

MAINE STATE BOARD OF OSTEOPATHIC LICENSURE

IN RE: Licensure Disciplinary Action) INTERLOCUTORY
Paul Gosselin, D.O.) DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. §2591-A, *et seq.*, 5 M.R.S. §9051, *et seq.* and 10 M.R.S. §8001, *et seq.*, the Board of Osteopathic Licensure (Board) met in public session at the Board's offices located in Augusta, Maine on May 12, 2011 for the purpose of conducting an adjudicatory hearing to determine whether Dr. Paul Gosselin violated certain Board statutes and Rules as alleged in the Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Participating Board members were Chairman David Rydell, D.O., John Gaddis, D.O., Joseph R.D. deKay, D.O., Gary Palman, D.O., and public member Marty McIntyre.¹ Carrie Carney, Ass't. Attorney General, presented the State's case. Dr. Gosselin was present and represented by Eric Menhert, Esq. James E. Smith, Esq. served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding.

State's Exhibits A-E (pp. 1-27) were admitted into the Record.² The Board took administrative notice of its statutes and Rules. Subsequent to the parties' opening statements and submission of exhibits, the Board heard the testimony of K.B. and Det. Peter Lizanecz. The respondent rested following the State's case in chief. The Board then heard the parties' closing arguments and thereafter commenced deliberations which resulted in the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

¹ Lonnie Lauer, D.O., served as the Board's Case Reporter and did not actively participate as a Board member in this proceeding although did count as a member for purposes of establishing the quorum.

² Respondent filed 3 motions at this hearing which were argued on the record out of the presence of the Board. In brief, those were: Motion to Suppress, 2 Motions to Dismiss. All were denied by the presiding officer for reasons stated on the record.

II.

FINDINGS OF FACT

1. Paul Gosselin, D.O., 50 years of age, was first licensed in Massachusetts as an osteopathic physician and subsequently licensed in the State of Maine on July 15, 1999.

2. Dr. Gosselin currently practices his profession in Augusta, Maine.

3. In 1992, Dr. Gosselin met a woman, K.B., birthdate June 16, 1970.

At the time, he was a medical student and she was employed as a medical transcriptionist.

Sometime between 1992 and 1994, Dr. Gosselin and K.B. engaged in a "romantic" relationship which ended in June 1994 when he moved to Worchester, Massachusetts.

4. In July 1995, K.B., who was in a failing marriage and residing out of state, returned to Maine to visit her family and also visited Dr. Gosselin who was married.

5. K.B. then moved back to Maine in November 2005 and approximately one month later called Dr. Gosselin for a prescription.

6. Dr. Gosselin agreed to accept K.B. as his patient in December 2005.

7. From December 2005 until August 23, 2008, Dr. Gosselin was K.B.'s primary care physician.

8. In March 2006, Dr. Gosselin went to the residence of K.B. and told her he "loved her."

The relationship became "physical," "sexual," and lasted until February 2009.

9. Dr. Gosselin lived with K.B. in her home from the latter part of April or early May 2008 until he moved out on August 23, 2008. K.B. had hoped to marry him and that he would be a step-father for her 2 sons who loved him.

10. During the time that Dr. Gosselin treated K.B. and was in an intimate and sexual relationship with her, he prescribed various medications, including antibiotics, cough syrup, Xanax (Alprazolam), and Ambien. Most notably, in April and July 2008, Dr. Gosselin prescribed Hydrocodone to K.B.

11. K.B. continued periodically to receive telephone calls from Dr. Gosselin.

12. On June 19, 2010, at approximately 6:00 p.m., Dr. Gosselin drove to K.B.'s residence. While there, Dr. Gosselin appeared to be intoxicated. The respondent was not angry or hostile. Dr. Gosselin told K.B. that he still cared for her and produced a handgun, which she testified was intended for her protection from his wife who allegedly had made threats against K.B. He retained possession of the handgun. The law enforcement authorities were not contacted.

13. Dr. Gosselin phoned K.B. in the evening of June 21, 2010, and visited with her on her porch until his wife appeared and he quickly left the premises. That was K.B.'s last contact with Dr. Gosselin.

14. On July 13, 2010, Dr. Gosselin was notified by letter of the Board's decision to have him undergo a mental evaluation pursuant to 32 M.R.S. § 2593 by August 3, 2010.

15. Dr. Gosselin's prior attorney notified the Board that Dr. Gosselin would not be undergoing the evaluation, stating that Dr. Gosselin was "unwilling to absorb the expense for an evaluation that he (Dr. Gosselin) feels is unnecessary" but that "[If] the Board pays, Dr. Gosselin will happily submit to the evaluation."

16. The respondent produced no evidence regarding his financial situation.

III. CONCLUSIONS OF LAW

The Board, based on the above recited facts and those found in the record but not cited herein, concluded by the vote of 5-0 that Paul Gosselin, D.O. violated the following provisions of Board statutes and Rules.

I. Violation of 32 M.R.S. § 2591-A(2)(H) by violating a statute of the Board to wit: 32 M.R.S. § 2591-A(2)(F), unprofessional conduct, by violating a standard of professional behavior that has been established in the practice for which the licensee is licensed;

II. Violation of 32 M.R.S. § 2591-A(2)(H), by violating a Rule of the Board, to wit: Board Rule, Chapter 16 § 2, treating an immediate family member under circumstances not warranted by the rule. Pursuant to Chapter 16 § 1(5), "Immediate family members" are "spouse, significant other(s), child(ren), parent(s), person(s) living in the home of the physician or physician assistant, or others for whom the physician or physician assistant is legally responsible." The exceptions to Chapter 16 §2, which the Board concluded are not present in this matter, are as follow:

"Physicians may treat themselves or immediate family members, under the following circumstances:

A. Physicians may treat themselves or immediate family members in emergency situations when there are no other qualified physicians that are reasonably available to address the emergency.

- B. Physicians may treat themselves and immediate family members for acute problems.
- C. Physicians may treat their own chronic problems or those of immediate family members for a period no longer than two months when in an isolated setting or when regular care is not otherwise reasonably available and the delay involved in obtaining treatment from a routine or alternate source of medical care may result in an emergency or acute exacerbation of the chronic problem.
- D. Physicians may also treat themselves and family members for seasonal problems.

III. Violation of Board Rule, Chapter 10 § 1(3)(A) and (B), sexual misconduct by committing a sexual violation and/or sexual impropriety with a patient .

The rule reads, in part:

“There are two levels of sexual misconduct: sexual violation and sexual impropriety. Behavior listed in both levels may be the basis for disciplinary action.

A. ‘Sexual violation’ is any conduct by a physician/physician assistant with a patient that is sexual or may be reasonably interpreted as sexual, even when initiated by or consented to by a patient, including but not limited to:

1. sexual intercourse, genital to genital contact;
2. oral to genital contact;
3. oral to anal contact or genital to anal contact;
4. kissing in a sexual manner (e.g. – French kissing);
5. any touching of a body part for any purpose other than appropriate examination, treatment, or comfort, or where the patient has refused or has withdrawn consent;
6. encouraging the patient to masturbate in the presence of the physician/physician assistant or masturbation by the physician/physician assistant while the patient is present; and,
7. offering to provide practice-related services, such as drugs, in exchange for sexual favors.

B. "Sexual impropriety" is “behavior, gestures, or expressions by the physician/physician assistant that are seductive, sexually suggestive, or sexually demeaning to a patient, including but not limited to:

1. kissing;
2. disrobing, draping practices or touching of the patient’s clothing that reflect a lack of respect for the patient’s privacy; deliberately watching a patient dress or undress, instead of providing privacy for disrobing;

3. subjecting a patient to an examination in the presence of another when the physician/physician assistant has not obtained the verbal or written consent of the patient or when consent has been withdrawn;

4. examination or touching of genitals without the use of gloves;

5. inappropriate comments about or to the patient, including but not limited to making sexual comments about a patient's body or underclothing; making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation (homosexual, heterosexual, or bisexual); making comments about potential sexual performance during an examination or consultation (except when the examination or consultation is pertinent to the issue of sexual function or dysfunction); requesting details of sexual history or sexual likes or dislikes when not clinically indicated;

6. using the physician/physician assistant-patient relationship to solicit a date or initiate romantic relationship;

7. initiation by the physician/physician assistant of conversation regarding the sexual problems, preferences, or fantasies of the physician/physician assistant; and,

8. examining the patient without verbal or written consent.”

IV. The Board further concluded by the same vote that Dr. Gosselin was in violation of 32 M.R.S. § 2593 since he had failed to undergo the Board ordered mental evaluation. That statute reads as follows:

For the purpose of this chapter, an osteopathic physician is, by so practicing, deemed to have given consent to a mental or physical examination when directed in writing by the board and to have waived all objections to the admissibility of the examining physician's testimony or examination on the grounds that it constitutes privileged communication. These examinations must be conducted by a qualified individual from a list of 5 provided by the board.

The Board predicated its directive to Dr. Gosselin requiring the mental evaluation in large part on his June 19, 2010 driving to and appearance at K.B.'s residence at which time he appeared to be intoxicated and produced a handgun.

IV.

SANCTIONS

The Board, during its deliberations in the sanction phase of this proceeding, considered in mitigation of more severe sanctions that Dr. Gosselin did not appear to be a predatory physician but rather had been engaged in a love affair of long duration with a consenting adult. However, the fact that K.B. appeared to initiate contact with him on occasion does not remove a physician's primary responsibility not to engage in a sexual relationship with his/her patient. Additionally, the evidence regarding Dr. Gosselin's prescribing of drugs to K.B. did not reveal an excessive pattern of prescribing or a criminal purpose. Therefore, based on the above conclusions and findings, the Board by the vote of 5-0 orders that:

1. Dr. Paul Gosselin shall receive a **WARNING** for the above violations.
2. Dr. Gosselin shall successfully complete by December 31, 2011 a course centered on "Professional Boundaries and Boundary Violations." The course shall be at his own expense and pre-approved by the Board's case reporter.
3. Dr. Gosselin, at his expense, shall comply with the Board's directive contained in its July 13, 2010 letter. The evaluator's report shall be filed with the Board by August 9, 2011. In addition, that report shall define for the Board what the analysis entailed, the provider's findings, impressions, and recommendations, particularly as they concern the need for counseling, mentoring, and monitoring. Dr. Gosselin shall also ensure that the provider has received prior to the evaluation a copy of this Interlocutory Decision and Order.

Dr. Gosselin should be prepared to discuss the provider's evaluation. The Board shall subsequently determine whether counseling, mentoring and/or monitoring or other therapy/education, etc. is in order following its receipt of the evaluation.

4. The Board reserves the right to postpone the issuance of a final decision until it is satisfied that Dr. Gosselin has successfully completed the above requirements and does not pose a threat of harm to the public. The Board further reserves the right to order additional sanctions in the event that Dr. Gosselin does not comply with this Decision and Order.
5. Dr. Gosselin shall pay the **\$1432.25 costs of the hearing to date.**³ (Hearing officer: participating in the pre-hearing conferences and review of notice and record-2 hrs. & 15 mins; draft interlocutory

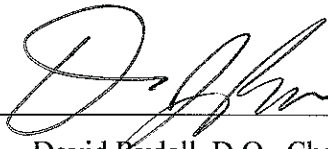
³ The Board ordered the costs not to exceed \$3000 for the Interlocutory Decision. The Board reserves the right to order additional costs for any future related proceedings.

decision-4.0 hrs; conduct the hearing-5 hrs. & 30 mins., totals 11 hrs. 45 mins. @ \$115 per hour = 1351.25); (costs of printing the documents for the hearing-12 copies x 27 pp. = 324 pp. @ \$.25=\$81); (court reporter – greater than \$200.) The check or money order shall be made **payable to the Maine Board of Osteopathic Licensure** and mailed to Susan E. Strout, Executive Secretary, Maine Board of Osteopathic Licensure, 142 State House Station, Augusta, Maine 04333-0142. Payment of this amount and additional sums arising from the final disposition of this matter shall be made at a time to be decided during the Board's future deliberations.

The costs are ordered due to the seriousness of the violations, the Board's past practice in this regard, and the opinion of the Board that costs of the hearing should be borne by the violator rather than the profession as a whole. Dr. Gosselin shall be responsible for any additional costs of a transcript of these proceedings in the event that he orders one or appeals from this Decision and Order.

SO ORDERED.

Dated: June 9, 2011



David Rydell, D.O., Chairman

Maine Board of Osteopathic Licensure

V.

APPEAL RIGHTS

To the extent that an interlocutory decision may be appealed, and pursuant to the provisions of 5 M.R.S. §10051.3 and 10 M.R.S. §8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Osteopathic Licensure, all parties to the agency proceedings and the Attorney General.