being my bf like for real like all the time

The Respondent: what would your want us to do?

Luke: be bf's

The Respondent: how?

Luke: like u love me and i love yu then no one hurts me no more

The Respondent: I'd like for you to never be hurt again at least not more than a swat on the butt when it's deserved

Luke: i swear i wont be bad

The Respondent: everybody is sometimes – even me but way rather cover you with hugs and kisses

Luke: u want 2 hit me?

The Respondent: no i want to cuddle you and make you feel safe and loved and cared about

Luke: i want that

The Respondent: you'll have it sounds like you've had more than enough bad things so far

26. At 8:31 p.m., Luke said that he had to go but asked if he could call the Respondent later and the

Respondent gave Luke his cell phone number. The exchange ended at 8:38 p.m.

27. On August 15, 2005, at 8:18 p.m.,² the Respondent contacted Luke via instant messaging. Luke noted that the Respondent did not answer his phone. The Respondent said he could call now.
28. At 8:22 p.m., Del Harvey, a verifier for Perverted Justice, called the Respondent's cell phone. As a verifier, Del Harvey calls individuals who have been engaged in on-line conversations with Perverted Justice volunteers to verify their identity. She imitates the voice of pre-teen and young teenage boys and girls. The phone call lasted three minutes.
29. At 8:24 p.m., the Respondent sent Luke an instant message saying that he liked his voice. Luke replied that he hated his voice and thought he sounded like a girl. The Respondent said no, his voice sounded like that of a young man whose voice was changing.
30. The Respondent and Luke discussed looking at each other's pictures, Luke's favorite food – chili cheese fries with ketchup – and Luke's swim practice.
31. At 8:38 p.m., the Respondent stated that he was going to a movie with his son and would talk to Luke later. They then had the following exchange:

The Respondent: he's 26
Luke: like a real kid?
The Respondent: yeah – i'm divorced
Luke: he gay?
The Respondent: no
Luke: im freaked
The Respondent: but he knows i am. Why are you freaked?
Luke: like if we are bf i don't get it
The Respondent: what don't you get?
Luke: what he say? is he hot?
The Respondent: i'm hotter
Luke: ur pic is way hot
The Respondent: it's how I look
Luke: this real? i mean like real
The Respondent: yes, real

² Board Ex. # 4 shows the time as 7:18 p.m.; however, the Respondent's cell phone records show he received a call at 8:22 p.m. on August 15, 2005. In addition, Del Harvey testified that she made the call around 8:30 p.m. While I note the time discrepancy, I do not find it to be material to the content or sequence of the instant message conversations.

Luke: like lots of guys say shyt to me but then just use me
 The Respondent: telling you the truth and i've already told you i not only won't use you, but won't meet you for sex at all
 Luke: u really really really want to be bf's? forever like ever?
 The Respondent: forever is a long time – i'd like us to meet – if we get along, then i'd like us to be friends forever
 Luke: i got friends
 The Respondent: and as to sex, if that happens out of the rest of the relationship, ok but it's not why I would meet you
 Luke: well some
 The Respondent: special friends, ok?
 Luke: whats that?
 The Respondent: not just friends i think we should probably spend some time together before we decide to be bfs forever if that's not ok, i'm sorry. But I won't lie to you, and I won't lead you on
 Luke: no i promise i like you lots
 The Respondent: and i like you lots.
 Luke: u like know me
 The Respondent: we just met yesterday luke
 Luke: and i can go to stuff and be like classy
 The Respondent: i know you're classy right now, i've gtg – talk to you later *kiss*

The exchange ended at 8:48 p.m.

32. On August 16, 2005, at 1:57 p.m., the Respondent contacted Luke via instant messaging. He asked Luke if he was still freaking about him having a son. Luke replied no but noted the son was older than he was. Luke then says that his father was leaving the following day and the Respondent asked him if he had any plans. When Luke replied no, the Respondent asked him where he went to get chili cheese fries. Luke asked if the Respondent was going to take him there and the Respondent said maybe Thursday. Luke told the Respondent that the maid would pick him up from swim practice at 1:30, take him home, and leave. The Respondent stated that he would be horseback riding earlier that day and would probably smell like a horse. Luke said that he could shower at his house. The following conversation ensued:

The Respondent: meeting you to take you to lunch not to shower with you
 Luke: no was sayin u can use it
 The Respondent: thanks

Luke: so this ain't a date?

The Respondent: a first date. to meet each other. not planning on anything more happening.

Luke: so frys and byes

The Respondent: let's see what happens

Luke: that's kewl i could smoke ha ha

The Respondent: no unless you want to be spanked for real

Luke: ur no fun

The Respondent: i'm a doctor – i see what cigarettes do to people every day – not gonna let it willingly happen to somebody I care a lot about

Luke: it not like all the time

The Respondent: it's really bad for you – and i don't like kissing ashtrays

Luke: k i promise i wont

The Respondent: what do you want to do after we eat?

Luke: kiss

The Respondent: that could be very nice

Luke: and i dont got no smokes rite now so wont smell

The Respondent: excellent

The Respondent then asked Luke where his house was located.

33. Sometime thereafter, the Respondent and Luke arranged to meet on August 18, 2005 at 2:00 p.m. at Luke's house in Herndon. Luke gave the Respondent the information where to meet him.

34. On August 18, 2005, sometime after 1:10 p.m., the Respondent arrived in the Herndon neighborhood where Luke told him he lived.

35. On August 18th around 2:20 p.m., the Respondent started to leave the area.

36. On August 18th, at 2:22 and 2:24 p.m., Del Harvey called the Respondent on his cell phone because he had not arrived at Luke's house. The first call lost reception. During the second call the Respondent said he was on his way.

37. On August 18th, sometime after 2:46 p.m., the Respondent arrived at the agreed location.

38. The Respondent entered the house through the garage, as Luke had told him to do.

39. Del Harvey, playing Luke, was in another room and called to the Respondent that he was upstairs changing his shorts because he had spilled something on them.
40. The Respondent crossed the kitchen, stepped over a low baby/pet gate and headed toward the stairs. As he was walking toward the stairs, the Respondent said, "I can come up if you want."³
41. At that moment, Chris Hansen of Dateline NBC approached the Respondent and asked him what he was doing there. The Respondent explained that Luke was anxious to have some company because he was left alone for four days and seemed neglected. He stated that he came to take Luke out to lunch. He said that he had never visited a teenage boy in his life. Once the television cameras appeared, the Respondent said he had nothing to say and left.
42. The Dateline NBC episode featuring the Respondent, among others who attempted to meet with twelve to fourteen-year-old boys and girls, aired on November 4, 2005.

Prescription Drugs

43. On January 31, 2004, the Respondent and Dr. Vaidyanathan, another physician on staff at Easton Memorial Hospital, entered the nurses' station in the Emergency Department. Dr. Vaidyanathan explained to the Respondent that earlier in the day she was taking her brother to the airport when he had a panic attack. She explained further that she took her brother to the emergency room in Newark, Delaware where he was given a prescription for Xanax, but that they were unable to fill the prescription in Easton because it was evening and all the pharmacies were closed. Dr. Vaidyanathan asked the Respondent if he could give her brother two Xanax until her brother could fill the prescription the following day.
44. The Respondent asked Val Lauriska, R.N., Emergency Department, to remove two Xanax from the Pyxis System. When Ms. Lauriska asked how to do that, the Respondent told her to enter a

³ Board Ex. # 5.

request for the Xanax into the Pyxis System under the name of another patient, retrieve the drug, and then mark the drug as wasted. The Respondent also told Ms. Lauriska not to tell anyone how she did this.

45. Ms. Lauriska obtained the Xanax from the Pyxis System as instructed by the Respondent. She then immediately notified the charge nurse, Vernon Usilton, of what had occurred. He, in turn, notified Debra Pumphry, Nurse Supervisor.

46. On March 16, 2004, Thomas Chiccone, M.D., completed a peer review of the January Xanax incident. Dr. Chiccone, along with Dr. Brian Brown and Richard Staiman, Vice President, Medical Affairs, determined that the Respondent's behavior was less than optimal. They also concluded that the Respondent did not intend to divert a controlled substance for personal use or an illicit end.

47. The Respondent's actions during the January Xanax incident constitute unprofessional conduct in the practice of medicine, willfully filing a false report or record in the practice of medicine, and fraudulently and deceptively using a medical license.

48. In September 2003, the Respondent wrote Shawn Brady a prescription for thirty 5/325 tablets of Oxycodone with acetaminophen. On September 28, 2003, Mr. Brady had the prescription filled at a CVS Pharmacy.

49. In August 2005, the Respondent wrote Mr. Brady two prescriptions for .5 MG tablets of Alprazolam; each prescription was for ten tablets. Mr. Brady had the prescriptions filled at a CVS Pharmacy on August 20 and 26, 2005, respectively.

50. In September 2005, the Respondent wrote Mr. Brady two prescriptions: one for twenty-eight 350 MG tablets of Carisoprodol and another for thirty 5/750 tablets of Hydrocodone with

acetaminophen. Mr. Brady had the prescriptions filled at a CVS Pharmacy on September 19, 2005.

51. Mr. Brady was living with the Respondent at the time the prescriptions were written.
52. The Respondent's actions in prescribing medication to Mr. Brady in the above circumstances constitute unprofessional conduct in the practice of medicine.

Language/Behavior with Patients and Staff

53. On July 18 and 21, 2002, a patient came to the Emergency Department complaining of pain and the inability to have a bowel movement for over a week. The Respondent told the patient to not come to the emergency room anymore, that she was wasting the Respondent's time, and "I don't care if you complain about me. I'm not losing my license over you."⁴ A peer review concluded that the Respondent's behavior represented a difficulty with communication.
54. On March 22 or 23, 2003, the Respondent forcefully intubated a patient who had an overdose involving alcohol and Valium, breaking the tube in the process. The patient started vomiting and the Respondent commented, "yeah, fine specimen of a mother isn't she."⁵ A peer review concluded the Respondent's behavior was less than optimal and counseled him regarding the zero tolerance policy for abusive or inappropriate language or behavior toward patients and staff.
55. On March 8, 2004, a patient came to the Emergency Department asking that an open fracture on his index finger be rechecked. The patient had been seen three days earlier and was advised to see an orthopedist, which he did not do. The Respondent stated: "I don't know what you want me to do. I'm just going to look at it and tell you it's a finger."⁶ A peer review concluded that

⁴ Board Ex. # 31.

⁵ *Id.*

⁶ *Id.*

the Respondent's statements represented a difficulty with communication caused by the Respondent's judgment and behavior.

56. On July 6, 2004, three families left the Emergency Department at Easton Memorial Hospital to seek care elsewhere. A patient's mother saw the Respondent playing a video game on a computer while there were patients waiting for care. Her child had fallen from a hammock onto metal and the Respondent told her: "You'd be wasting my time and yours to be doing an x-ray."⁷ A peer review concluded that the Respondent's behavior represented a difficulty with communication.

57. The Respondent's statements and behavior toward patients in the above described incidents constitute unprofessional conduct in the practice of medicine.

58. On multiple occasions, the Respondent discussed his ex-wife using derogatory terms, such as bitch and psycho bitch, in the presence of patients and hospital staff while at the hospital.

59. The Respondent's derogatory statements regarding his ex-wife in the presence of patients and hospital staff constitute unprofessional conduct in the practice of medicine.

DISCUSSION

The Board has charged the Respondent with violating the following subparagraphs of section 14-404(a) of the Health Occupations Article:

(a) In general.--Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

- . . .
- (2) Fraudulently or deceptively uses a license;
- (3) Is guilty of immoral or unprofessional conduct in the practice of medicine;
- . . .

⁷ *Id.*

(11) Willfully makes or files a false report or record in the practice of medicine.

Md. Code Ann., Health Occ. §.14-404(a)(2), (3), (11) (2005).

The Board asserts that the Respondent is guilty of immoral or unprofessional conduct in the practice of medicine by engaging in sexual conversations with an individual he believed to be fourteen-years-old and arranging to meet that individual alone. The Board contends the Respondent's actions were in the practice of medicine because during the instant message conversations the Respondent identified himself as a doctor and gave medical advice, specifically, that smoking is bad for you. The Board admits that a non-professional could give the same advice but maintains that this advice has more impact coming from a doctor. Also, the Board alleges that the Respondent sexualized his medical advice by saying he did not like kissing ashtrays. The Board notes that the Respondent explained his actions to the Board by claiming that he believed Luke was a child at risk and that he made this assessment by using his professional background. In addition, the Board argues that the Respondent engaged in unprofessional conduct when making derogatory remarks about his ex-wife in front of patients and staff and when making inappropriate comments to or about patients. The Board contends that the Respondent engaged in unprofessional conduct, fraudulently and deceptively used his license, and willfully made a false report or record when he directed a nurse to obtain Xanax from the Pyxis System under another patient's name. The Board alleges that the Respondent engaged in unprofessional conduct when he prescribed medication to Shawn Brady in non-emergency situations. The Board asserts that the Respondent's license to practice medicine should be revoked in order to protect the public.

The Respondent maintains that there are problems with the reliability of the instant message chat logs. The Respondent argues that initially he thought he was role playing with an adult in the chat room but that when he began to suspect he was talking with a child he became concerned for

the child's safety. He notes his considerable history of helping others. The Respondent contends that his actions were not in the practice of medicine and that there was no doctor-patient relationship established. He asserts that discussing smoking does not constitute the practice of medicine. He argues that the instances of disruptive behavior at Easton Memorial Hospital were addressed by the facility's administration, he was referred to MedChi, and his conduct improved. He maintains that when he provided Xanax to Dr. Vaidyanathan's brother he did so with excellent motives and notes that the facility administration reprimanded him for doing so. He asserts that the prescriptions he wrote for Mr. Brady were medically appropriate and notes the urgent circumstances. He describes his relationship with Mr. Brady as like that of father and son.

Communications with Luke

The Board's charges and sanction of revocation in this case are primarily based upon the Respondent's instant message conversations with an individual he believed to be fourteen-years-old and his attempt to meet the teenager alone at his home. The Respondent's visit to what he thought was Luke's home resulted in the Respondent's appearance on Dateline NBC on a program featuring individuals who met purported twelve to fourteen-year-old boys and girls on the internet and then attempted to meet them in person alone. In the course of its investigation, the Board asked the Respondent for his explanation. The Respondent wrote a three page letter in which he explained that he was in a gay themed chat room on the internet and during the initial conversation believed that he was talking to a role playing adult "because his language usage was not typical of teens with whom I interacted regularly as a professional." Board Ex. # 6. He explained further that as their conversation continued he began to believe that he was talking to someone underage and that "the tone of the conversation most definitely changed from roleplay/fantasy to adult mentoring." *Id.* The Respondent continued:

This child appeared to be neglected, left alone for days at a time by his custodial parent, with a maid coming in for only a few hours a day. He stated he was lonely. Given his stated sexual history, I felt the "child" was clearly at risk. All too often I have seen the consequences of sexual acting out in teens in a professional capacity. I felt this "child" needed someone to talk to; although I did not respond to his attempts to steer the conversation in a sexual direction, I didn't outright rebuff him either, because I didn't want to offend him. He pushed several times to be allowed to telephone me, and I finally gave him my cell phone number and allowed "him" to call. There was nothing inappropriate said in that telephone call. I never asked the "child" for his number or address or any other personal information. He volunteered that "his" name was "Luke." I gave my real first name. I wasn't doing anything wrong, and I have never hidden on the internet.

"Luke" talked about a restaurant that served chili cheese fries that he was particularly fond of. He indicated that he was lonely and hungry. I offered to take him to lunch. I was very specific that it was to be "just lunch." My thinking was that I wanted to see for myself whether this "child" was being neglected before calling Children's Protective Service. My reasoning was that a) I didn't know whether this was actually a child, b) I didn't have a last name or address for this "child," and c) even if this were a real child, if he was clearly well taken care of, I would not wish to either waste Children's Services time or subject a good family to investigation by Children's Services were the situation not what "Luke" indicated it was in what I had initially believed was a fantasy chat.

Id. The Respondent stated that on the day they had arranged to meet he had second thoughts. He wrote: "Although I remained extremely concerned about this 'child' who I thought was being neglected, I felt the risk of walking into an unknown situation was too great, and ultimately, that it was not my duty to get personally involved." *Id.* He stated that he planned to go home and notify children's services but that Luke called his cell phone and "begged" him to take him to lunch and that "he was so insistent, and seemed so needy, that I relented." *Id.*

In order to uphold the charges regarding Luke, I must find that the Respondent engaged in immoral or unprofessional conduct in the practice of medicine. The Maryland courts have defined the meaning of the phrase "in the practice of medicine" in the context of section 14-404(a). In *Finucan v. Maryland Board of Physician Quality Assurance*, 380 Md. 577, 596-597 (2004), the Maryland Court of Appeals reviewed its rulings addressing the phrase as follows.

In *McDonnell v. Commission on Medical Discipline*, 301 Md. 426, 483 A.2d 76 (1984), we first considered what "in the practice of medicine" meant in the context of § 14-404(a)(3). We were asked to determine whether a physician who attempted to intimidate witnesses scheduled to testify against him in a medical malpractice action could be disciplined for "[i]mmoral conduct of a physician in his practice as a physician," under Md.Code Ann. (1957, 1980 Repl.Vol.), Art. 43, § 130(h)(8), the predecessor to § 14-404(a)(3). *McDonnell*, 301 Md. at 428, 483 A.2d at 76. We resolved that Dr. McDonnell's conduct, although "improper and not to be condoned," did not occur "in his practice as a physician." 301 Md. at 434, 483 A.2d at 80. We reasoned that the meaning of the phrase "practice as a physician" was limited "to matters pertaining essentially to the diagnosis, care or treatment of patients." 301 Md. at 436, 483 A.2d at 80. We agreed with Dr. McDonnell's concession, however, that the classic illustration of "immoral conduct of a physician in his practice as a physician" is the commission of a sex act on a patient, while the patient is under the doctor's care." 301 Md. at 436 n. 5, 483 A.2d at 80 n. 5.

In *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 72-73, 729 A.2d 376, 383 (1999), we most recently examined the phrase "in the practice of medicine" in § 14-404(a)(3). In *Banks*, we rejected the argument that *McDonnell* should be read as precluding a physician from being sanctioned under the statute for committing acts of sexual harassment against colleagues in the workplace. *Id.* Dr. Bank's conduct included his unwelcome sexual comments and inappropriate touching, squeezing, and pinching of the anatomy of various female employees who worked at a hospital. 354 Md. at 62-64, 729 A.2d at 378. We rejected Dr. Banks's argument that "a physician may only be sanctioned under § 14-404(a)(3) if he or she is in the immediate process of diagnosing, evaluating, examining or treating a patient and engaged in a non-clerical task." 354 Md. at 73, 729 A.2d at 383. Such an "approach so narrowly construes § 14-404(a)(3) that it would lead to unreasonable results and render the statute inadequate to deal with many situations which may arise." *Id.* Rather, Dr. Bank's conduct was a threat to patients and was, thus, "in the practice of medicine." We stated that

The Board of Physician Quality Assurance is particularly well-qualified to decide, in a hospital setting, whether specified misconduct by a hospital physician is sufficiently intertwined with patient care to constitute misconduct in the practice of medicine. In light of the deference which a reviewing court should give to the Board's interpretation and application of the statute which the Board administers, we believe that the Board's decision in this case was warranted. When a hospital physician, while on duty, in the working areas of the hospital, sexually harasses other hospital employees who are attempting to perform their jobs, the Board can justifiably conclude that the physician is guilty of immoral or unprofessional conduct in the practice of medicine.

354 Md. at 76-77, 729 A.2d at 385.

McDonnell and *Banks* are persuasive authorities in the present case. Although not a holding in *McDonnell*, we agreed with the principle that a physician acts in the practice of medicine by committing a sex act on a patient "under the doctor's care." *McDonnell*, 301 Md. at 436 n. 5, 483 A.2d at 80 n. 5. Moreover, *Banks* indicates that if the physician's misconduct relates to the effective delivery of patient care, the misconduct occurs in the practice of medicine. *Banks*, 354 Md. at 74, 729 A.2d at 384.

In *Finucan*, the Court of Appeals found that "Finucan used the physician-patient relationship for purposes of facilitating the engagement of current patients in sexual activities." *Finucan*, 380 Md. at 603. He "exploited his knowledge of [several current female] patients and their families for his own personal gratification, using his medical practice as a springboard, then as a cover, for his sexual adventures, to the detriment of his patients." *Id.* at 599. The court concluded:

In each episode, Finucan had, or reasonably could be perceived to have, a vested personal interest in his choice of treatment for his patients. His recommendations for medical care in some instances appear to have been based solely on his own interests. His creation of these irreconcilable conflicts of interest compromised his professional relationships with these patients and their families. Finucan's creation of these dual relationships thus was connected with his medical practice and was "in the practice of medicine."

Id. at 600.

As the above cases make clear, immoral or unprofessional conduct alone is not grounds for disciplinary action. Rather, the conduct must impact patient care. Thus, the Board's charges in this case involving Luke hinge upon the Respondent's explanation in his letter that he identified Luke as a child at risk based on his professional background and that the Respondent identified himself in the instant messages as a doctor and told Luke that smoking is bad for you.

The Board's expert's opinion that the Respondent's conduct with Luke was within the practice of medicine is internally inconsistent. In his report, Dr. Zolet opines that the Respondent's conduct was unprofessional because he claimed to be acting as a physician trying to protect a

vulnerable individual. Dr. Zolet notes this assumes the establishment of a physician-patient relationship but concedes that no such relationship was established by mutual agreement between the Respondent and Luke. Throughout his report and his testimony, Dr. Zolet explains how the Respondent's conversations with Luke violated the boundaries between doctor and patient, all while recognizing there was no doctor-patient relationship. Dr. Zolet testified:

[The Respondent's] perspective on this, the framework for this, the justification for this is all based on his functioning as a physician. I think that the failure to establish a physician/patient relationship that was mutually agreed upon, and the fact that he still acted as a physician in the absence of a physician/patient relationship is in concert with what I've been saying.

In other words, it's unprofessional to continue to act as a physician when, in fact, you've not established a physician/patient relationship because that's what drove the remainder of his actions. The actions were driven by a professional perception of identifying a vulnerable person, a child in need, someone at risk, the identification of which couldn't have been done without professional expertise.

Tr. at pp. 153-154.

The problem with Dr. Zolet's opinion is threefold. First, as I have noted, it is inconsistent to assert that a physician-patient relationship was violated while admitting there was no physician-patient relationship. Second, I question whether a physician-patient relationship can exist with, and whether one can practice medicine upon, a fictional patient. Third, and most importantly, Dr. Zolet's opinion rests on the assumption that the Respondent's justification for his actions is true. This I simply do not believe.

I have read the transcript of the Respondent's instant message conversations with Luke numerous times. What I see is the Respondent trying to make connections with Luke, sharing his own interests and asking Luke about his interests. Some of those interests are benign, such as the Respondent's interest in theater; some are not, such as his interest in spanking. The Respondent mentions spanking several times throughout the conversations, including the last conversation,

when he said he would spank Luke if he smoked. I also see the Respondent trying to arrange a meeting with Luke. The Respondent asks Luke if it would be okay if he asked him to dinner, asks if it were up to him what would he like to do, says he would like to take Luke to the Smithsonian, and asks Luke where he goes to get chili cheese fries. I do not see any evidence of role playing, nor do I see any shift in the conversation, as the Respondent claims. The Respondent initiated the instant message conversation with Luke, whose profile showed he was fourteen, at 11:19 a.m.; two minutes later the Respondent asked Luke how old he was. Luke responded he was fourteen, the Respondent said he was fifty, and they exchanged pictures. At 11:27 a.m., Luke told the Respondent: "ur hot for a old dude" and asked if he was rich. Board Ex. # 4. Luke then asked: "what you do for coin?" *Id.* At 11:35 a.m., Luke asked: "u gotta a cool pad?" *Id.* At 11:37 a.m., Luke noted the Respondent was not saying much and the Respondent replied because "ur only 14 and mostly interested in how rich i am and how cool my pad might be." *Id.* The first twenty minutes of their conversation was a simple exchange of information, including their ages, pictures, what the Respondent did for a living, and where they lived; the first mention of any sexual activity occurred at 11:39 a.m. In addition, I do not see any evidence that Luke's language in the first conversation is atypical of teenagers, contrary to the Respondent's assertion. It is evident to me that the Respondent was aware from the very beginning that he was talking to a fourteen-year old. Based on their conversations, I believe that the Respondent was trying to convince Luke that he was not going to use him for sex but wanted to develop an emotional connection with him first that could lead to a sexual relationship later.

Moreover, I did not find the Respondent to be a credible witness and his version of events cannot be reconciled with the other evidence produced at the hearing. For example, the Respondent testified that when he entered Luke's home he went toward the stairs to find a bathroom because "it

had been almost three hours since I had been to the bathroom, and [] I really wanted to wash my hands. I was still wearing my riding breeches. . . . All of the bathrooms in my house are upstairs. There was a question about whether Luke was changing, so, I asked whether I could come up.” Tr. pp. 480-481. However, a review of the video of the Respondent shows him wearing some sort of black leggings, not riding breeches. More importantly, the Respondent states “I can come up if you want” as he is about to ascend the stairs. Board Ex. # 5. He does not ask if he can come upstairs, nor does he pause to wait for an answer. Further, I note that stating “I can come up if you want” implies coming up the stairs to see Luke, not looking around for a bathroom.

The Respondent also testified that Luke said that “he was left alone for four days at a time” and that “he was hungry.” Tr. p. 471. The Respondent stated that his intention was to take Luke out to lunch for chili cheese fries and determine whether he should notify children’s services. The chat logs show that the Respondent asked Luke what kind of food he liked on August 15th. On August 16th, Luke stated that his father was leaving the next day. The Respondent then asked Luke where he went for chili cheese fries and Luke asked if the Respondent was going to take him to get chili cheese fries. The Respondent replied that he would, maybe on Thursday, a day he knew Luke’s father would be away. Luke and the Respondent then made plans to meet two days later, on August 18th, after the maid dropped him off after swim practice. Luke never said that he was hungry, the conversation in the chat log does not indicate Luke was left alone for days without access to food, and it was the Respondent who led the conversation to meeting to get chili cheese fries. In short, the Respondent arranged a date with Luke; he was not providing food to a hungry child.

In describing the sequence of events on August 18th, the Respondent explained: “I drive past the street where Luke lives and decide that this is really not a very good idea, and I’m going to

go home." Tr. p. 477. He testified further: "I decided it was not a good idea because the question is whether he was neglected or not. And the reason I'd been unable to report it previously is because I didn't have a name or place to report. Now, I do. If I go to this house, there's a possibility that things will be construed as something other than what they're meant to be." *Id.* It is clear from the Respondent's EZPass toll records that he did not simply drive by the street where Luke lived and then decide to leave. Rather, a significant amount of time elapsed, over an hour. The toll records show the Respondent exited the toll road near Herndon at 1:10 p.m. and that he entered the toll road leaving Herndon the first time at 2:23 p.m. The Respondent did not explain why he remained in the area so long before deciding to leave, although he stated it took him a little bit of time to get around Herndon because of road construction.

In addition, the Respondent was evasive throughout questioning by counsel for the Board and many of his answers were not directly responsive to the questions asked. Furthermore, it was revealed during cross examination that the Respondent was not completely candid with Dr. Lareau, his own expert, when he was asked questions about his sexual history during their interview. The Respondent failed to tell Dr. Lareau about a number of his previous sexual encounters involving men, some of whom he met on the internet and some of which involved spanking. The Respondent's explanation for failing to disclose these incidents was that he did not remember because they were meaningless. Also, there were several instances when the Respondent appeared to answer a question asked by his attorney but then it became apparent that he had answered a slightly different question. Considered in isolation, one might believe that the Respondent misunderstood the questions. However, I find that, when viewed in totality, the Respondent has demonstrated a pattern of providing the information he wishes to provide and omitting or minimizing information he wishes to conceal.

Based upon my findings that the Respondent is not a credible witness and that his testimony is not consistent with the other evidence of record, I conclude that the Respondent's explanation to the Board that he felt Luke was a child at risk and potentially neglected is false. Moreover, I find that the Respondent's explanation is implausible and inconsistent with the objective evidence. Thus, one of the Board's bases for concluding the Respondent's conduct was in the practice of medicine fails.

The other basis for the Board's conclusion that the Respondent was engaged in the practice of medicine was that the Respondent identified himself in the instant messages as a doctor and told Luke that smoking is bad for you. As detailed in the findings of fact, the Respondent admitted that he was an emergency room doctor, said kissing someone who smokes was "like kissing an ashtray," and stated "i'm a doctor - i see what cigarettes do to people every day - not gonna let it willingly happen to somebody I care a lot about. . . . it's really bad for you - and i don't like kissing ashtrays." Board Ex. # 4. These comments are the only comments the Respondent made about smoking. Dr. Zolet opined that the Respondent's statement "i'm a doctor - i see what cigarettes do to people every day" constituted the practice of medicine because it was "advice given under the auspices of being a physician." Tr. pp. 164-165.

In addition to the concerns I identified above regarding Dr. Zolet's recognition that no physician-patient relationship existed and whether one can practice medicine on a fictional patient, I am not convinced that the Respondent's statements regarding smoking constitute the practice of medicine. The Respondent did not describe, in even the simplest of terms, what cigarettes do to people. The sum total of his alleged medical advice was that smoking is bad for you. Such a broad, generalized statement is akin to stating that exercise or eating vegetables is good for you or eating too much junk food is bad for you. This is common knowledge and does not require medical

training. Also, Luke did not ask for the Respondent's advice about smoking. Moreover, the Respondent's primary concern seems to be the potential impact to him, namely that he did not want to kiss Luke if he had been smoking because he did not like the taste. Thus, the Respondent's statements constitute unsolicited, generalized remarks to a non-patient, who was also a fictional person. As such, I do not find that the Respondent's statements constitute the practice of medicine.

In sum, I conclude that the Respondent's instant message conversations with an individual he believed to be fourteen years old and his attempt to meet the teenager alone at his home, while immoral, did not occur in the practice of medicine. The facts of this case are distinct from the facts in *Banks*, 354 Md. 59, where the doctor's misconduct in a hospital had a direct impact on patient care, and *Finucan*, 380 Md. 577, where the doctor engaged in sexual activities with current patients. The Board has not produced any evidence to show that the Respondent's conduct involving Luke had any impact on patient care. Thus, I cannot uphold the charges with respect to Luke.

Prescription Drugs

On January 31, 2004, Dr. Vaidyanathan, a physician on staff at Easton Memorial Hospital, came to the Emergency Department with her brother. The Respondent was working at the time. Dr. Vaidyanathan explained to the Respondent that earlier in the day she was taking her brother to the airport when he had a panic attack, and she took her brother to the emergency room in Newark, Delaware where he was given a prescription for Xanax. Dr. Vaidyanathan explained further that they were unable to fill the prescription in Easton because it was evening and all the pharmacies were closed and asked the Respondent if he could give her brother two Xanax until her brother could fill the prescription the following day. The Respondent then asked a nurse to remove two Xanax from the Pyxis System, explaining that she should enter a request for the Xanax into the

Pyxis System under the name of another patient, retrieve the drug, and then mark the drug as wasted. The Respondent told the nurse not to tell anyone how she did this. The Board contends that the Respondent's actions constitute unprofessional conduct in the practice of medicine, fraudulent and deceptive use of his license, and willfully making a false report or record in the practice of medicine.

On March 16, 2004, Thomas Chiccone, M.D., completed a peer review of the January Xanax incident. Dr. Chiccone, along with Dr. Brian Brown and Richard Staiman, Vice President, Medical Affairs, determined that the Respondent's behavior was less than optimal but concluded that the Respondent did not intend to divert a controlled substance for personal use or an illicit end.

I agree with the Board. The Respondent was on duty at the hospital and he directed a nurse to circumvent the hospital's controls for dispensing controlled substances by falsely obtaining the drug under another patient's name. While I recognize a hospital peer review concluded that the Respondent did not divert the drug for personal use or an illicit end, that conclusion is relevant when considering the sanction to impose, not when determining whether the violation itself occurred. Thus, I conclude that the Respondent's actions during the January Xanax incident constitute unprofessional conduct in the practice of medicine, willfully filing a false report or record in the practice of medicine, and fraudulently and deceptively using a medical license.

The Board also alleges that the Respondent engaged in unprofessional conduct when he prescribed medication to Shawn Brady in non-emergency situations. The evidence shows that the Respondent prescribed medication to Mr. Brady on three occasions. In September 2003, the Respondent wrote Mr. Brady a prescription for thirty 5/325 tablets of Oxycodone with acetaminophen (also known as Percocet), a narcotic analgesic. In August 2005, the Respondent wrote Mr. Brady two prescriptions for .5 MG tablets of Alprazolam (also known as Xanax), an anti-

anxiety medication; each prescription was for ten tablets. In September 2005, the Respondent wrote Mr. Brady two prescriptions: one for twenty-eight 350 MG tablets of Carisoprodol and another for thirty 5/750 tablets of Hydrocodone with acetaminophen (also known as Vicodin), a muscle relaxant and a narcotic analgesic, respectively.

Dr. Zolet opined that the Respondent's prescriptions for Mr. Brady constituted unprofessional conduct in the practice of medicine. He explained that a doctor may only prescribe controlled substances to family members in emergency situations and noted that Mr. Brady was a household resident. Dr. Zolet testified that he believed that the Respondent prescribed the thirty tablets of Oxycodone with acetaminophen to Mr. Brady after he had his wisdom teeth removed. Dr. Zolet stated that wisdom teeth removal was a planned event and that the oral surgeon or dentist should have prescribed the necessary narcotic or analgesic. Dr. Zolet recognized that the Respondent could have prescribed such medication in an emergency overnight, for example, but stated that the amount of thirty tablets was excessive for such a situation. Dr. Zolet also testified that it was unprofessional for the Respondent to prescribe Xanax to Mr. Brady immediately following the Respondent's encounter with Dateline NBC because the Respondent himself was the cause of Mr. Brady's distress. Dr. Zolet was not questioned about the prescriptions for Carisoprodol and Hydrocodone with acetaminophen.

Section 8.19 of the Code of Medical Ethics of the American Medical Association states: "Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members." Resp. Ex. # 2. The plain language of section 8.19 does not address the situation in this case. Mr. Brady is not the Respondent's immediate family member, although the Respondent calls Mr. Brady his son and describes their relationship as that of father and son. However, the stated purpose of section 8.19 is to prevent

professional objectivity from being compromised and to ensure patient autonomy and informed consent. These concerns are relevant in the context of the Respondent's and Mr. Brady's intimate relationship. Thus, I find Dr. Zolet's opinion persuasive that it was unprofessional for the Respondent to prescribe controlled substances to Mr. Brady. Prescribing medication is clearly practicing medicine. Therefore, I conclude that the Respondent's actions in prescribing medication to Mr. Brady in this case constitute unprofessional conduct in the practice of medicine.

Language/Behavior with Patients and Staff

The Board argues that the Respondent engaged in unprofessional conduct when making inappropriate comments to or about patients and when making derogatory remarks about his ex-wife in front of patients and staff.

The Respondent's employment records at Easton Memorial show that he made inappropriate comments to or about patients on at least four occasions between 2002 and 2004, as detailed in the findings of fact above. Recorded interviews with nursing staff reveal that on multiple occasions the Respondent discussed his ex-wife using derogatory terms, such as bitch and psycho bitch, in the presence of patients and hospital staff while at the hospital. Although nursing staff did not give specifics as to where and when the Respondent made these statements, the Respondent admitted to "universally [referring to his ex-wife] as the psycho bitch from hell." Tr. p. 492. The Respondent also admitted to making such comments to staff at the nursing station, an area that is open and where comments could be heard by patients. Dr. Zolet opined that the Respondent's comments regarding patients and his ex-wife constituted unprofessional conduct in the practice of medicine. Dr. Chiccone testified that he received complaints from patients that the Respondent was discussing the details of his divorce with them. Dr. Chiccone stated that he spoke to the Respondent about his comments at the time he learned of the complaints.

Dr. Chiccone also testified that he received a complaint from one of the behavioral health practitioners at the hospital that the Respondent was giving his business card to young, male behavioral health patients. Dr. Chiccone testified that the behavioral health practitioner told him the following:

He's [the Respondent] giving his business card with a home phone number and cell phone number to say that sometimes when you're admitted to the hospital for a behavioral health problem you'll carry a stigma when you come out. Your family will ostracize you and whatnot. I want you to know always that there's somebody you can call if you need a place to live.

Tr. p. 68. Dr. Chiccone explained that he received this complaint just before the commercials aired promoting the Dateline NBC episode featuring the Respondent. Dr. Chiccone explained further that the first commercial aired on a Sunday evening and that on Thursday evening the Respondent was asked to stop working at Easton Memorial. As a result, Dr. Chiccone did not investigate the behavioral health complaint further.

The allegation that the Respondent was giving his personal phone numbers to young, male behavioral health patients and offering them a place to live is truly disturbing. However, there is no credible evidence in the record to substantiate this claim. While I find Dr. Chiccone to be a credible witness, his statement is simply an allegation based on hearsay with no corroborating facts to substantiate it. I have included this allegation in my decision for two reasons. First, because I find that there is no evidence to support this claim, I wish to be clear that I have not relied upon it in making my decision. Second, I question why the Board did not investigate this claim because, if true, the alleged conduct clearly occurred in the practice of medicine.

Therefore, I conclude that the Respondent's statements and behavior toward patients in the incidents described in the findings of fact constitute unprofessional conduct in the practice of medicine. In addition, I conclude that the Respondent's derogatory statements regarding his ex-wife

in the presence of patients and hospital staff constitute unprofessional conduct in the practice of medicine.

Sanction

The Board asserts that the Respondent's license to practice medicine should be revoked in order to protect the public. The Respondent requests that the summary suspension be lifted and his license be returned to him. He agrees to have his license restricted with conditions. He also agrees to attend treatment.

Dr. Zolet begins his report by stating: "The centerpiece of the charges is the internet correspondence and telephone communication with a person thought by [the Respondent] to be a 14-year old male." Board Ex. 26. He concludes his report as follows:

Putting the sentinel event of August 2005 aside, it could be argued that each of these other incidents, if considered in isolation, may warrant disciplinary action of a lesser degree than license revocation. However, when all of the incidents documented over a three year period are considered in toto, they describe a pervasive pattern of unprofessional conduct in the practice of medicine. When considered along with the behavior exhibited in his interactions with "Luke" in August 2005, there is convincing evidence that [the Respondent's] behavior violates the ethical standards of the profession and of the Maryland Medical Practice Act to a degree that warrants license revocation.

Id.

The difficulty for me in determining whether revocation is the appropriate sanction in this case stems from my conclusion that the Respondent's actions regarding Luke did not occur in the practice of medicine. It appears to me that, but for the events involving Luke, the Board would not be seeking revocation. Dr. Zolet acknowledges that the other incidents, when considered in isolation, may warrant lesser disciplinary action. However, neither Dr. Zolet nor the Board stated what that lesser disciplinary action would be. Dr. Zolet concludes that the other incidents, when considered in toto, constitute "a pervasive pattern of unprofessional conduct in the practice of

medicine.” *Id.* However, Dr. Zolet clearly states that he considered this pattern of behavior along with the Respondent’s behavior regarding Luke in making his recommendation for revocation.

On the other hand, when I consider all of the evidence of record, I have before me an individual with a history of making decisions and taking actions that show, at a minimum, very poor judgment. In particular, the psychological evidence regarding the Respondent is deeply concerning, although much of it is not directly related to the specific charges filed by the Board. In addition, the Respondent has a history of denying or minimizing his responsibility for events and continually perceives himself as a blameless victim. Moreover, the Respondent has shown he is willing to omit, change, or minimize facts when it is in his interest to do so. As a result, I have serious concerns about the Respondent’s resumption of the practice of medicine.

The problem I face is that the charges and revocation in this case are based primarily on a series of events that did not occur in the practice of medicine. In the states that have already suspended or revoked the Respondent’s license based upon the Luke incident, the standards in those states do not require the doctor’s actions to occur in the practice of medicine. In considering the charges I have upheld as well as my other concerns regarding the Respondent, I believe the appropriate sanction in this case is to suspend the Respondent’s license indefinitely pending his active participation in an intensive counseling program. The Respondent’s treating psychiatrist and/or psychologist should report regularly to the Board regarding his progress and the Board should lift the suspension if and when it feels the Respondent is able to resume the practice of medicine. In addition, the Respondent should be prohibited from writing prescriptions for Mr. Brady, as well as any other individuals who are not patients in his professional care. I recognize that my decision in this case is proposed and that the Board has the final authority to uphold,

modify, or reverse my decision. It is quite possible that the Board will disagree with my proposed sanction.

CONCLUSIONS OF LAW

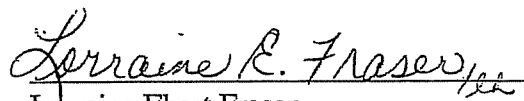
Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated section 14-404(a)(2), (3), (11) (2005). I further conclude that, as a result, the Board may discipline the Respondent. Md. Code Ann., Health Occ. § 14-404(a) (2005).

PROPOSED DISPOSITION

I **PROPOSE** that the charges filed by the Board on September 18, 2006 against the Respondent be **UPHELD** in part and **DISMISSED** in part. Specifically, all of the charges regarding prescription drugs and the charges regarding the Respondent's language and behavior with patients and staff should be **UPHELD**. The charges regarding the Respondent's instant message conversations with an individual he believed to be fourteen-years-old and his attempt to meet the teenager alone at his home should be **DISMISSED**.

I **PROPOSE** that the Respondent's license be suspended indefinitely pending his active participation in an intensive counseling program and a determination by the Board that he is able to resume the practice of medicine. I **PROPOSE** further that the Respondent should be prohibited from writing prescriptions for Mr. Brady, as well as any other individuals who are not patients in his professional care.

August 1, 2007
Date Decision Mailed


Lorraine Ebert Fraser
Administrative Law Judge

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NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions, in writing, to this Proposed Decision with the Board of Physicians within fifteen days of receipt of the decision. Md. Code Ann., State Gov't § 10-216 (2004) and COMAR 10.32.02.03F. The Office of Administrative Hearings is not a party to any review process.

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