

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HEALTH, BOARD OF
MEDICINE,

Petitioner,

vs.

Case No. 21-0864PL

SAEED AKHTAR KHAN, M.D.,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge (“ALJ”) Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing by Zoom conference on July 26, 2021.

APPEARANCES

For Petitioner: Amanda M. Godbey, Esquire
Ryan Sandy, Esquire
Kristen M. Summers, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399

For Respondent: Robert N. Nicholson, Esquire
Nicholson & Eastin, LLP
707 Northeast 3rd Avenue, Suite 301
Fort Lauderdale, Florida 33304

Edward Donald Reagan, Esquire
Edward D. Reagan, P.A.
658 West Indiantown Road, Suite 209
Jupiter, Florida 33458

STATEMENT OF THE ISSUES

Whether Respondent, Saeed Akhtar Khan (“Respondent”), engaged in sexual misconduct in the practice of a health care profession with M.T. in 2015, as alleged in the First Amended Administrative Complaint; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On January 8, 2021, Petitioner, Department of Health, Board of Medicine (“Petitioner”), issued a First Amended Administrative Complaint (“Complaint”) against Respondent, alleging he engaged in sexual misconduct in the practice of a health care profession with M.T. in 2015, in violation of sections 456.063(1), 458.329, 458.331(1)(j), and 458.331(1)(nn), Florida Statutes (2015), and Florida Administrative Code Rule 64B8-9.008(2). On February 15, 2021, Respondent timely filed an Election of Rights and Request for Formal Administrative Hearing to contest the allegations. On March 5, 2021, Petitioner referred the matter to DOAH to assign an ALJ to conduct the final hearing.

The final hearing was initially set for May 12 through 14, 2021, but was continued to July 26 through 28, 2021, at the request of the parties. The final hearing was held on July 26, 2021. At the hearing, Petitioner presented the testimony of M.T. and J.T. Petitioner’s Exhibits 1 and 2 were received into evidence. Respondent testified on his own behalf and presented the additional testimony of Miranda Chandler, Kristina Chapman, and Amanda Curtis. Respondent did not offer any exhibits into evidence.¹

¹ Petitioner’s Exhibit 2 consists of pages 1 through 4, and 65 through 73 to line 15, of the transcript of Respondent’s deposition taken on April 8, 2021, in consolidated DOAH Case Nos. 21-0864PL and 21-0865PL. Subsequently, the two cases were severed, DOAH Case No. 21-0865PL was closed, and, at the request of the parties, jurisdiction of DOAH Case No. 21-0865PL was relinquished to Petitioner.

The two-volume final hearing Transcript was filed at DOAH on August 26, 2021. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order. On July 20, 2021, the parties filed their Joint Pre-Hearing Stipulation, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below.

Unless otherwise indicated, all statutory and rule references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of medicine in the State of Florida, pursuant to section 20.43 and chapters 456 and 458, Florida Statutes.

2. At all times material to this proceeding, Respondent was a licensed medical doctor in the State of Florida, having been issued license number ME 77602. At all times material to this proceeding, Respondent, who is board certified in internal medicine, practiced medicine at his own medical practice, Saeed A. Khan, M.D., P.A., located at 2257 Highway 441 North, Suite A, Okeechobee, Florida 34972.

3. Miranda Chandler is a physician's assistant ("PA") in Respondent's medical practice. Ms. Chandler became licensed as a PA 14 years ago and has worked in Respondent's medical practice as a PA for the past 14 years. M.T., now a former patient of Respondent, is married to Ms. Chandler's brother, J.T.

4. On November 30, 2011, M.T., then a 27-year-old female, was first seen by Respondent at his medical practice for an initial check-up. M.T. presented to be "doing well on Adderall with control of her symptoms of ADHD," and was advised to continue with the Adderall.

5. Adderall is a controlled substance prescribed for Attention Deficit Disorder. Because M.T. was taking Adderall, she needed to meet regularly with a health care provider at Respondent's practice so that she could obtain prescription refills.

6. From November 30, 2011, until October 20, 2015, M.T. returned to Respondent's medical practice on several occasions for routine examinations and prescription refills, at which times she came under the medical care of her sister-in-law, Ms. Chandler.

7. M.T. was not charged a fee for any of these visits because the policy at Respondent's medical practice is not to charge a fee to family members of employees of the practice. Because M.T. is married to J.T., and J.T. is Ms. Chandler's brother, M.T. was considered "family."

8. However, M.T. and J.T. separated in September 2015, shortly before M.T. was scheduled to return to Respondent's medical practice on October 20, 2015, for a prescription refill.

9. J.T.'s separation from M.T. caused a rift between M.T. and Ms. Chandler. Following the separation, J.T. attempted suicide and had to be hospitalized. Ms. Chandler blamed M.T. for the separation and its emotional impact on J.T. Following the separation, M.T. and Ms. Chandler ceased being on speaking terms. Ms. Chandler no longer considered M.T. "family," and no longer wanted to provide medical treatment to M.T.

10. Shortly before M.T.'s October 20, 2015, appointment, Ms. Chandler expressed her concern to Respondent about not wanting to continue to treat M.T. because of her separation from J.T. Respondent agreed that Ms. Chandler should no longer treat M.T.

11. Respondent agreed to see M.T. on October 20, 2015, because her appointment was for a prescription medication refill, and canceling the appointment would result in M.T. being unable to refill her prescription. Petitioner's allegations against Respondent are based on her visit to Respondent's medical practice on October 20, 2015.

12. On October 20, 2015, M.T. presented to Respondent's medical office at approximately 2:00 p.m., for a refill of her controlled substance prescription, at which time she came under the care of Respondent. At hearing, M.T. testified she does not recall the time she arrived at the office, but that at the start of the appointment, she initially met with Respondent in an examination room, during which Respondent began asking M.T. about her separation from J.T. M.T. testified she did not want to discuss with Respondent her separation from J.T. However, when Respondent subsequently invited M.T. to go into his personal office so that they could talk further, she accompanied him into his personal office anyway.

13. At hearing, M.T. testified that as she and Respondent walked from the examination room toward Respondent's personal office, Respondent advised his staff, whose names she does not recall, that they could go home. According to M.T., once they arrived in Respondent's personal office, he resumed discussing M.T.'s recent separation from J.T.

14. At hearing, M.T. testified that once in Respondent's personal office, he told her that she would be lonely being separated from J.T., and that he would take care of her needs. M.T. testified that "at first," she did not know what he meant because she considered Respondent a "family friend."

15. Nevertheless, M.T. testified she told Respondent she did not need anything, to which Respondent stated: "we all need certain things." M.T. testified that Respondent told her that "he has other women that he does things for." M.T. testified that once she realized what Respondent was "insinuating or saying really," she told him, "I don't think your wife would appreciate that," to which Respondent responded, stating that his wife was aware of similar arrangements with other women and that he had her permission, so long as he always came home to his wife.

16. At hearing, M.T. testified that Respondent's proposition made her feel uncomfortable and that she declined Respondent's offer, stating continuously that she needed to go. M.T. testified that she told Respondent "thank you,

thank you,” “I appreciate you looking out for me, but no thank you”; “that would mess things up worse,” and that she needed “to get going.”

17. At hearing, M.T. testified that as she got up to leave Respondent’s personal office, Respondent also stood, walked over to her, and gave her a “hug goodbye.” M.T. testified that during the “hug,” Respondent placed his hands around her lower back, moved them down to her buttocks, pulled himself close to her pushing his groin into her groin, and rubbed his erect penis against her pelvic bone. M.T. testified she pulled and backed away from Respondent’s embrace and then left the medical office.

18. M.T. further testified that she did not think anyone else was in the office as she was leaving Respondent’s office because Respondent had previously told the staff they could go home. However, M.T. could not say if there were any more appointments after hers.

19. In fact, M.T. was not the last patient of the day to be treated in Respondent’s medical practice on October 20, 2015. One other patient, L.N., was scheduled to be seen at 2:00 p.m., and two other patients, B.D. and B.D., were scheduled for 3:45 p.m. Moreover, two administrative staff employees of Respondent’s medical practice did not leave the medical office until 3:55 p.m., and five other employees left between 4:57 p.m., and 4:58 p.m.

20. M.T. further testified that after leaving Respondent’s medical office, she got in her car and drove away, and that while driving, called J.T. to tell him what had occurred.

21. At hearing, Respondent vehemently denied Petitioner’s allegations and M.T.’s assertions. Respondent testified he was only in an examination room with M.T. on October 20, 2015, and that the entire appointment lasted only approximately 15 to 20 minutes. Respondent further denies ever discussing M.T.’s separation from her husband, asking her about having a relationship outside of his medical office, hugging M.T., rubbing her back, grabbing her buttocks, and pulling her to his pelvic area.

22. Despite the alleged incident, M.T. returned to Respondent's medical practice for many more years and continued to receive medical treatment under the care of Amanda Curtis, a nurse practitioner ("NP") working in Respondent's medical office since 2015.

23. In 2019, a dispute arose between M.T. and Respondent's medical practice over a referral of M.T. to a neurologist. Because of this dispute, M.T. contemplated submitting a negative on-line Google review of Respondent's medical practice. On November 18, 2019, M.T. was discharged from Respondent's medical practice because of the dispute over the referral. As of the date of M.T.'s discharge on November 18, 2019, M.T. owed Respondent's medical practice the sum of \$1,910.00, for medical treatment incurred after October 20, 2015, to the date of her discharge; charges which were more than 150 days past due.

24. Although M.T. is no longer Respondent's patient, J.T., and numerous other family members of J.T.'s (both male and female), have remained patients of Respondent.

25. Having observed the demeanor of the witnesses at hearing and based on the totality of the evidence adduced at hearing, the undersigned is not clearly convinced that Respondent, in fact, engaged in sexual misconduct with M.T. in 2015, as alleged in the Complaint.

26. M.T.'s testimony was materially lacking as to the details and timing of the alleged events. M.T. could not recall when, in 2015, the alleged incident with Respondent occurred. Rather, M.T. testified it "was towards the end...in the second half of the year."

27. M.T. also could not recall how long she was in an examination room with Respondent prior to allegedly leaving the treatment room and going into Respondent's personal office. Moreover, despite having been a regular patient at Respondent's medical practice for many years, M.T. could not recall the names of any staff members working on the day of the alleged incident. M.T. also could not recall what time she left Respondent's medical office the day of

the alleged incident and whether any staff members were present at the office when she left.

28. Even if M.T.'s testimony that, while in an examination room, Respondent began asking her questions about her separation from J.T. that she did not want to discuss, is believed, it makes no sense that M.T. would then voluntarily leave the examination room and follow Respondent to his personal office, at his request, to discuss the issue "further." And if Respondent continued to attempt to proposition M.T. while they were in his personal office, why would she thank him, allow him to walk over to her and give her a hug, and not leave his medical office sooner. These questions raise serious issues regarding M.T.'s credibility and motivations for her assertions.

29. M.T.'s testimony was also contradicted by other evidence and testimony presented at the hearing. At hearing, M.T. testified her appointment time on October 20, 2015, was in the "[l]ate afternoon." However, M.T.'s appointment time was at 2:00 p.m. In addition, while M.T. believed she was the last patient scheduled to be seen on the date of the alleged incident and testified that she does not recall seeing anyone else in the office when she left because Respondent told staff they could go home, other patients were, in fact, present in Respondent's medical office after M.T.'s appointment and staff remained in the office after M.T.'s appointment. M.T. further testified that after leaving Respondent's medical office following the alleged incident, she called J.T. from her car. M.T. would have left Respondent's medical practice in the mid-afternoon. However, J.T. testified that his conversation with M.T. about the alleged incident occurred during the evening.

30. M.T. further testified that her relationship with Ms. Chandler is "friendly" and that they "speak," which is in sharp contrast to the testimony of her own witness, J.T., and Ms. Chandler. M.T. further testified that she told Ms. Chandler about the alleged incident with Respondent, which Ms. Chandler denies. M.T. also testified that she continued to see

Ms. Chandler for medical care even after the alleged incident, which conflicts with the testimony of Ms. Chandler, Ms. Curtis, Respondent, and the medical records.

31. M.T. further testified that the reason she continued to seek treatment at Respondent's medical office after the alleged incident was because she received free medical care as a family member of an employee of the practice. However, M.T.'s patient file from Respondent's office reveals that Respondent's medical practice began charging M.T. after the October 20, 2015, visit, which is consistent with Ms. Chandler's and Respondent's testimony that because of M.T.'s separation from J.T., M.T. was no longer considered family, and therefore, ineligible for the family courtesy.

32. The fact that M.T. was cut off as "family" and no longer entitled to the family courtesy after the October 20, 2015, visit; continued treatment with Respondent's office for many years after the incident; was discharged from the practice because of a dispute over a referral; and owes a balance of \$1,910.00 to the practice, raises further questions about M.T.'s credibility and the motivations for her assertions.

CONCLUSIONS OF LAW

33. DOAH has jurisdiction over the parties and subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

34. This is a proceeding whereby Petitioner seeks to revoke Respondent's license to practice medicine. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations in the Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

35. The clear and convincing evidence standard:

Requires that the 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 in 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.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

36. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1st DCA 1985); *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995).

37. Charges in a disciplinary proceeding must be strictly construed, with any ambiguity construed in favor of the licensee. *Munch v. Dep't of Prof'l Reg., Div. of Real Estate*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992). In addition, the allegations set forth in the Complaint are those upon which this proceeding is predicated. *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits Petitioner from taking disciplinary action against a licensee based on conduct not specially alleged in the Complaint. *Id.*; see also *Delk v. Dep't of Prof'l Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

38. Section 456.072(1)(v) provides that a physician is subject to discipline for “[e]ngaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).” Section 456.063(1) provides as follows:

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, of 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.

39. Section 458.331(1)(j) further provides that a physician is subject to discipline for “[e]xercising 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.”

40. Section 458.331(1)(nn) provides that violating any provision of chapters 458 or 456, or any rules adopted pursuant thereto constitute grounds for disciplinary action.

41. Section 458.329 provides that:

The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

42. Rule 64B8-9.008(2) provides, in pertinent part, that:

(2) For purposes of this rule, sexual misconduct between a physician and a patient includes, but it 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, or
 3. Is an abuse or reasonably appears to be an abuse of authority or power.

43. Turning to the present case, Petitioner failed to prove by clear and convincing evidence that Respondent is guilty of conduct in violation of sections 456.063(1), 458.329, 458.331(1)(j), and 458.331(1)(nn), and rule 64B8-9.008(2). The Complaint specifically alleged that Respondent engaged in sexual misconduct with M.T. in 2015, by telling M.T. that he would take care of her "needs" since she was separated from her husband; touching or squeezing M.T.'s buttocks; and/or by pressing his genital area against M.T.'s body. As detailed above, it was not clearly and convincingly shown that Respondent engaged in sexual misconduct with M.T. in 2015, as alleged in the Complaint. The lack of clarity and inconsistencies in M.T.'s testimony; substantial conflict between M.T.'s testimony and other witnesses in this case; M.T.'s personal conflict with Ms. Chandler and the medical practice; the circumstances surrounding her discharge from the practice; and monies owed to the medical practice, raise too many questions regarding M.T.'s credibility and motivations, such that the undersigned is unable to conclude that Respondent engaged in sexual misconduct as alleged in the Complaint.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Health, Board of Medicine, enter a Final Order dismissing the First Amended Administrative Complaint.

DONE AND ENTERED this 23rd day of September, 2021, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
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 23rd day of September, 2021.

COPIES FURNISHED:

Amanda M. Godbey, Esquire
Ryan Sandy, Esquire
Kristen M. Summers, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399

Edward Donald Reagan, Esquire
Edward D. Reagan, P.A.
658 West Indiantown Road, Suite 209
Jupiter, Florida 33458

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

Robert N. Nicholson, Esquire
Nicholson & Eastin, LLP
707 Northeast 3rd Avenue, Suite 301
Fort Lauderdale, Florida 33304

Paul A. Vazquez, JD, Executive Director
Board of Medicine
Department of Health
4052 Bald Cypress Way, Bin C-03
Tallahassee, Florida 32399-3253

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.