

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

APR 30 2003

In the Matter of)
)
MAHER AYYASH, M.D.)
Applicant for Kansas License)
_____)

Docket No. 03-HA-01

KANSAS STATE BOARD OF
HEALING ARTS

FINAL ORDER

NOW ON THIS Twenty Sixth Day of April 2003, this matter comes before the Board for review of an Initial Order. Maher Ayyash, M.D. appears in person and through Tracie R. England, Attorney at Law. Kelli J. Benintendi, Associate Counsel, appears in person.

Having the agency record before it, and having heard the arguments of counsel, the Board adopts the findings, conclusions and order as stated in the Initial Order, and make the same the Final Order of the Board, as follows:

1. Applicant submitted an application to the Board seeking a license to practice medicine and surgery. There does not appear to be any disputed issue regarding Applicant's initial qualifications for licensure.

2. The Board filed an answer opposing the application, alleging that Applicant engaged in unprofessional or dishonorable conduct. The Board concludes that the burden is upon the Board to prove by clear and convincing evidence that Applicant engaged in the conduct as alleged. The clear and convincing standard refers to the quality of the evidence rather than the amount of the evidence. The evidence must be certain and not speculative or ambiguous, and it must be sufficiently persuasive so that it may be believed.

3. The incidents alleged by the Board's answer occurred while Applicant was engaged

in a psychiatric residency program through the University of Kansas School of Medicine-Wichita.

4. The Board alleges that Applicant inappropriately touched the breast of a female. The Board finds that the female, SH, was a staff member at the counseling and testing center where Applicant provided services as part of his residency program. SH had been given an article of clothing as a gift from two of her students, both of whom were from Pakistan. The article of clothing was of a style worn by women in the Middle East, and might be considered unique in this country. SH was wearing the top part of this clothing over other outer clothing in the office on June 29, 2001. SH was working at a computer in an open office area. At least three other coworkers were present with SH; one of these coworkers was also SH's husband. When Applicant entered the office area, he was invited to see the clothing. While discussing the clothing, Applicant touched the stitching by laying the open palm of his hand onto the cloth at the area of SH's breasts. SH felt slight pressure on her breasts where Applicant touched the clothing. Applicant had not asked SH for permission to touch her or her clothing in that area.

5. The Board finds that Applicant did not intend to touch SH's breasts; rather he was focused on touching the clothing. SH understandably misunderstood his intentions and was offended by his conduct. The Board concludes that Applicant's conduct does not constitute sexual abuse, misconduct or exploitation. However, Applicant's conduct does demonstrate a lack of awareness of personal boundaries. The Board notes that personal boundaries are especially important when a physician interacts with vulnerable patients in a psychiatric setting. The Board concludes that by touching SH's clothing at her breasts with disregard to SH's personal boundaries, Applicant engaged in conduct that is likely to harm the public.

6. The Board alleges a second incident occurred during Applicant's residency at UKSM-W in the Department of Psychiatry. A female, MI, was a student in the university's graduate nursing program. This student was a registered professional nurse working to obtain her nurse practitioner certificate in psychiatry. On September 20, 2001, MI participated in a medication examination with Applicant. After the patient had left the examination, Applicant and MI stayed in the examination room for discussion. The Board alleges that during that discussion Applicant made comments of a sexual nature that were not relevant to the patient appointment.

7. The Board notes that there is a dispute regarding what statements Applicant made during the discussion with MI. Applicant claims that MI misunderstood what was said, and that he personally never uses the words that MI claims he used. MI testified that at first she misunderstood what Applicant meant when he used these words. But MI further testified that she had no trouble in understanding what words Applicant used. The Board finds that MI's testimony is not speculative or ambiguous, and that her testimony was persuasive. MI's inability to restate all of the conversation verbatim does not diminish the credibility of her testimony.

8. The Board finds that in discussing female anatomy, Applicant used vulgar non-clinical terms. In attempting to discuss women's sexual issues, Applicant related his own sexual experiences, including his relationship with a Moroccan prostitute. Applicant described to MI that a possible intervention for a woman experiencing sexual aversion disorder is for the woman to have sex with more men. Applicant described a patient who was having problems initiating sex, and commented that she must be crazy if she thinks her husband is waiting around for her. MI was offended by the conversation and left the room.

9. The Board finds that the comments by themselves do not constitute sexual abuse,

misconduct or exploitation, but they are grounds for concern that Applicant might not be able to communicate with patients or with other health care providers with professional competency. It is foreseeable that using non-clinical terminology, relating one's own sexual experiences, and suggesting multiple sexual partners as therapy will confuse or harm patients.

10. The Board finds and concludes that Applicant engaged in conduct that, if repeated, is likely to harm the public. The Board may deny or otherwise discipline a license upon a finding of conduct likely to harm the public, as provided by K.S.A. 2002 Supp. 65-2837(b)(12). Applicant's conduct is especially noteworthy in light of Applicant's chosen practice specialty in psychiatry and his interest in women's health issues. As a practicing physician, the Presiding Officer was aware that patients must allow the physician to discuss matters or to touch the patient in a manner that the patient might not allow others to do as a matter of personal privacy. When a physician makes statements or touches a person in manner that crosses personal boundaries, the clinical purpose is not clear, and the patient can be expected to be embarrassed, to be confused about the nature of the relationship, or even to lose trust in the professional relationship. The public must be protected from this type of harm. The Board adopts this finding based upon the Presiding Officer's experience as a practicing physician.

11. In mitigation, the Board finds that Applicant has dedicated several years to his medical education, that there are no complaints regarding his technical skills, and that he has endured hardships along the way, including being displaced from his homeland unexpectedly. The Board further finds that if Applicant completes a Board approved continuing education program to assist him in recognizing and observing personal boundaries in professional medical practice, he should be granted a license to practice medicine and surgery. The Board approves the course *Maintaining*

Proper Boundaries, offered June 25-27, 2003 by Vanderbilt University Medical Center.

IT IS, THEREFORE, ORDERED that the application for a license to practice medicine and surgery by Maher Ayyash, M.D., is granted upon completion of the course *Maintaining Proper Boundaries*, offered June 25-27, 2003 by Vanderbilt University Medical Center.

IT IS FURTHER ORDERED that the parties should each bear their own costs.

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-610, et seq. Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon the Board's executive director at 235 S. Topeka Blvd., Topeka, KS 66603.

Dated this 30th Day of April 2003.

Kansas State Board of
Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 30th day of April 2003 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Don D. Gribble
Tracie R. England
200 West Douglas, Suite 600
Wichita, Kansas 67202

and a copy was hand-delivered to:

Stacy L. Cook
Litigation Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603


