

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, )  
BOARD OF MEDICINE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-4042PL  
 )  
ADRIAN ISIDORE JOSE MEDINA, M.D., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 19 and 20, 2006, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: April D. Skilling, Esquire  
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For Respondent: Mark D. Rodriguez, Esquire  
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 456.072(1)(u), 458.331(1)(j), and 458.331(1)(nn), Florida Statutes (2002 and 2003); Subsection 458.331(1)(c),

Florida Statutes (2004)<sup>1</sup>; and Florida Administrative Code Rule 64B8-9.008, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On February 21, 2005, Petitioner, the Department of Health, Board of Medicine (Department), filed a four-count Administrative Complaint, alleging that Respondent, Adrian Isidore Jose Medina, M.D. (Dr. Medina), violated Subsections 456.072(1)(u), 458.331(1)(j), and 458.331(1)(nn), Florida Statutes; Subsection 458.331(1)(c), Florida Statutes (2003); and Florida Administrative Code Rule 64B8-9.008. Dr. Medina requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on November 2, 2005, for assignment of an administrative law judge.

The final hearing was originally scheduled for January 10-12, 2006. Due to requests for continuances, the final hearing was rescheduled numerous times.

On July 17, 2006, the Department filed a Notice of Scrivener's Error, stating that the statutory references in paragraphs 62 and 65 of the Administrative Complaint should be to the 2004 version rather than the 2003 version of the Florida Statutes. At the final hearing, the Administrative Complaint was amended to reflect the correction.

On July 19, 2006, the Department filed a Motion to Seal Deposition Videos and Redact Names, requesting that the video-

taped depositions of S.C., P.M., and F.M. be sealed and that the full names of S.C., F.M., and P.M. be redacted from the record. There was no objection to the motion, which was granted at the final hearing.

At the final hearing, the Department called the following witnesses: Babette Smith-Agett, David Lashbrook, S.E.C., Lija G. Scherer, Denise Ann Nevers, and Mary Ellen Singer. Petitioner's Exhibits 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3-A, 3-B, 4 through 8, 10 through 13, 18 through 24, 25A, and 25B were admitted in evidence.

At the final hearing, Dr. Medina called J. Darrin Miller and Eileen R. Synder as his witnesses. Respondent's Exhibit A was admitted in evidence.

The three-volume Transcript was filed on November 9, 2006. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The parties timely filed their proposed recommended orders, which have been considered in rendering this Recommended Order.

#### FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of medicine under Florida law pursuant to Section 20.43 and Chapters 456 and 458, Florida Statutes (2002-2004).

2. At all times material to the allegations in the Administrative Complaint, Dr. Medina was licensed to practice medicine within the State of Florida pursuant to Chapter 458, Florida Statutes (2002-2004), having been issued license number ME 74141 on September 9, 1997. Dr. Medina is board-certified in orthopedic surgery.

3. In April 2003, S.C., who at that time was 15 years old, went to Jewett Orthopedic Center in Orlando, Florida, regarding her collarbone. She was advised that she could have surgery or, due to her young age, she could wait to see if the problem resolved as she grew older.

4. S.C. desired another opinion from an orthopedic surgeon. With her parents' permission, she went on the Internet and located the e-mail addresses of three orthopedic surgeons using the membership directory of America Online (AOL). One of the doctors she found in the membership directory was Dr. Medina. She sent an e-mail to each of the three orthopedic physicians, telling him of her ailment, the opinion that she had received from the Jewett Orthopedic Center, and requesting a second opinion.

5. Two of the three doctors responded to her e-mail. One of these doctors was Dr. Medina, who advised S.C. that her bones were still growing and that due to her age she should wait and

see if her collarbone healed by itself. In responding to her inquiry, Dr. Medina used the e-mail address of luvortho@aol.com.

6. A few days after Dr. Medina gave S.C. his medical opinion, he sent S.C. another e-mail, inquiring further about her symptoms in more detail. S.C. provided Dr. Medina with additional information along with her instant messaging name.

7. Dr. Medina continued to send e-mails to S.C. and to chat with her using instant messaging. The communications became friendly and included discussions regarding friends, music, and school.

8. S.C. provided Dr. Medina with a link to her online live journal, which contained personal information, including her name, age, and location and a photograph of her. The online journal site also contained a link to her poetry site at Geocities. Dr. Medina would leave comments on the poetry site.

9. After viewing S.C.'s photograph on her live journal, Dr. Medina began to make flirtatious comments to S.C. such as "AWW you're cute." Dr. Medina also offered to buy S.C. clothing and a compact disc player.

10. Dr. Medina told S.C. about his work as an orthopedic surgeon, including that he frequently traveled to foreign countries to study new technology in orthopedic surgery, that he performed consulting work in Orlando, that he was rich, and that

he was located in Springhill. He sent photographs to S.C., including a photograph of himself with his son.

11. On Sunday, September 21, 2003, Dr. Medina sent S.C. a message that he was going to Orlando that day. S.C. told him that she would be studying at a local book store in a shopping center in Orlando that same day. S.C. was now 16 years old.

12. Dr. Medina went to the book store and found S.C. studying. They talked a short while, and Dr. Medina offered to take her to lunch. S.C. agreed to go, and they got into his vehicle. Dr. Medina gave S.C. some roses, drove to downtown Orlando, and parked on the street. Prior to going to a local restaurant, Dr. Medina gave S.C. a kiss and tried to hold her hand as they walked down the street. His actions made S.C. feel awkward and confused. They ate lunch and made small talk. At the end of the meal, Dr. Medina told S.C. that he had left his wallet in the car, and he left to retrieve the wallet. He came back and paid for the meal, and they left the restaurant.

13. Dr. Medina told S.C. that he had moved the car closer to the restaurant. They went to a parking garage and took an elevator to an upper deck where Dr. Medina had relocated the car. S.C. did not see anyone else on the parking deck where his car was parked.

14. When they reached the vehicle, Dr. Medina kissed S.C. and she turned away. He opened the back door of the car and

asked S.C. to get in the backseat while he got something. She did as he requested. Dr. Medina got into the backseat with S.C. and tried to kiss her. She told him that she did not want to kiss. He then placed his hands on her stomach, lifted up her shirt, moved his hands under her bra and touched her breasts, and then unzipped her pants. S.C. told him that she did like what he was doing, but he continued.

15. Dr. Medina put his fingers inside S.C.'s panties and digitally penetrated her. He then pulled off his clothes down to his underwear, put on a condom, and partially inserted his penis in her vagina. S.C. kept trying to scoot away from Dr. Medina, telling him that she did not want to do anything and that she needed to be somewhere to meet her friends. He stopped and drove her back to the shopping center, where he left her.

16. Following her encounter with Dr. Medina, S.C. put a block on her computer to prevent Dr. Medina from communicating with her via instant messaging. However, she did continue to receive e-mails from Dr. Medina. The content of his communications changed drastically after the incident in the parking lot. He began to send pornographic pictures to her, including an image of a male genitalia, which he told S.C. was of him.

17. Sometime prior to January 2004, the block which had been placed on S.C.'s instant messaging was removed, and

Dr. Medina started to communicate with S.C. again via instant messaging.

18. In early January 2004, S.C.'s stepmother, Mrs. S.E.C., accessed S.C.'s e-mail account and discovered that pornographic photographs and sexually explicit comments were being sent to S.C. from [luvortho@aol.com](mailto:luvortho@aol.com). Mrs. S.E.C. researched the e-mail address and learned that the address belonged to Dr. Medina. Mrs. S.E.C. contacted the Florida Department of Law Enforcement (FDLE) and reported that someone was sending her teenage daughter e-mails containing pornographic photographs and sexually explicit comments.

19. Denise Nevers, an agent for FDLE, responded to Mrs. S.E.C.'s complaint. Ms. Nevers subpoenaed records from AOL and confirmed that the e-mail account of [luvortho@aol.com](mailto:luvortho@aol.com) belonged to Dr. Medina. A background check on Dr. Medina revealed that he had an internet web site for his business, Medina Orthopedics and Sports Medicine. The web site listed the office e-mail as [luvortho@aol.com](mailto:luvortho@aol.com).

20. On January 7, 2004, Mrs. S.E.C. logged on to her computer to check her step-daughter S.C.'s e-mails and signed onto the AOL instant messenger. While she was logged on, Mrs. S.C. received an instant message from Dr. Medina as [luvortho](mailto:luvortho@aol.com) and decided to pose as S.C. and chat with the message sender. Dr. Medina asked her why S.C. was home from school, and



Mrs. S.E.C. replied that she was sick. Dr. Medina told her that she needed an antibiotic and volunteered to call in a prescription for her. During his conversation with Mrs. S.E.C., Dr. Medina wrote: "i can still feel uuu, from the last, was the besttt, I know you were scaredd, but u felt so good, did u feel me a lil...too" and "was in u for a lil while, did you know that, yeahh u have tooo, ill make sure of it k, u are too precious to me, to get u hurt."

21. Ms. Nevers interviewed S.C. on January 8 and 9, 2004. S.C. told Ms. Nevers that she and Dr. Medina had had sexual contact in September 2003 and that he had been sending her sexually explicit material. Between January 9, 2004, and January 18, 2004, Dr. Medina continued to send S.C. e-mails and instant messages containing sexually explicit comments and photographs. Ms. Nevers was present when these e-mails were being opened by S.C. and was present while S.C. drafted her responses and sent them back to Dr. Medina.

22. A search warrant was issued to search Dr. Medina's office, and Dr. Medina gave permission to have his home computer searched. Dr. Medina's computers showed that he had been sending the sexually explicit e-mails to S.C. from his home and office computers. A search of the computers also revealed links to a multitude of web sites which appeared to cater in pornography, including teen pornography.

23. On or about December 1, 2004, in case number 48-04-CF-871-O/A in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, Dr. Medina pled guilty to engaging in sexual activity with a person 16 or 17 years of age, and was sentenced to one year in jail, followed by five years of sex-offender supervised probation, to be followed by ten years of administrative probation.

24. In addition to providing S.C. with medical advice concerning her collarbone in June 2003, Dr. Medina also gave S.C. medical advice during his communications with her between June 2003 and January 2004. He answered S.C.'s questions concerning a cyst on her neck that was found when a MRI was done; and gave advice about being a blood donor; and provided directions on getting over what he suspected were S.C. allergies, including drinking fluids, taking Nyquil, using a nasal spray, taking Vitamin C, and drinking orange juice.

#### CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2006).

26. The Department has the burden to establish the allegation in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

27. The Department has alleged that Dr. Medina violated Subsection 456.072(1)(u), Florida Statutes, which provides:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

\* \* \*

(u) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).

28. Subsection 456.063(1), Florida Statutes, provides:

Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

29. The Department alleged that Dr. Medina violated Subsection 458.331(1)(c), Florida Statutes, which provides:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

\* \* \*

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

\* \* \*

(j) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

\* \* \*

(nn) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

30. The Department alleged that Dr. Medina violated Florida Administrative Code Rule 64B8-9.008, which provides:

(1) Sexual contact with a patient is sexual misconduct and is a violation of Section 458.329 and 458.331(1)(j), F.S.

(2) For purposes of this rule, sexual misconduct between a physician and a patient includes, but is not limited to:

(a) Sexual behavior or involvement with a patient including verbal or physical behavior which

1. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it;

2. May reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient, or any third party or;

3. May reasonably be interpreted by the patient as being sexual.

(b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in paragraph (2)(a) above and which

1. Results from the use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship;
2. Misuses privileged information or access to privileged information to meet the physician's personal or sexual needs;
3. Is an abuse or reasonably appears to be an abuse of authority or power.

\* \* \*

(4) The determination of when a person is a patient for purposes of this rule is made on a case by case basis with consideration given to the nature, extent, and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the patient-physician relationship is terminated.

(5) The mere passage of time since the patient's last visit to the physician is not solely determinative of whether or not the physician-patient relationship has been terminated. Some of the factors considered by the Board in determining whether the physician-patient relationship has terminated include, but are not limited to, the following:

- (a) Formal termination procedures;
- (b) Transfer of the patient's case to another physician;
- (c) The length of time that has passed since the patient's last visit to the physician;
- (d) The length of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the physician;
- (f) The nature of the patient's medical problem;
- (g) The degree of emotional dependence that the patient has on the physician;

(6) Sexual conduct between a physician and a former patient after a termination of the physician-patient relationship will constitute a violation of the Medical Practice Act if the sexual contact is a result of the exploitation of trust, knowledge, influence, or emotions, derived from the professional relationship.

(7) A patient's consent to, initiation of, or participation in sexual behavior or involvement with a physician does not change the nature of the conduct nor lift the statutory prohibition.

\* \* \*

(9) Upon a finding that a physician has committed unprofessional conduct by engaging in sexual misconduct, the Board will impose such discipline as the Board deems necessary to protect the public. The sanctions available to the Board are set forth in Rule 64B8-8.001, F.A.C., and include restriction or limitation of the physician's practice, revocation or suspension of the physician's license.

31. In order to establish a violation of Subsections 456.072(1)(u), 458.331(1)(j), and 458.331(1)(nn), Florida Statutes, and Florida Administrative Code Rule 64B8-9.008, the Department must establish that a physician-patient relationship existed between Dr. Medina and S.C. Dr. Medina argues that no physician-patient relationship existed because Dr. Medina never did a physical examination of S.C., did not have medical records for S.C., and never saw S.C. in his office. His argument is without merit.

32. Subsection 458.305(3), Florida Statutes (2002 and 2003), defines the "practice of medicine" as the "diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition." Dr. Medina was practicing medicine when he gave S.C. a second opinion concerning her collarbone. A physician-patient relationship was established when Dr. Medina responded to S.C.'s medical inquiry with a medical opinion. He continued to give her medical advice from June 2003 to January 2004, including advice about a cyst, the donating of blood, and remedies for allergies. He also offered to write a prescription for S.C. for antibiotics when he was talking to Mrs. S.E.C. in January 2004, while he thought he was talking to S.C. instead of her stepmother. Thus, the Department has established that a physician-patient relationship existed between Dr. Medina and S.C.

33. The Department has established by clear and convincing evidence that Dr. Medina is guilty of sexual misconduct in the practice of medicine. He had physical sexual contact with S.C. in September 2003 and sent her sexually explicit pictures and comments from September 2003 through January 2004. He used the physician-patient relationship as an entrée to engage in sexual misconduct with S.C. Thus, the Department has established that Dr. Medina violated Subsections 456.072(1)(u), 458.331(1)(j),

and 458.331(1)(nn), Florida Statutes, and Florida Administrative Code Rule 64B8-9.008.

34. The Department has established by clear and convincing evidence that Dr. Medina violated Subsection 458.331(1)(c), Florida Statutes, by pleading guilty to engaging in sexual activity with a person of 16 or 17 years of age. The crime directly relates to the practice of medicine because Dr. Medina first encountered S.C. when she was asking for a second medical opinion. He used her inquiry as a means of ingratiating himself with her to fulfill his own sexual desires. The crime also relates to his ability to practice medicine. His actions show a lack of good judgment. Dr. Medina was not attempting to have an affair with a consenting adult he met outside his practice of medicine; he was seducing a 16-year-old child, who innocently had requested a medical opinion from him. His actions clearly show that he is not to be trusted with adolescent females.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Dr. Medina violated Subsections 456.072(1)(u), 458.331(1)(c), 458.331(1)(j), and 458.331(1)(nn), Florida Statutes, and Florida Administrative Code Rule 64B8-9.008 and revoking his license.



DONE AND ENTERED this 4th day of January, 2007, in  
Tallahassee, Leon County, Florida.

*Susan B. Harrell*

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Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of January, 2007.

ENDNOTE

1/ All references to Subsections 456.072(1)(u), 458.331(1)(j),  
and 458.331(1)(nn), Florida Statutes, are to the 2002 and 2003  
versions. All references to Subsection 458.331(1)(c), Florida  
Statutes, are to the 2004 version.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.