BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Joaquin Antonio Barahona, M.D.	)	**Case No. 03-2011-212519**
Physician's and Surgeon's Certificate No. G 61084	)	
Respondent	)	

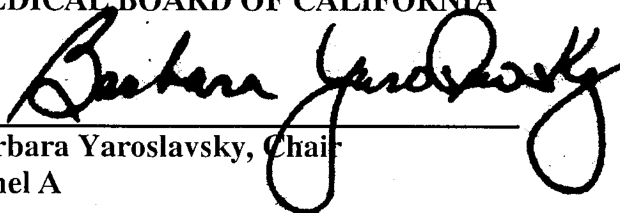
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 17, 2014 **.**

IT IS SO ORDERED December 18, 2013 **.**

MEDICAL BOARD OF CALIFORNIA



By: ______________________
Barbara Yaroslavsky, Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JOAQUIN ANTONIO BARAHONA, M.D., Physician's and Surgeon's Certificate No. G 61084 Respondent.	Case No. 03-2011-212519 OAH No. 2013050661

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on September 16 through 19, 2013, in Oakland, California. Mila Magallanes, R.N., provided interpretation services from English to Spanish, and from Spanish to English, on September 16, 2013.

Deputy Attorney General Brenda P. Reyes represented complainant Kimberly Kirchmeyer, Interim Executive Director, Medical Board of California, Department of Consumer Affairs.

Mitchell J. Green, Attorney at Law, Nossaman LLP, represented respondent Joaquin Antonio Barahona, M.D., who was present.

The record remained open for the parties to provide redacted copies of exhibits that contain confidential personal information. On September 30, 2013, complainant filed redacted copies of Exhibits 3 and 3A, 6, 7, 10 and 14-17, and respondent filed redacted copies of Exhibits C and O; neither party objected to the redactions of the other. The original versions of those exhibits were sealed and the redacted copies substituted into the record. Exhibit 19, a confidential names list, was also sealed. Respondent's Prehearing Brief was marked Exhibit V.

The record closed and the matter was deemed submitted on September 30, 2013.

FACTUAL FINDINGS

1. On August 24, 1987, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 61084 to respondent Joaquin Antonio Barahona, M.D. The license will expire on July 31, 2015, if not renewed.

2. On April 27, 2012, complainant Linda K. Whitney, acting in her official capacity at that time as the Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent had sexual relations with two patients, Patient A and Patient B, making his license subject to discipline for sexual misconduct and gross negligence.[1] The accusation alleges, as a matter in aggravation, that respondent had sexual relations with a third patient, Patient C; complainant is time-barred from alleging respondent's relationship with Patient C as cause for discipline. Respondent filed a notice of defense and this hearing followed.

Respondent

3. Respondent is a 61-year-old physician who specializes in family medicine. (Respondent was board certified in family medicine until 1996, when his certification lapsed.) He is a native of El Salvador. Respondent came to the United States in 1971 at the age of 18, graduated from San Francisco State University in 1975, and then returned to El Salvador to attend medical school. He went to medical school in El Salvador until 1980, when he was admitted to the University of California, Davis School of Medicine. Respondent graduated from UC Davis in 1986. He completed an internship and residency in family medicine at San Jose Medical Center in 1989. In July 1989, respondent started work with the Golden Gate Medical Group (GGMG) in San Francisco. GGMG was a four- or five-physician practice in the Mission District, located next to St. Luke's Hospital. Respondent and the other physicians at GGMG had staff privileges at St. Luke's. From 1990 to 1996, respondent was the Chief of Family Practice at St. Luke's.

4. Respondent left GGMG at the end of June 2009 and went to work for Kaiser Permanente in San Francisco. He resigned from Kaiser Permanente on May 31, 2012, after the accusation was issued. Respondent has not practiced medicine since then.

Patient C

5. Patient C met respondent when she was a ward clerk at St. Luke's Hospital. She became his patient in 1993. Patient C felt vulnerable; she had just had a baby the year before and she was a single parent. Shortly after becoming respondent's patient, Patient C

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[1] Initials are used to protect the privacy of the patients. In some documents, and in the record of the hearing, Patient A is referred to as J.C., Patient B is referred to as A.B., and Patient C is referred to as L.J.

and respondent began a sexual relationship that continued until 1999. Respondent was Patient C's physician during all of that time.

6. Respondent knew when he began the relationship with Patient C that, as a physician, he was prohibited from having sexual relations with a patient.

Patient B

7. Patient B, a nurse's assistant at St. Luke's Hospital, became a patient of respondent's in 1994 or 1995. She remained his patient until he left GGMG in 2009.

8. In 1995, shortly after she became respondent's patient, Patient B initiated a sexual relationship with respondent that continued until 2012. Respondent knew when the relationship began that it was contrary to his ethical responsibilities as a physician. He concealed the relationship from his partners and from the staff at GGMG.

9. Respondent and Patient B met for sexual relations once or twice a week at a hotel; sometimes, they met in respondent's office at night, after it had closed.

10. Between 1995 and 2009, respondent never told Patient B that he was prohibited from having sexual relations with a patient, and he never referred her to another physician.

11. Respondent's sexual relationship with Patient B affected his professional judgment. Patient B was married when she and respondent began their relationship and she was not taking contraceptives. Respondent prescribed contraceptives for her so that they could maintain their sexual relationship.

12. Respondent's sexual relationship with Patient B continued from 1995 until June 2012, two months after complainant issued the accusation in this case. Patient B terminated the relationship after she was interviewed by a Board investigator, and learned for the first time that ethical principles prohibit a physician from having sexual relations with a patient.

Patient A

13. Patient A was a medical assistant at GGMG when respondent started work there in 1989, and was promoted to office manager in 2001. She became respondent's patient in 2001. Soon thereafter, respondent became the physician for all of Patient A's family – her husband, her then 10-year-old daughter, and her 9-year-old son. Patient A and her family remained patients of respondent until he left GGMG in 2009.

14. In 2005, after respondent had made sexual advances to Patient A for several weeks, respondent and Patient A began a sexual relationship that continued until January 2011. While respondent was employed at GGMG, they met for sexual encounters once a

week or so in respondent's office, before work. The sexual relationship continued after respondent left GGMG.

15. When he began the relationship with Patient A, respondent knew that the ethical principles of his profession prohibited him from having a sexual relationship with a patient. Respondent never told Patient A that their sexual relationship violated his ethical obligations, and he never referred her to another physician.

16. Respondent kept his relationship with Patient A secret from his wife, from Patient A's husband, from Patient B, and from his partners and the staff at GGMG. He reassured Patient A from time to time that they would not "get caught." Respondent knew it would be "real big trouble" if their relationship were exposed.

17. In 2006, respondent diagnosed Patient A's daughter with leukemia, and he coordinated her treatment for that condition over the next two and one-half years. Respondent continued his sexual relationship with Patient A during the time he was treating Patient A's daughter for this condition.

18. When respondent left GGMG in June 2009, Patient A found a new primary care physician for her and her family. Patient A and respondent continued their sexual relationship, and that relationship affected respondent's professional judgment. On several occasions, respondent prescribed medications for Patient A without performing a physical examination and without informing Patient A's primary care physician, both of which are required to conform to the standard of care. The medications included Cheratussin for cough; amoxicillin, an antibiotic; Valtrex and Zovirax for genital herpes; fexofenadine, an antihistamine; Fluticasone, a nasal spray for allergies; and cortisone cream for rashes.

19. In January 2011, Patient A's husband found out about the relationship between his wife and respondent, and confronted his wife. Patient A called respondent. She told him that her husband had discovered their relationship and that he was going to file a complaint with the Board.

Patient A called respondent again the next day. She told respondent her husband had asked how long the relationship had being going on, and she had told him "since 2005." Respondent told Patient A that she should have told him the relationship began after he left GGMG.

At hearing, respondent testified he made that remark because he thought it would have been less painful to Patient A's husband to think that the relationship had begun more recently. When respondent made that statement, however, he knew that his relationship with Patient A was unethical and that a complaint to the Board was imminent. Moreover, respondent has never demonstrated any empathy toward Patient A's husband: he has never apologized to him and, when respondent first sought therapy in October 2012, his primary complaint was not guilt over the harm he had caused Patient A's family, but the loss of his career and his relationship with his own wife. It is concluded that respondent made the

remark to Patient A because he had hoped to cover up his unethical conduct. Respondent's testimony, that he was trying assuage the feelings of Patient A, is not credible.

20. The sexual relationship between Patient A and respondent was devastating to Patient A's husband and her family. Patient A and her husband are not sure whether their marriage will survive and whether the family will stay together; they both testified that even now, almost three years since the relationship between respondent and Patient A came to light, there is a lot of tension, fighting, anger and pain. Patient A's husband testified that what happened is "incomprehensible." He looks at the medical profession differently now: he feels that, especially when his daughter was ill with leukemia, respondent's attention should have been on his daughter, not on a sexual relationship with his wife. Patient A's husband stated that he and his family trusted respondent; now, he does not have that same unqualified trust of physicians. In the words of Patient A's husband, "You wonder whether you're [the physician's] priority, or whether there's a personal agenda."

21. In January 2011, after her husband discovered her relationship with respondent, Patient A filed a complaint with the Board. Although Patient A wrote and signed the complaint, it was Patient A's husband who was the moving force behind it. He works in a hospital setting, and was aware that there are rules that govern the relationship between a physician and patient. He told his wife that if she did not file a complaint against respondent, he would.

22. Board investigators interviewed respondent on October 20, 2011, in connection with Patient A's complaint. Respondent admitted during the interview that he had had sexual relations with Patient A, and also with two other patients, Patient B and Patient C. The interviewers asked respondent if he had considered seeking mental health counseling, and respondent told them "no."

Standard of care

23. Reinhardt G. Hilzinger, M.D., testified as an expert at the request of the Board. Dr. Hilzinger has been a licensed California physician since 1989, and has been board certified in family medicine since 1988. In Dr. Hilzinger's opinion, it is the standard of care for a physician to avoid sexual relations with a patient, and that any act of sexual relations with a patient is an extreme departure from the standard of care. Dr. Hilzinger's opinion on this issue was uncontradicted, and it is persuasive.

Respondent's evidence

RESPONDENT'S TESTIMONY

24. In his testimony at hearing, respondent acknowledged that his sexual relationships with Patients A, B and C violated his ethical obligations as a physician. He feels that he rationalized the relationships to himself on the ground that he was still providing high quality medical care to them. Respondent insists, however, that he never used his status

as a physician to establish the sexual relationships. He described the circumstances under which the relationships began: he and Patient C went out socially; he and Patient B were put together by friends and went to coffee together; he tried to kiss Patient A on several occasions when she brought files into his office because he felt that she was attracted to him. Respondent's point is that he did not initiate sexual relations with these patients during a medical appointment, or during a physical examination; in his mind, that is what separates a consensual relationship between two adults from an exploitive relationship between a physician and his patient. These relationships, respondent believes and emphasizes, were not exploitive, and were not instances in which he as a physician abused his authority; they were, as respondent sees it, long-term, affectionate, consensual relationships.

25. Respondent's argument demonstrates a lack of insight into the physician-patient relationship. The relationship is not one of equality; it is inherently unequal. The physician is in the position of authority; the patient is seeking treatment from the physician, and is vulnerable. Respondent exploited that relationship when he pursued a sexual relationship with Patient A – exploited it doubly, because Patient A was respondent's subordinate in the medical practice. Even though he did not initiate the relationship with Patient B, respondent maintained his position of authority over Patient B, and his position of authority over Patient A, by not referring them to another physician.

MEDICAL OPINIONS

26. Respondent offered the testimony of two psychiatrists, Eli Merritt, M.D., whom he saw for treatment, and James R. Missett, M.D., Ph.D, whom he saw for evaluation. These psychiatrists have sharply different views on respondent's psychological condition and his ability to practice safely.

DR. MERRITT

27. Respondent first sought treatment from Dr. Merritt on October 18, 2012. Dr. Merritt recorded respondent's chief complaint as "[60-year-old] male presents for emotional stress related to recent loss of MD license." Respondent described the sexual relationships with his patients as "affairs" and said that his greatest guilt concerned his wife. Respondent told Dr. Merritt that he was aware that the sexual relationships were ethical violations, but pointed out that they were consensual. In his treatment notes, Dr. Merritt wrote that respondent's emotional stress related to his wife, not his "medical ethical guilt," and to the loss of his employment. Respondent saw Dr. Merritt for eight sessions (respondent missed one session), and then chose to terminate his treatment.

28. In a letter dated June 14, 2013, Dr. Merritt expressed his opinion that respondent is safe to practice:

> In my opinion, [respondent] now exhibits very good judgment and insight into his past behaviors, their causes and consequences, and the meaning and purposes of medical ethical

> standards as they relate to sexual relations between physicians and patients. He has successfully addressed the psychological and cultural[2] issues involved, and, furthermore, it [is] my expectation that the risk of any recurrence of similar boundary violations is extremely low. He now exhibits mastery and self-control over the issues and impulses involved and, if necessary, would readily seek mental health help before repeating his past mistakes.

Dr. Merritt testified to the same effect at hearing. In Dr. Merritt's opinion, respondent has no psychiatric diagnoses.

DR. MISSETT

29. On June 10, 2013, respondent saw Dr. Missett for evaluation, at the request of his attorney. Dr. Missett met with respondent twice, interviewed him, and administered various psychological tests. He prepared a written report dated August 5, 2013, as well as two letters dated July 10 and August 7, 2013. Dr. Missett also testified at hearing.

Dr. Missett found that respondent suffers from certain psychological conditions ("Axis I" diagnoses) that should be a direct target of treatment. Those conditions include "Adult Antisocial Behavior," "Impulse Control Disorder," "Adult Acculturation Problem," and "Adjustment Disorder with Mixed Disturbance of Emotions and Conduct."

Dr. Missett also concluded that respondent suffers from a personality disorder – an "Axis II" diagnosis. A personality disorder, Dr. Missett testified, is an aspect of an individual's personality that has been present since early adulthood; unlike an Axis I condition, a personality disorder is less subject to change without intervention. Respondent's personality disorder, in Dr. Missett's opinion, is part of the explanation for his sexual misconduct.

Dr. Missett described respondent's personality disorder as "Personality Disorder Not Otherwise Specified . . . with Dependent, Narcissistic, and Histrionic features." He explained the meaning of those terms. The reference to "dependent features" means that in his interviews and his psychological testing, respondent appeared to be "overly dependent on those around him, including his family, his patients . . . women . . . for signs of attention, affection, approval, support and direction." "Narcissistic" means that respondent appeared to "display a need for admiration together with a lack of empathy towards those with whom he interacts at the same time that he blithely assumes that those with whom he is interacting attach the same meaning to his actions and behavior as he does." And "histrionic" means that respondent displayed a "tendency initially to charm new acquaintances with his

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[2] Dr. Merritt believes that cultural issues, deriving from respondent's Central American heritage and his father's conduct during his own marriage, contributed to respondent's sexual relationships with his patients.

enthusiasm, his apparent openness, and his flirtatiousness, but with his behavior often being inappropriately sexually provocative or seductive."

Dr. Missett opined that respondent can practice safely with certain "minimally required" safeguards, which include: regular psychiatric counseling; regular participation in a 12-Step group program, such as Sex and Love Addicts Anonymous; and a workplace chaperone for all patient contacts. In Dr. Missett's words, respondent "should not be seeing patients, men or women, by himself without another licensed professional available to make certain the care he provides is appropriate and that he behaves himself."

Dr. Missett recommended that respondent seek psychiatric treatment from a psychiatrist who will establish rules for respondent and insist that respondent follow them. This treatment, Dr. Missett stated, should continue for the entire time that respondent is licensed, and six months beyond that. Dr. Missett recommended Phillip Liu, M.D., because he is "tough and expects patients to follow his rules."

30. Dr. Missett's opinion concerning respondent's psychiatric condition is more persuasive than Dr. Merritt's. Dr. Merritt's opinion is not supported by psychological testing. He does not address the testing performed by Dr. Missett, nor does he address Dr. Missett's diagnosis of a personality disorder. Central to Dr. Merritt's opinion is his belief that respondent demonstrates "very good judgment and insight" into the ethical principles that govern sexual relations between a physician and patient, but respondent's testimony at hearing does not support Dr. Merritt's belief. Respondent's insight into those principles is poor. For all these reasons, Dr. Merritt's opinion that respondent carries no psychiatric diagnoses, and is safe to practice, is not credible. On the other hand, Dr. Missett's opinion that respondent suffers from a personality disorder is supported by psychological testing, and is consistent with the evidence presented at hearing. Dr. Missett's opinion on this issue is persuasive.

OTHER EVIDENCE

31. From July 20 to July 22, 2012, about two months after the accusation was issued, respondent attended a Professional Boundaries Course at the University of California, Irvine School of Medicine. Since then, he has completed two more "blocks" of the course, in 2012 and 2013. Respondent testified that the boundaries course helped him "come to understand that [he has] done a great deal of harm" to his patients and their families, and to his own family.

32. At hearing, respondent testified that he began attending Sex and Love Addicts Anonymous meetings in July 2012. According to respondent, he attended weekly until November 2012, and has attended monthly since then. No evidence was offered to corroborate respondent's testimony on these points.

33. Respondent testified that he began treatment with Dr. Liu in July 2013 and has been seeing him weekly. No written reports from Dr. Liu were submitted. Dr. Liu did not testify at hearing.

34. Respondent testified that he feels deeply sad for all the pain he has caused. He would like to return to medical practice and make a contribution to society. Respondent hopes to use his medical and language skills to treat underserved members of the Latino community. He is willing to practice under any probationary conditions the Board might impose, including the presence of a chaperone for all patients.

35. Respondent has colleagues who know him well, who were shocked by his ethical violations, but who nevertheless respect his medical expertise and hope that he can continue to serve disadvantaged patients. Robert G. Perez, M.D., Jonathan J. Leichtling, M.D., Walter Kopp, Romilda Foresti-Lorente, M.D., Manuel Abullarde, RN, Robert C. Vazquez, M.D., and Luis A. Bonilla, M.D., appeared at hearing to support respondent, or wrote letters on his behalf; Dr. Vazquez and Dr. Bonilla wrote letters and also testified at hearing. Dr. Bonilla was one of respondent's partners at GGMG. He has been deeply affected by respondent's misconduct. Dr. Bonilla believes, however, that respondent has sincerely repented and, if respondent is allowed to continue to practice, Dr. Bonilla will employ him.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. The Board may discipline the license of a physician who has engaged in unprofessional conduct. (Bus. & Prof. Code, § 2234.[3])

3. The term "unprofessional conduct" is defined to include any act of gross negligence. (§ 2234, subd. (b).)

4. Section 726 states that "[t]he commission of any act of sexual abuse, misconduct, or relations with a patient . . . constitutes unprofessional conduct and grounds for disciplinary action for any [licensed physician]."

Citing *Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, and *Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, respondent asserts that a consensual sexual relationship between a physician and his patient, one that arises outside of the examination room, is not a violation of section 726. Respondent argues that, to show a violation of section 726, complainant must prove that the sexual relationship was substantially related to the qualifications, functions or duties of the physician.

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[3] All statutory references are to the Business and Professions Code.

Respondent's position is not a correct statement of the law. Until 1993, section 726 required a showing that the act of sexual relations was "substantially related to the qualifications, functions or duties" of a physician. That requirement, however, was deleted when section 726 was amended in 1993. Since then, section 726 has prohibited any act of sexual relations between a physician and the physician's patient.

First cause for discipline

5. During a four-year period of time when she was respondent's patient, from 2005 to 2009, respondent had a sexual relationship with Patient A. (Findings 13 & 14.) By engaging in sexual relations with Patient A when she was his patient, respondent was grossly negligent in his care and treatment of Patient A. (Finding 23.) Each act of sexual relations between respondent and Patient A during that period constitutes cause to take disciplinary action against respondent's license pursuant to section 2234, subdivision (b).

Second cause for discipline

6. Each act of sexual relations between respondent and Patient A, during the time that she was respondent's patient, constitutes unprofessional conduct under section 726. Cause exists to take disciplinary action against respondent's license pursuant to section 726.

Third cause for discipline

7. During a 14-year period of time when she was respondent's patient, from 1995 to 2009, respondent had a sexual relationship with Patient B. (Findings 7 & 8.) Each act of sexual relations between respondent and Patient B, during the time she was respondent's patient, constitutes unprofessional conduct under section 726. Cause exists to take disciplinary action against respondent's license pursuant to section 726.

Fourth cause for discipline

8. By engaging in sexual relations with Patient B when she was his patient, respondent was grossly negligent in his care and treatment of Patient B. (Finding 23.) Each act of sexual relations between respondent and Patient B during that period constitutes cause to take disciplinary action against respondent's license pursuant to section 2234, subdivision (b).

Disciplinary considerations

9. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his misconduct so that it would not be contrary to the public interest to allow him to continue to practice. Evidence of rehabilitation must be measured against the severity of the misconduct; the more serious the misconduct, the stronger the showing of rehabilitation must be. It is the Board's policy to aid in a physician's rehabilitation, where it

is possible to do so. (§ 2229, subd. (b).) Where rehabilitation and protection of the public are inconsistent, however, protection of the public is paramount. (§ 2229, subd. (c).)

10. Respondent's misconduct is serious and disturbing. Knowing that he was violating his professional obligations, respondent established sexual relationships with three patients that spanned more than 15 years. The number of relationships, the length of time that respondent maintained them, and the sustained deception on respondent's part, are troubling enough. But respondent's sexual relationship with Patient A, while he was the primary physician for her entire family and while her daughter was being treated for leukemia, is unconscionable. The disastrous consequences of respondent's misconduct were exactly those that section 726 seeks to prevent: the sexual relationships clouded respondent's professional judgment, all but destroyed Patient A's family, and undermined trust and confidence in the integrity of physicians. Respondent's misconduct demonstrates that he is a threat to patient safety. A compelling demonstration of rehabilitation is required if respondent is to be allowed to practice.

11. No evidence of meaningful rehabilitation was presented. Respondent's sexual misconduct is rooted in a personality disorder. This condition cannot be reached by a three-day boundaries course. Assuming that a personality disorder in a person of respondent's age can be successfully treated, it can be treated only with highly-structured and demanding long-term psychotherapy. Respondent's motivation to pursue such treatment has not been established: he did not seek treatment until after the accusation was filed against him; he quit therapy with Dr. Merritt after eight sessions; and no evidence of his treatment with Dr. Liu was presented. Still, even assuming that respondent is motivated to pursue treatment, there is no evidence of any progress to date. The constant presence of a third party monitor is not a substitute for respondent's personal rehabilitation. One hopes that respondent is successful in addressing the psychological issues identified by Dr. Missett. At this time, however, the evidence establishes only the prospect of rehabilitation, not the fact of rehabilitation. It would be contrary to the public interest to allow respondent to retain his license, even on a probationary basis.

ORDER

Physician's and Surgeon's Certificate No. G 61084 issued to respondent Joaquin Antonio Barahona, M.D., is revoked.

DATED: October 29, 2013

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 27 2012
BY: K. Montalbano ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JOAQUIN ANTONIO BARAHONA, M.D.** **2200 O'Farrell Street** **San Francisco, CA 94115** **Physician's and Surgeon's Certificate No. G 61084** Respondent.	Case No. 03-2011-212519 **ACCUSATION**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about August 24, 1987, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 61084 to Joaquin Antonio Barahona, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board),[1] Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states, in relevant part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states, in relevant part:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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[1] The term "board" means the Medical Board of California. "Division of Medical Quality" shall also be deemed to refer to the Medical Board. (Bus. & Prof. Code, § 2002.)

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence."

7. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

"This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

MEDICAL BOARD INVESTIGATION

8. On or about January 20, 2011, the Medical Board received a patient complaint alleging that Respondent had engaged in a sexual relationship with the patient for several years during the time he was her primary care physician.

9. The Medical Board thereafter conducted an investigation which revealed that Respondent had engaged in sexual relationships with multiple patients, as set forth in more detail hereinafter.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence re: Patient A[2])

10. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 2234, subdivision (b), of the Code in that respondent was grossly negligent in his care and treatment of Patient A. The circumstances are as follows:

[2] The patients' identities are kept confidential to protect their right of privacy but will be revealed to Respondent in discovery.

11. In or about July 1989, Respondent joined the Golden Gate Medical Group (GGMG) practicing family medicine in San Francisco, CA. At the time Respondent joined the GGMG, Patient A was employed as a medical assistant with GGMG. Patient A remained employed with the GGMG, which merged with another medical practice group in or about July 2009, until approximately July 2010.

12. In or about 2001, Respondent became the primary care physician for Patient A, then 37-years-old, Patient A's husband, and Patient A's two children. Respondent remained the primary care physician for Patient A and her family until in or about May 2009, when he left GGMG to practice at Kaiser Permanente Medical Group in San Francisco.

13. In or about June 2005, Respondent began a sexual relationship with Patient A. From in or about June 2005 until his departure from the GGMG in or about May 2009, Respondent engaged in weekly sexual intercourse with Patient A before work hours at the GGMG Office. Respondent continued the sexual relationship with Patient A after he left the GGMG and was no longer Patient A's primary care physician, until January 2011.

14. On or about October 20, 2011, Respondent was interviewed by a Medical Board Investigator and District Medical Consultant regarding the complaint of Patient A. Respondent admitted at that time to engaging in a sexual relationship with Patient A from June 2005 to January 2011. Respondent also admitted to engaging in sexual relationships with two other unidentified women during the time they were his patients.

15. On or about November 18, 2011, the Medical Board served Respondent with Investigative Interrogatories seeking information regarding the two additional patients with whom Respondent admitted at his Board interview to having sexual relationships during the time they were his patients. On or about January 17, 2012, Respondent served verified Answers to the Investigative Interrogatories, identifying Patient B and Patient C as patients with whom he engaged in sexual relationships during the time they were his patients. Respondent reported that Patient C was his patient from approximately April 1993 to June 2008, and that he had engaged in an intimate sexual relationship with Patient C from approximately June 1993 to October 1999.

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16. Thus, Respondent is guilty of gross negligence in his care and treatment of Patient A in that he engaged in a sexual relationship with the patient for several years during the time he was her primary care physician.

SECOND CAUSE FOR DISCIPLINE

(Sexual Misconduct re: Patient A)

17. The allegations of Paragraphs 11 through 15, above. are incorporated herein by reference as if fully set forth.

18. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 726 of the Code in that respondent engaged in sexual relations with Patient A during the time he was her primary care physician.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence re: Patient B)

19. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 2234, subdivision (b), of the Code in that respondent was grossly negligent in his care and treatment of Patient B. The circumstances are as follows:

20. In or about 1995 or 1996, Respondent became the primary care physician for Patient B. Respondent remained Patient B's primary care physician until approximately October 2008. Sometime in or about 1996, respondent began an intimate and sexual relationship with Patient B. The intimate and sexual relationship continues to the present.

21. Thus, Respondent is guilty of gross negligence in his care and treatment of Patient B in that he engaged in a sexual relationship with the patient for several years during the time he was her primary care physician.

FOURTH CAUSE FOR DISCIPLINE

(Sexual Misconduct re: Patient B)

22. The allegations of Paragraphs 20, above, are incorporated herein by reference as if fully set forth.

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23. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 726 of the Code in that respondent engaged in sexual relations with Patient B during the time he was her primary care physician.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 61084, issued to Respondent Joaquin Antonio Barahona, M.D.;

2. Prohibiting Respondent from supervising physician assistants pursuant to section 3527 of the Code;

3. Ordering Respondent, if placed on probation, to pay the costs of probation monitoring; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: April 27, 2012

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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