

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F I L E D

AUG 22 2002

In the Matter of)
)
JOHN T. SCHROLL, M.D.)
Kansas License No. 4-17350)
_____)

Docket No. 02-HA-30

KANSAS STATE BOARD OF
HEALING ARTS

FINAL ORDER

NOW ON THIS Seventeenth Day of August 2002, this matter comes before the Board for review of the Initial Order issued July 11, 2002. Stacy L. Cook, Litigation Counsel, appears for Petitioner. Respondent John T. Schroll, M.D. appears in person and through Thomas E. Wright of Wright, Henson, Somers, Sebelius, Clark & Baker, LLP.

After hearing the arguments of counsel and the statement of Respondent, and having the record of the hearing before it, the Board adopts Paragraphs 1-17 of the Initial Order as the findings and conclusions of the Board. Those findings and conclusions are as follows:

1. Respondent is licensed to practice medicine and surgery in the State of Kansas. He is certified by the American Board of Obstetrics and Gynecology and practices in that specialty.
2. On December 6, 1999, Patient T.K. presented to Respondent's office. She had been referred to Respondent by her primary care physician to discuss mild dyspareunia symptoms.
3. During the examination and discussion that followed, Respondent made statements to Patient T.K. that caused the patient to file a written complaint with the Board. Respondent denies that he made these statements in the manner alleged. Patient T.K. testified regarding her visit to Respondent's office. The Presiding Officer finds her testimony clear and persuasive.

4. Respondent commented to Patient T.K. during the examination that she had beautiful eyes, and stated that after looking at "hips, butts, boobs and vaginas all day, it was the eyes that did it" for him. This statement was made while Respondent held the patient's hand.

5. Respondent and Patient T.K. discussed the physical examination in Respondent's office following the examination. Respondent recommended a hysterectomy. Respondent told Patient T.K. that after the surgery she would be able to have sex in every position and that her husband would enjoy it.

6. The Presiding Officer finds that Respondent did not intend to invite the patient into a sexual relationship by the comments or by holding her hand. Further, the Presiding Officer concludes that these comments and holding of the patient's hand do not constitute sexual abuse, misconduct or exploitation. But these comments were considered inappropriate by the patient. While some familiarity in communication between the physician and patient is acceptable, a patient does legitimately expect a physician to have a professional demeanor and a clinical level of communication with the patient, particularly when discussing the patient's anatomy or treatment. This is especially true in the relationship between a patient and an obstetrician. That relationship involves intimacy in the physical examination, and it involves discussion of private information about which the patient might be shy or embarrassed.

7. The Presiding Officer concludes that when Respondent used nonprofessional terms to refer to body parts, and when he told the patient what is personally attractive to him while holding her hand, Respondent should have realized that the patient would question whether the visit is a clinical experience for the patient or a personal experience for the physician.

8. The Presiding Officer further concludes that it was not inappropriate for Respondent

to tell the patient she could have intercourse in every position following a hysterectomy. But when Respondent added that the patient's husband would enjoy the sexual experience, he should realize that his statement creates confusion for the patient in understanding whether the procedure is for the patient's medical benefit or for her husband's enjoyment.

9. On November 8, 2001, Patient E.M. presented to Respondent's office for a postpartum visit. After the pelvic exam, Respondent and the patient were discussing birth control, and Respondent observed that Patient E.M.'s bra did not fit properly. The patient was wearing a shirt at the time. Respondent lifted the patient's shirt and adjusted the bra to tuck her breasts back into the bra. While he did touch the patient's breasts, Respondent did not fondle her breasts. These facts are not in dispute.

10. Respondent suggests that there was a medical purpose for adjusting the clothing of this patient. However, the precise medical purpose is not clear from the record, and the incident is not documented in the patient record.

11. A female medical student was present in the examination room with Patient E.M., and the student witnessed Respondent adjusting the patient's clothing. The student testified that she was surprised by Respondent's actions, and observed that the patient was also surprised.

12. Respondent did not ask Patient E.M. for permission to lift her shirt or to touch her clothing or her breasts, and he did not tell the patient in advance what he was doing. Respondent did comment while he was adjusting the bra that the bra did not fit correctly.

13. The Presiding Officer finds and concludes that when Respondent touched the breasts of Patient E.M. he did not do so for his own pleasure, or that he engaged in sexual abuse, misconduct or exploitation. However, the Presiding Officer does find that Respondent confused the

boundaries of the professional relationship by adjusting the patient's bra and touching the patient's breasts without first asking for the patient's permission to do so, or without explaining in advance the clinical nature of what he was about to do.

14. The Presiding Officer finds and concludes that Respondent failed to observe appropriate professional boundaries with two patients. Those failures include making inappropriate comments, even though possibly in jest, and in unauthorized touching. Dr. Bates's testimony emphasized the importance of those boundaries, and the result when the boundaries are violated. As a policy matter, the Presiding Officer finds that for the effective practice of medicine, a patient often must allow a physician to discuss matters or to touch the patient in a manner that the patient would not allow others to do as a matter of personal privacy. But when the physician makes statements or engages in conduct that crosses that personal boundary and the clinical purpose is not clear, 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. Patients must be protected from this type of harm.

15. In mitigation, Respondent did not engage in the conduct for his own sexual gratification.

16. The Board may issue a disciplinary order upon the finding that a licensee has engaged in unprofessional, incompetent, or dishonorable conduct. The Kansas Supreme Court has established that the Legislature did not intend an exhaustive list of actions that constitute unprofessional or dishonorable conduct when it enacted K.S.A. 65-2837. The Presiding Officer concludes boundary violations such as those committed by Respondent constitute unprofessional or dishonorable conduct.

17. Disciplinary action authorized by statute includes revocation, suspension, or limitation of a license, or censure or fine of a licensee. In light of the mitigating circumstances found above, the Presiding Officer orders that Respondent be fined \$1000, and that he pay the costs of the disciplinary proceeding.

The Board further finds as follows:

18. Based upon the hearing record as a whole, and based upon prior agency action involving Respondent's failure to observe a proper boundary between himself and a patient when he attempted to engage in a business transaction with that patient, the Board finds that Respondent's license should be limited with a requirement that Respondent attend a Board-approved course in professional boundaries. For purposes of this order, the Board hereby approves the program entitled Professional Renewal Medicine through Ethics, offered September 20-22, 2002 by the Robert Wood Johnson Medical School, University of Medicine and Dentistry of New Jersey.

19. The Board further concludes that the limitation imposed by this order does not reduce the scope of practice or the authority of Respondent to engage in the healing arts, and thus shall not be reported as a limitation upon Respondent's license. The Board further concludes that this order is an open public record.

20. The Board finds that Petitioner's motion for assessment of costs should be considered separately to allow Respondent time to file a written response. The motion shall be heard by Presiding Officer Emily Taylor, who is hereby authorized to issue a Final Order on that motion. Any party may seek reconsideration of that Final Order before the Board.

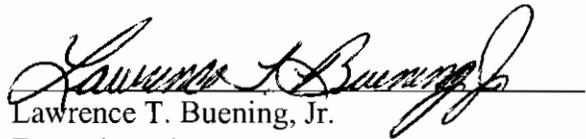
IT IS, THEREFORE, ORDERED that Respondent is fined \$1000, and that he pay the costs of the proceeding as allowed by statute.

IT IS FURTHER ORDERED that Respondent attend a course on professional boundaries as approved by the Board.

IT IS FURTHER ORDERED that Emily Taylor is appointed as Presiding Officer and authorized to issue a Final Order on Petitioner's motion for assessment of 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 22nd day of August 2002.


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing Order was served this 22nd day of August 2002 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Thomas E. Wright
Evelyn Z. Wilson
Wright, Henson, Somers, Sebelius, Clark & Baker, LLP
2nd Floor, 100 SE 9th Street
P.O. Box 3555
Topeka, Kansas 66601-3555

and a copy was hand-delivered to the office of:

Stacy L. Cook
Kelli J. Benintendi
235 S. Topeka Blvd.
Topeka, Kansas 66603