

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HEALTH,  
BOARD OF OSTEOPATHIC MEDICINE,

Petitioner,

vs.

Case No. 21-0625PL

ERIC LANG, D.O.,

Respondent.

---

RECOMMENDED ORDER

An administrative hearing was conducted in this case on May 26, 2021, via Zoom, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Gerald C. Henley, Esquire  
Kristen M. Summers, Esquire  
Prosecution Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Chanel Mosley, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin  
315 East Robinson Street, Suite 550  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Respondent should be subject to discipline against his license to practice osteopathic medicine because of his attempt to engage a patient in sexual activity.

PRELIMINARY STATEMENT

On December 13, 2020, the Department of Health (Petitioner or Department) filed an administrative complaint (Administrative Complaint) alleging that Respondent violated section 459.015(1)(l), Florida Statutes,<sup>1</sup> by exercising influence within the patient-physician relationship for the purposes of engaging or attempting to engage a patient in sexual activity by hugging and kissing the patient. Upon filing of the Administrative Complaint, an Emergency Suspension Order was entered, but was lifted with the condition that Respondent can continue to practice provided a chaperone is present when Respondent sees female patients. Respondent timely filed an Election of Rights disputing the allegations of the Administrative Complaint and requesting a hearing pursuant to sections 120.569(2)(a) and 120.57(1), Florida Statutes. The case was referred to DOAH on February 16, 2021.

This case was originally scheduled for April 28, 2021, but, upon the granting of the parties' Joint Motion to Continue Final Hearing, was rescheduled and held on May 26, 2021. At the beginning of the final hearing, the undersigned denied the parties' pending motions in limine, without prejudice to raise the same evidentiary objections during the hearing. At the final hearing, Petitioner presented the testimony of Patient S.K., who allegedly was hugged and kissed by Respondent; and Patient S.K.'s husband, R.K.; as well as the testimony of Licensed Mental Health Counselor Kelly Freund, presented through her deposition received into evidence as Petitioner's Exhibit P-6. Petitioner also presented two other exhibits received into evidence as Petitioner's Exhibits P-4 and P-5. Respondent testified on his own behalf, presented the testimony of his physician's assistant, Shelley Williams, P.A., and submitted four multiple-page documents received into

---

<sup>1</sup> Unless otherwise indicated, all references to the Florida Statutes and Florida Administrative Code are to the versions in effect during 2019, the relevant time period in this case.

evidence as Respondent's Exhibits R-1 and R-2, with Bates stamp numbers, 1.001-1.002, 1.014-1.019, 1.073-1.076, and 2.006-2.008. In addition, during Respondent's cross-examination, a portion of an investigative report prepared by Petitioner's investigator purporting to contain statements from Respondent (Reported Statements), and a police report dated September 19, 2019, containing statements attributed to Respondent (Police Report about Respondent), were received into evidence. As these two exhibits were not previously filed by Petitioner, Petitioner was given until June 5, 2021, to file the Reported Statements and the Police Report about Respondent with DOAH. They were timely filed on June 2, 2021, as Joint Exhibit 1 and Petitioner's Exhibit 7.

The proceedings were recorded and a transcript was ordered. The parties were given 30 days after the filing of the transcript within which to file their respective proposed recommended orders. The one-volume Transcript of the proceedings was filed with DOAH on August 7, 2021. Thereafter, the parties timely filed their respective Proposed Recommended Orders, both of which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent is licensed to practice as an osteopathic physician within the State of Florida, license number OS 8946.

2. At all times material to the Administrative Complaint, Respondent worked at Respondent's medical practice, located at 1600 West Eau Gallie Boulevard, Suite 100, Melbourne, Florida, and had a patient-physician relationship with Patient S.K.

3. Petitioner is the state agency charged with regulating the practice of osteopathic medicine, pursuant to section 20.34, Florida Statutes; chapter 456, Florida Statutes; and chapter 459.

4. Section 459.015(1)(l) authorizes discipline against an osteopathic physician for exercising influence within a patient-physician relationship for the 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.

5. The Administrative Complaint alleges that during her office visit on August 21, 2019, Respondent hugged Patient S.K., and kissed Patient S.K. on the lips during her visit to Respondent's medical practice on September 4, 2019. If true, such conduct by Respondent would constitute sexual activity.

6. If Respondent kissed Patient S.K. on the lips, as alleged in the Administrative Complaint, such conduct would be outside the scope of a medical examination and a violation of section 459.015(1)(l).

7. On August 21, 2019, Patient S.K. presented to Respondent's medical practice with complaints of leg and back pain. After arriving, Patient S.K. was seated in the waiting room and then a medical assistant brought Patient S.K. to the examination room.

8. At some point, after entering the examination room, Patient S.K. changed into a hospital gown.

9. Inside the exam room were two chairs and an exam table. Patient S.K. sat in one of the chairs while the medical assistant recorded her vital signs and then left the room.

10. After the medical assistant had left, Respondent entered the exam room, closed the door behind him, and spoke with Patient S.K. about her health concerns. Patient S.K. then sat on the exam table and Respondent examined her leg and thigh.

11. Patient S.K. was in a hospital gown during the physical examination. Respondent discussed some of the concerns he had regarding a lump that he located during the examination. After discussing the findings of the examination with Patient S.K., Respondent exited the exam room and allowed Patient S.K. to redress.

12. Respondent returned a short time later and told Patient S.K. that he wanted her to get additional tests on her back and spine.

13. As the discussion and examination concluded, Respondent asked Patient S.K., "Can I have a hug?" Patient S.K. felt that this was an awkward and unusual request. However, she complied and gave Respondent a hug.

14. Respondent wrapped both arms around Patient S.K. in an embrace.

15. After Respondent hugged Patient S.K., he opened the door to the exam room and they both exited.

16. Patient S.K. walked to the reception area and made a follow-up appointment to go over the results of her upcoming testing, the results of which were of special importance to her because of her history with cancer and fear of having a blood clot.

17. On or about September 4, 2019, Patient S.K. presented to Respondent's medical practice for her follow-up appointment with Respondent. Patient S.K.'s husband drove her to her appointment that day.

18. Upon their arrival, Patient S.K. checked in at the front desk and Patient S.K.'s husband waited in the lobby.

19. A medical assistant escorted Patient S.K. to the exam room where they took Patient S.K.'s vitals. The medical assistant then left the room.

20. Respondent entered the room and closed the door. Patient S.K. sat on the exam table and Respondent stood next to her. Respondent and Patient S.K. were alone.

21. Respondent and Patient S.K. discussed the results of her test. The tests results were negative for both cancer and a blood clot. This news relieved Patient S.K. Respondent recommended that Patient S.K. schedule a future appointment.

22. As the discussion concluded, Patient S.K. stood up to leave and began to make her way toward the door. Respondent stood between Patient S.K. and the door.

23. As Patient S.K. went toward the door, Respondent leaned forward towards Patient S.K. Patient S.K. believed that Respondent was attempting to hug her again.

24. As Patient S.K. readied herself to receive another hug, Respondent leaned down and forward toward Patient S.K., and then, without warning, and without asking for permission or indicating his intentions, Respondent kissed Patient S.K. hard on her lips.

25. Patient S.K. was shocked by Respondent's actions and did not know what to do.

26. Patient S.K. did not say anything to Respondent, exited the exam room, and she went to the front desk. Respondent followed her.

27. In the moment, Patient S.K. was nervous, upset, still in shock, and found it difficult to process the incident.

28. Patient S.K. scheduled her follow-up appointment because she felt pressured by Respondent's presence nearby. Patient S.K., however, because of Respondent's actions, did not intend to go for her follow-up appointment.

29. Patient S.K. did not report the incident to the receptionist when making the follow-up appointment because she was still in a state of shock and did not know whether Respondent's receptionist would act in her best interests. Patient S.K. simply wanted to quickly exit the facility.

30. Patient S.K.'s husband accompanied her as she left. Patient S.K. felt fearful and ashamed. While Patient S.K.'s husband drove them both home, Patient S.K. did not tell her husband that Respondent had kissed her because she was afraid how her husband might react.

31. According to her husband, during the car ride home, Patient S.K. appeared to be "a little bothered."

32. The next day, Patient S.K. told her husband that Respondent hugged her at the conclusion of her August 21, 2019, appointment, and kissed her on her mouth at the conclusion of her September 4, 2019, appointment.

33. Patient S.K.'s revelation upset her husband and he asked her how she was feeling. She told him that she was shocked and that she didn't know what to do at the time but that she recognized that something was not right about what happened.

34. A few days later, Patient S.K. contacted law enforcement to report the incident. Patient S.K. also placed a telephone call to her mental health counselor, Kelly Freund. Patient S.K. had been receiving counseling from Ms. Freund since January of 2019. Patient S.K. trusted Ms. Freund and felt comfortable sharing difficult, personal matters with her. Patient S.K. was very upset during her phone call.

35. On September 9, 2019, Patient S.K. met with Ms. Freund and told Ms. Freund that during her second visit with Respondent, Respondent kissed her on the lips as she left the examination room. Patient S.K. was tearful at times during her September 9, 2019, session with Ms. Freund.

36. Ms. Freund helped Patient S.K. process the event and advised her that she (Patient S.K.) was not to blame for the incident, and that Respondent's reported behavior was inappropriate and unprofessional. Ms. Freund provided Patient S.K. with the Department's phone number in case she wanted to file a complaint against Respondent.

37. Thereafter, Patient S.K. reported Respondent to the Department.

38. On September 10, 2019, Patient S.K. met with an officer with the Melbourne Police Department. Patient S.K. told the officer that Respondent hugged her during her first visit and kissed her during her second visit with him.

39. Patient S.K. met with Ms. Freund again on September 17, 2019. Patient S.K. reported that she was still having a hard time sleeping and was anxious about what would happen following her reports to the Department and to law enforcement.

40. At a later meeting with Ms. Freund on October 4, 2019, Patient S.K. reported that she was still having some "ups and downs" emotionally because

of the incident with Respondent and was fearful that she may see Respondent in the community.

41. During the final hearing, Respondent provided evidence that Patient S.K. was forgetful, citing the fact that Patient S.K. forgot her binder at her appointment, forgot to list all of her medications on an intake sheet, and did not remember all of the details of her visits to Respondent's practice.

42. While there is evidence that Patient S.K. has been treated in the past for memory problems, the evidence does not indicate that Patient S.K. had false memories or imagined the occasions when Respondent hugged and kissed her.

43. Although Patient S.K. may not have perfect memory, her testimony was clear, concise, and credited regarding the fact that Respondent hugged her on her first visit and gave her an unsolicited kiss on the mouth during her second visit. Patient S.K.'s observations and reports were corroborated by other witnesses.

44. In contrast, during his testimony, Respondent denied hugging Patient S.K. or kissing her on the lips or cheek.

45. Respondent further testified that he hugs patients in extremely limited circumstances. Respondent explained that he occasionally accepts hugs from elderly patients. Respondent also explained that he sometimes hugs patients to console them after they have received bad news.

46. Despite testifying that he did not hug Patient S.K., Respondent previously admitted to law enforcement and a Department investigator that he hugged Patient S.K. He further admitted to the Department investigator that he kissed Patient S.K. on the cheek.

47. The inconsistencies between his testimony at the final hearing and his statements to law enforcement and the Department investigator discredit Respondent's assertions that he did not hug or kiss Patient S.K.

48. While Patient S.K. has experienced forgetfulness, her testimony provided clear and convincing evidence of the allegations against Respondent.



49. Respondent's testimony denying the hug and the kiss is not credited.

#### CONCLUSIONS OF LAW

50. DOAH has jurisdiction over the subject matter of this proceeding and the parties pursuant to sections 120.569 and 120.57(1).

51. Petitioner, as the party asserting the affirmative in this proceeding, has the burden of proof. *See, e.g., Balino v. Dep't of HRS*, 348 So. 2d 349 (Fla. 1st DCA 1977). Because Petitioner seeks to suspend, revoke, or impose other discipline upon a license, this proceeding is penal in nature, *see State ex rel. Vining v. Fla. Real Estate Comm'n*, 281 So. 2d 487, 491 (Fla. 1973), and must prove the allegations in the Complaint by clear and convincing evidence. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

52. Clear and convincing evidence:

[r]equires that evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

*In re Henson*, 913 So. 2d 579, 590 (Fla. 2005), quoting *Slomowitz v. Walker*, 429 So. 797, 800 (Fla. 4th DCA 1983).

53. Disciplinary statutes and rules "must be construed strictly, in favor of the one against whom the penalty would be imposed." *Munch v. Dep't of Prof'l Reg.*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992).

54. In determining whether Petitioner has met its burden of proof, the evidence presented should be evaluated considering the specific factual allegations in the Administrative Complaint. Disciplinary actions against licensees may only be based upon those offenses specifically alleged in the charging document. *See, e.g., Trevisani v. Dep't of Health*, 908 So. 2d 1108

(Fla. 1st DCA 2005). The Administrative Complaint charged Respondent with violating section 459.015(1)(l), which provides, in pertinent part:

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

\* \* \*

(l) 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.

55. The Department proved the allegations in the Administrative Complaint by clear and convincing evidence.

56. In addition to the clear and convincing evidence proving that Respondent kissed Patient S.K. on the lips, the parties stipulated that if Respondent kissed Patient S.K. on the lips as alleged in the Administrative Complaint, such conduct would constitute sexual activity.

57. Consistent with the evidence and the parties' stipulation, Petitioner established by clear and convincing evidence that Respondent engaged and attempted to engage Patient S.K. in sexual activity by kissing Patient S.K.

58. Consistent with that conclusion, it is further concluded that Respondent used the patient-physician relationship for the purpose of engaging and attempting to engage Patient S.K. in sexual activity.

59. Penalties in a licensure discipline case may not exceed those in effect at the time a violation was committed. *Willner v. Dep't of Prof'l Reg.*, 563 So. 2d 805, 806 (Fla. 1st DCA 1990), *rev. denied*, 576 So. 2d 295 (Fla. 1991).

60. Section 456.079 requires the Board of Osteopathic Medicine to adopt disciplinary guidelines for specific offenses. Penalties imposed must be consistent with any disciplinary guidelines prescribed by rule. *See Parrot*

*Heads, Inc. v. Dep't of Bus. & Prof'l Reg.*, 741 So. 2d 1231, 1233-34 (Fla. 5th DCA 1999).

61. The Board of Osteopathic Medicine has adopted Florida Administrative Code Rule 64B15-19.002(14), which provides that the discipline for a first-time violation of section 459.015(1)(l) should be probation and a \$10,000 fine at minimum and denial of licensure or revocation and a \$10,000 fine at maximum.

62. Section 456.072(4) provides that in addition to any other discipline imposed for violation of a practice act, the Board shall assess costs related to the investigation and prosecution of the case.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Osteopathic Medicine enter a final order finding that Eric Lang, D.O., engaged and attempted to engage Patient S.K. in sexual activity, which is punishable under section 459.015(1)(l). Because this is Respondent's first such offense, it is further RECOMMENDED that Respondent be placed on probation for two years subject to such reasonable terms and conditions as the Board deems appropriate, including continuation of the requirement of a chaperone for female patients, that an administrative fine of \$10,000 be imposed, and that Respondent pay any costs of investigation and prosecution.

DONE AND ENTERED this 31st day of August, 2021, in Tallahassee, Leon County, Florida.



---

JAMES H. PETERSON, III  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of August, 2021.

COPIES FURNISHED:

Chanel Mosley, Esquire  
Marshall, Dennehey, Warner,  
Coleman & Goggin  
315 East Robinson Street, Suite 550  
Orlando, Florida 32801

Gerald C. Henley, Esquire  
Prosecution Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399

Kristen M. Summers, Esquire  
Prosecution Services Unit  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399

Louise St. Laurent, General Counsel  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

Kama Monroe, JD, Executive Director  
Board of Osteopathic Medicine  
Department of Health  
4052 Bald Cypress Way, Bin C-06  
Tallahassee, Florida 32399-3252

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.