

MAINE STATE BOARD OF OSTEOPATHIC LICENSURE

IN RE: Licensure Disciplinary Action ) INTERLOCUTORY  
Michael Patnaude, D.O. ) DECISION AND ORDER  
INV#-10-06

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. §2591-A, *et seq.*, 5 M.R.S. §9051, *et seq.* and 10 M.R.S. §8001, *et seq.*, the Board of Osteopathic Licensure (Board) met in public session at the Board's offices located in Augusta, Maine on October 14, 2010 for the purpose of conducting an adjudicatory hearing to determine whether Dr. Michael Patnaude violated certain Board statutes and Rules as alleged in the Notice of Hearing.<sup>1</sup>

A quorum of the Board was in attendance during all stages of the proceedings. Participating Board members were Chairman John Gaddis, D.O., Scott A. Thomas, D.O., Lonnie Lauer, D.O., Gary Palman, D.O., David Rydell, D.O., and public member Kathy W. Walker, L.M.S.W.<sup>2</sup> Carrie Carney, Ass't. Attorney General, presented the State's case. Dr. Patnaude was present and represented by Christopher Taintor, Esq. James E. Smith, Esq. served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding.

State's Exhibits 1-9 and Respondent's Exhibits 1-9 were admitted into the Record. Subsequent to the parties' opening statements, the taking of testimony, submission of exhibits, and the closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

**II. FINDINGS OF FACT**

1. Michael Patnaude, D.O., 50 years of age, has been licensed as an osteopathic physician in the State of Maine since April 9, 1998.

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<sup>1</sup> On August 12, 2010, the Board suspended Dr. Patnaude's license to practice pursuant to 5 M.R.S. §10004(3). The Superior Court subsequently stayed that decision pending the outcome of this hearing.

<sup>2</sup> Marty McIntyre, public member, served as the Board's Case Reporter and did not actively participate as a Board member in this proceeding although did count as a member for purposes of establishing the quorum.

2. Dr. Patnaude's specialty is psychiatry/medication management which he practices in Portland, Maine.
3. Between on or about May 1, 2010 and August 12, 2010, Dr. Patnaude engaged in a dual relationship with DH, who was his patient, and whom Dr. Patnaude described as his best personal friend. (Christie Report pp. 3, 4).
4. Dr. Patnaude allowed DH to stay in his home during a period of time when DH was experiencing difficulties with DH's girlfriend and was receiving treatment from Dr. Patnaude, and at other times when he had no place to stay. Dr. Patnaude also allowed DH's teenage daughter and her boyfriend to stay at his house. (Christie Report pp. 3, 4)
5. Dr. Patnaude allowed DH, while a patient of the licensee, to sleep in the licensee's own bed with him although there was a blanket separating the two friends.<sup>3</sup> (Christie Report pp. 3, 4, 5)
6. Dr. Patnaude paid approximately \$2,000.00 of his own monies to purchase prescription medications for DH – Clonazepam (a benzodiazepine) and Oxycodone (a narcotic) – which were prescribed either by him or another medical practitioner. (Christie Report pp. 3, 6)
7. On June 5, 2010, Dr. Patnaude prescribed a 20 day supply (120 tabs) of Oxycodone 30 mg for DH. Six days later, on June 11, 2010, he prescribed a 30 day supply (240) of Oxycodone 30 mg for DH. In addition, Dr. Patnaude either paid for or gave DH money to pay for these narcotics. (Christie Report pp. 3, 6)
8. On July 11, 2010, Dr. Patnaude prescribed a 26 day supply (210 tabs) of Oxycodone 30 mg for DH. In addition, he either paid for or gave DH money to pay for these narcotics. (Christie Report pp. 3, 6)
9. Dr. Patnaude was the custodian of DH's drugs and would dole them out as prescribed.
10. The licensee hid the drugs in his house without utilizing an appropriate locked repository. (Christie Report pp. 3, 6)
11. During the time that he was treating DH, Dr. Patnaude failed to coordinate DH's care with the other treatment providers of DH, including those who were prescribing controlled substances to DH. (Christie Report p. 8)
12. On July 22, 2010, Dr. Patnaude terminated his treatment of DH due primarily to DH's absconding with DH's prescription drugs located in Dr. Patnaude's home.

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<sup>3</sup> The evidence did not reveal a sexual relationship between the two men.

13. On July 22, 2010, Dr. Patnaude terminated his treatment of DH without providing a referral to a different treatment provider or any plan for urgent care although DH did have a primary care provider and the termination was clearly documented by Dr. Patnaude.

14. On July 22, 2010, Dr. Patnaude forcibly prevented DH from entering the licensee's home, where DH had been living, and told him to return the licensee's money and the prescriptions or he was no longer welcome in Dr. Patnaude's life.

15. Walter Christie, M.D., testified for the state as an expert in the field of psychiatry. He utilized as an ethical resource for his opinions the "American Psychiatric Association, The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry" and related papers.

16. In his report and testimony, he cited his opinion that Dr. Patnaude committed "major boundary violations" which resulted in "a bad outcome."

17. Violations of the standard of care found by Dr. Christie and his reasons therefore are noted above as referenced by (Christie Report pp.).

18. Thomas Gutheil, M.D., testified as an expert witness for the licensee.

19. Dr. Gutheil's opinions that some or all of the above do not constitute boundary violations but rather may constitute boundary crossings are not persuasive.

### **III. CONCLUSIONS OF LAW**

The Board, based on the above evidence and that in the record not recited herein, and utilizing its experience and training as well as those opinions voiced by Walter Christie, M.D., concluded by the following votes that Michael Patnaude, D.O. violated the provisions of:

I. 32 M.R.S. §2591-A.(2)(F), "Unprofessional conduct," when he violated "a standard of professional behavior that has been established in the practice for which the licensee is licensed."  
(6-0)

II. 32 M.R.S. §2591-A(2)(E)(1), incompetence by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. (6-0)

IV. 32 M.R.S. §2591-A(2)(H), violation of a statute of the Board. (See Para's. I & II above) (6-0)

VI. 32 M.R.S. §2591-A(2)(H), violation of a rule of the Board. (See Para.VII. post) (6-0)

VII. Board rule, Chapter 16 §2, treating an immediate family member under circumstances not warranted by the rule. Pursuant to Chapter 16 §2(5), "immediate family member" includes a person living in the home of the licensee. (5-1)

The Board dismissed count III by the vote of 5-1 to wit: 32 M.R.S. §2591-A(2)(E)(2), incompetence by engaging in conduct that evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice for which the licensee is licensed. The State withdrew Count V, 32 M.R.S. §2598, practicing osteopathic medicine without a proper license.

#### IV. SANCTIONS

The Board, during its deliberations in the sanction phase of this proceeding, considered the record in this matter including the July 31, 2003 Board "Letter of Guidance" regarding Dr. Patnaude. That letter stressed "measures that can be taken to avoid complaints related to boundary violations." In particular, the Board recommended therein that observing strict boundaries that prohibits physical contact with all psychiatric patients would be a measure to avoid boundary violation complaints with patients. The Board, at this hearing, by the following votes, ordered that:

1. Michael Patnaude, D.O., at his own expense, shall successfully complete, after pre-approval by the Board's case reporter, the course titled: "Professional Boundaries and Boundary Violations" being conducted on November 19-21, 2010. (6-0)
2. Dr. Patnaude, at his expense, shall schedule a neuropsychological evaluation to provide the Board with an in-depth analysis in a report to be filed with the Board by March 18, 2011. That report shall define for the Board what the analysis entailed, the provider's findings, impressions, and recommendations, particularly as they concern the need for counseling, mentoring, and monitoring and rescue behavior issues. Each party shall provide a list of three providers from which Dr. Patnaude may choose the provider subject to the pre-approval of the case reporter. Dr. Patnaude shall give the provider a copy of this Decision and Order, the witness statement of Dr. Patnaude, and the report of Walter Christie, M.D. (6-0 for all but mentoring/monitoring which passed 4-2)
3. Dr. Patnaude, after due notice by the Board, shall appear before the Board following completion of the "Professional Boundaries and Boundary Violations" course and explain why he thinks the boundary violations occurred, what factors contributed to the boundary violations, and specifically

how he plans to ensure that this never happens again. Moreover, Dr. Patnaude should be prepared to discuss the provider's evaluation. The Board shall subsequently determine whether counseling, mentoring and/or monitoring or other therapy/education, etc. is in order. (6-0 for consideration of counseling; 4-2 for consideration of mentoring and/or monitoring).

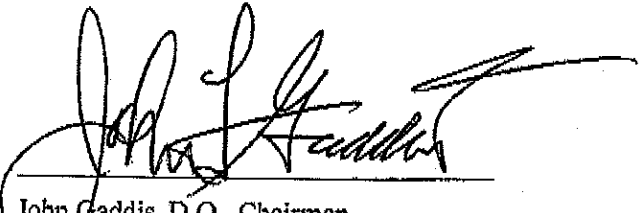
4. The Board reserves the right to postpone the issuance of a final decision until it is satisfied that Dr. Patnaude has successfully completed the above requirements and does not pose a threat of harm to the public. The Board further reserves the right to order additional sanctions in the event that Dr. Patnaude does not comply with this Decision and Order.

5. Dr. Patnaude shall pay the **\$2500 costs of the hearing.**<sup>4</sup> (Hearing officer: participating in the pre-hearing conferences, draft decision re: stay, reviews of record; conduct the hearing - 15 hours, write the Decision and revisions - 5 hours @ \$115 per hour = \$2300); (costs of printing the documents for the hearing-12 copies x 62 pp. = 744 pp. @ \$.25=\$186); (court reporter - greater than \$14.) The check or money order shall be made payable to the **Maine Board of Osteopathic Licensure** and mailed to Susan E. Strout, Executive Secretary, Maine Board of Osteopathic Licensure, 142 State House Station, Augusta, Maine 04333-0142. Payment shall be made by November 18, 2011.

The costs are ordered due to the seriousness of the violation, the Board's past practice in this regard, and the opinion of the Board that costs of the hearing should be borne by the violator rather than the profession as a whole. Dr. Patnaude shall be responsible for the additional costs of a transcript of these proceedings in the event that he orders one or appeals from this Decision and Order. (4-2)

**SO ORDERED.**

Dated: November 18, 2010.

  
John Gaddis, D.O., Chairman  
Maine Board of Osteopathic Licensure

<sup>4</sup> The Board ordered the costs not to exceed \$2500. The actual costs exceed that amount.

V.

**APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S. §10051.3 and 10 M.R.S. §8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Osteopathic Licensure, all parties to the agency proceedings and the Attorney General.