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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
KHALIL S. BAROUD, M.D.,	:	LS0406171MED
RESPONDENT.	:	

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 20th day of October, 2004.

Alfred Franger
Board Member
Medical Examining Board

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST :		PROPOSED FINAL DECISION
	:	AND ORDER
KHALIL S. BAROUD, M.D.	:	LS0406171MED
RESPONDENT	:	

PARTIES

The parties to this action for the purposes of section 227.53 Stats., are:

Khalil S. Baroud, M.D.
P.O. Box 851045
Westland, MI 48185-6145

Khalil S. Baroud, M.D.
c/o Najeeba Baroud
37848 Dale Dr.
Westland, MI 48185-7527

John R. Zweig
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

A hearing on the department's motion for default in the above-captioned matter was held on August 6, 2004, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by John R. Zweig. The respondent did not appear.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Medical Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Khalil S. Baroud, M.D., Respondent, date of birth July 27, 1955, is licensed and currently registered by the Wisconsin Medical Examining Board to practice medicine and surgery in the state of Wisconsin pursuant to license number 43117, which was first granted March 21, 2001.
2. Respondent's last address reported to the Department of Regulation and Licensing is P. O. Box 851045, Westland, MI 48185-6145.
3. Respondent's practice specialty is internal medicine.
4. During the events of this matter, Respondent practiced as a physician at NorthReach Healthcare Internal Medicine of Marinette located in Marinette, Wisconsin.

COUNT I (MS. A)

5. On September 26, 2001, Ms. A, a 61-year-old married woman, first saw Respondent for professional services. At that appointment:
 - a. Ms. A described a chronic problem with dizziness and possible vertigo.
 - b. Respondent took Ms. A's medical and personal history, performed a physical exam and prescribed medication.
 - c. Ms. A explained that her spouse was unable to provide much assistance to her because he suffered from a chronic illness. While relating her personal history, Ms. A described family events that had occurred over the past few months and began to cry.
 - d. Respondent hugged Ms. A, kissed her on both cheeks and told her she was very pretty and he would make

everything alright.

6. On October 10, 2001, Ms. A saw Respondent for follow-up regarding her symptoms. Ms. A told Respondent that she had too much stress and when Respondent asked about it, Ms. A told him she would make a list of everything that was bothering her and bring it to her next appointment. Respondent hugged Ms. A, kissed her cheeks, held her face in his hands and told her she was so beautiful and shouldn't be so sad.

7. During Ms. A's next appointment on October 24, 2001:

a. They discussed the list Ms. A had brought in regarding the stress in her life. Respondent asked Ms. A if the list was for her medical file or for his personal use.

b. Ms. A requested that Respondent be her spouse's local physician and Respondent agreed to assume that role.

c. Respondent gave Ms. A his e-mail address and home telephone number and insisted that she call him at home anytime so they could discuss Ms. A's concerns. Respondent commented that he would love to hear Ms. A's voice.

d. Respondent told Ms. A he would try to find information to provide to her relating to her spouse's medical conditions and care.

e. Before Ms. A left the office, Respondent again held her face in his hands, kissed her on both cheeks, embraced her, told her she was beautiful and reminded her to call him anytime.

8. At a November 26, 2001 appointment:

a. Ms. A saw Respondent again for follow-up regarding her symptoms of vertigo as well as the depressive symptoms she had been experiencing over the past few months.

b. Respondent prescribed Paxil®, an antidepressant, as treatment for Ms. A's depression.

c. Ms. A mentioned that she would be taking her usual trip to Florida after the holidays, but wasn't sure if her husband's condition would allow him to make the trip. Respondent replied that he was going to be in Florida for an educational program in a few months and he would like to stay an extra day or two to visit her there, if she didn't make him stay in his own room.

d. Respondent asked Ms. A why she didn't call him after her last appointment. Respondent said he wanted to talk to her and instructed her to call him the upcoming weekend so they could get together.

e. Before Ms. A left the room, Respondent held her face in his hands, kissed her two or three times on each cheek and embraced her.

9. On January 25, 2002, Ms. A saw Respondent for follow-up regarding her depression.

a. Respondent greeted Ms. A with a hug and kissed her on her cheeks.

b. Ms. A said she had done internet research on the side effects of Paxil® and discussed them with Respondent. One possible side effect is sexual dysfunction. In response to Respondent's questions, Ms. A said that due to her spouse's medical condition, they had not had a sexual relationship for several years.

c. Respondent again told Ms. A that he would find the information about her spouse's illness and said he would let her know when she could pick it up.

d. As Ms. A was leaving, Respondent hugged Ms. A and kissed her on the lips, inserting his tongue in her mouth. Ms. A quickly pulled away and left the office without saying anything.

10. After that appointment, Ms. A decided not to see Respondent as her doctor, but called the clinic to ask him about the information he said he would obtain regarding her spouse. She was told Respondent was not in the office that day, so she called Respondent at the home number he had given her. Respondent told Ms. A he had the information at his apartment which was next door to the clinic. He suggested that they meet in the clinic's parking lot and walk over to the apartment.

11. When Ms. A arrived, Respondent greeted her and told her she was "so beautiful." Respondent and Ms. A walked to Respondent's second floor apartment and went inside. Respondent made non-alcoholic drinks for them and they sat and made small talk about Respondent's family. When Respondent told Ms. A that he did not have the information ready for her to pick up, Ms. A told Respondent she had to leave. Respondent thanked her for coming, kissed her on both cheeks and said he would talk to her soon. Respondent did not note the apartment visit in the medical records of Ms. A or her spouse.

12. On January 31, 2002, Ms. A called Respondent to ask if he had the information ready for her. He said he did and asked Ms. A to come to his apartment to pick it up. Ms. A asked to pick it up at the clinic but Respondent told her it would be more private and would allow more time to talk about the information if she came to his apartment.

13. Ms. A went to Respondent's apartment that day. After she arrived:

a. Respondent again made drinks and they sat in the living room and made small talk.

b. Respondent then asked Ms. A to tour his apartment and showed her the kitchen, den, computer and bathroom. Ms. A declined to follow Respondent into his bedroom.

c. Respondent and Ms. A went back into the living room and Respondent sat next to Ms. A on the sofa. Ms. A commented about how warm it was in the apartment and Respondent got up to open a window. When Respondent returned, he had his shirt off.

d. Ms. A told Respondent she had to leave and when she stood up, Respondent partially lowered the zipper at the neck of her shirt and said perhaps that would cool her off.

e. Respondent then looked down at her breasts, asked her "what size?" and asked Ms. A to take a shower with him.

f. When Ms. A started to open the door to leave, Respondent pressed Ms. A up against the wall, unzipped her shirt further and put his hand down inside of her bra, touching her breast.

g. Ms. A told Respondent not to do that and he attempted to put his hand down the front of her pants. Ms. A pushed his arm away and Respondent told her she was beautiful and said he wanted to have sexual intercourse with her. Ms. A pushed him away and left.

h. Respondent did not note the apartment visit in the medical records of Ms. A or her spouse.

14. Respondent has told the Division of Enforcement that Ms. A was never in his apartment. However, the Division has confirmed that Ms. A's description of the apartment's floor plan and interior is accurate.

15. Ms. A cancelled a February 11, 2002 appointment with Respondent.

16. On March 20, 2002, Ms. A went to an appointment at the clinic she had made to discuss her spouse's health issues with Respondent. A nurse took Ms. A to Respondent's office where he extended his hand to shake hers and asked her to have a seat. Ms. A asked Respondent to keep his office door closed because she wanted to discuss some very personal issues concerning her spouse and did not want the staff listening. Respondent stood up, left the office and announced to the

outer office staff that he would no longer be seeing Ms. A or her spouse as patients. Respondent asked the nurse to make an appointment for Ms. A with a local psychiatrist and walked away.

17. On that same date, Respondent sent Ms. A a certified letter stating that because of her special needs, he would no longer be able to offer further services to her or her spouse, effective April 22, 2002.

18. Respondent's conduct with Ms. A, as set out in this Count of the Complaint, constitutes practices and conduct which tend to constitute a danger to the health, welfare, or safety of patient, which is defined as unprofessional conduct by Wis. Adm. Code § MED 10.02(2)(h) and subjects Respondent to discipline pursuant to § 448.02(3), Stats.

COUNT II (MS. B)

19. Because Ms. B (DOB [redacted]) had recently moved to Marinette, Wisconsin [redacted], she needed a local internist to monitor maintenance treatment she was receiving for several medical conditions. Respondent was accepting new patients and Ms. B had her medical records transferred to Respondent at the NorthReach Medical Center in Marinette.

20. At Ms. B's first appointment on February 25, 2002, Respondent conducted a thorough physical examination of Ms. B. Ms. B also had a follow up appointment with Respondent on March 11, 2002.

21. The next time Ms. B saw Respondent was on March 19, 2003, for an annual physical. Ms. B was not given a g to change into and was fully clothed when Respondent entered the exam room. Among other things, Respondent noted:

“The only complaint she has is pain in the left lower extremity on and off for some time now. The pain occurs in the lateral aspect of the left thigh but also in the medial aspect near the inguinal area. The pain increases with movement of the leg especially with abduction.”

22. Respondent told Ms. B to lie back and had her pull her jeans and panties down to her pubic area so he could palpate her abdomen. Respondent then moved to the foot of the table and examined Ms. B's legs. After flexing her right knee Ms. B told Respondent that her right knee hurt mostly when going down stairs. Respondent then had Ms. B flex her left knee and asked if it hurt. Ms. B told him that if her left knee was flexed at the same time her leg was externally rotated, she experienced pain in the groin area and hip joint. Respondent pushed on Ms. B's groin area and told her he could give her an injection in the tendon there to help relieve the pain.

23. Respondent then asked Ms. B to take her left leg out of her pants and panties, and she did so. Respondent pressed on her pelvic region and asked if she felt pain. Respondent then, without wearing gloves or using any lubrication, inserted his fingers between Ms. B's labia and into her vagina. He began pressing hard and moved his fingers in a circular motion and massaged her retro pubic area.

24. Respondent removed his fingers and asked Ms. B to roll over onto her stomach. Ms. B rolled over with her leg still out of her pants and panties. Respondent put his hand between Ms. B's legs and massaged her clitoris with his two fingers, again asking Ms. B if she felt pain.

25. There was no legitimate medical purpose for Respondent to insert his fingers between Ms. B's labia and into her vagina or to touch her clitoris.

26. Respondent did not make any note in Ms. B's medical record that he touched her in the genital area.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to Wis. Stats. § 448.02(3).

2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, and by failing to appear at the hearing, respondent is in default under Wis. Admin. Code § RL 2.14, and the Medical Examining Board may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.

3. The conduct described in the findings of fact constitutes a violation of Wis. Admin. Code § Med 10.02(2)(h).
4. The conduct described in the findings of fact constitutes an agency finding within the meaning of Wis. Stats. §50.065.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Khalil S. Baroud, M.D., license number 43117, to practice medicine and surgery in the State of Wisconsin is REVOKED.

The respondent is ordered to pay the costs of the department pursuant to Wis. Stats. § 440.22 (2).

OPINION

Applicable Law

Wis. Admin. Code § Med 10.02 (2) (h), provides:

(2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

The Notice of Hearing and Complaint in this matter were served upon the respondent on June 17, 2004. More than twenty days has passed since service of the complaint and the respondent has failed to answer or otherwise respond to the complaint.

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint, nor did he appear at the scheduled default hearing.

The complainant's motion for default is granted and the relief requested is granted.

The division of enforcement placed into the record, five exhibits which recount the division's investigation of the facts underlying the complaint, and the division's attempts to communicate with Dr. Baroud regarding answering the complaint in this matter.

My review of the transcript and the exhibits establishes that the investigation of this matter as recounted in the investigative reports of the division is accurately reflected in the allegations contained in the complaint. Simply put, notwithstanding the respondent's default, the division has demonstrated that it was and is prepared to go forward with substantial evidence so as to meet its burden of proof that the allegations contained in the complaint occurred. The victim statements and descriptions of the respondent's apartment were admitted as Exhibits 3, 4 and 5.

Exhibits 1 and 2 establish that the division attempted to do more than the legally required minimum to insure that the complaint in this matter actually was received by the respondent. In fact, the respondent communicated to the division as late as June 7, 2003, (Exh. 1), to provide a specific post office box where the division should send correspondence. As of July 7, 2004, the division went one step further and conducted a further investigation to obtain a street address where the complaint could be sent, purportedly to an agent of the respondent. (Exh. 2) I conclude that the respondent is engaging in evasion in an attempt to delay. This supports the granting of a default as a proper result, when taken in combination with exhibits 3, 4 and 5.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional

discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or that he even has an interest in being rehabilitated. The respondent has not come forward to show remorse, an explanation, or to dispute the findings of the complaint. The conduct alleged demonstrates a depraved indifference to the health, safety and welfare of patients and constitutes the extreme and unfortunate example of an abuse of trust placed in medical doctors.

Absent some mitigating evidence (of which none has been presented), imposing anything less than revocation would not aid in rehabilitation, as no response has been received from the respondent to initiate any conceivable process of rehabilitation. Further, to not revoke respondent's license would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter such conduct by other practitioners.

Costs

Section 440.22 (2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Chiropractic Examining Board, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

Date: 9-10-2004

William Anderson Black
Administrative Law Judge