

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING, AND REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF MEDICAL EXAMINERS**

In the Matter of:

Kevin Curtis Schuller, MD
License No. 28925,
Licensee.

Case No. 2010-0159

**FINAL
ORDER
(Public)**

This matter came before the Board of Medical Examiners (the Board) for hearing on May 3, 2011, as a result of the Notice and Complaint served upon the Respondent and filed with the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. § 40-47-117 to determine whether sanctions should be imposed based upon the Memorandum of Agreement and Stipulations agreed upon by the Respondent and the State. Paula S. Magargle, Assistant Agency Counsel, represented the State. The Respondent appeared without counsel.

The Respondent was alleged to have violated of S.C. Code Ann. §§ 40-1-110(f), (g), (k), and (l); 40-47-110(B)(9), (B)(13), (B)(14), (B)(18), (B)(19), and (B)(24); and S.C. Code Regs. 81-60(A) and (D).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a physician duly licensed to practice medicine in South Carolina, and was so licensed at all times relevant to the issues in this case.
2. At all times relevant to this matter, the Respondent was in his residency at the Medical University of South Carolina (MUSC) in Charleston, South Carolina; he participated in Counseling and Psychological Services (CAPS) as part of his residency.
3. In December 2008, the Respondent was assigned A.F., an MUSC student known to him, for treatment. The original course of treatment was weekly, one-hour sessions of cognitive-behavioral therapy. In August 2009, the Respondent began treating A.F. twice weekly after her treatment method

changed to psychodynamic therapy.

4. On or about February 2, 2010, the Respondent invited A.F., while A.F. remained his patient, for lunch, and the following day the two watched a basketball game together at a bar. On February 9, 2010, the Respondent and A.F. had lunch together, walked along the beach, and watched a film at a friend's residence. The Respondent had his last treatment session with A.F. on or about February 10, 2010.

5. On or about February 11, 2010, the Respondent and A.F. met at a friend's house and engaged in a sexual relationship [*sic*]. With some time lapses, the Respondent and A.F. have continued their intimate relationship; the Respondent is divorced, but was married at all times relevant to this matter.

6. MUSC was informed of the sexual relationship on or about March 21, 2010, and informed the Respondent he could not see patients while the school investigated allegations against him. On or about April 30, 2010, the school issued a Report and Recommendation to the Chair which concluded, based on all the evidence, that the inappropriate sexual relationship had occurred. Further, the Report recommended the following:

- a. Immediate probation based upon misconduct, including a violation of professional ethics and state medical regulations;
- b. Suspension from all clinical and education program activities for ninety (90) days, with intent to dismiss from the program;
- c. Reporting to the South Carolina Medical Board;
- d. If, within the suspension period, additional information is brought to the attention of the Program Director/Department Chair that presents mitigating factors and/or treatable conditions that may have contributed to the behavior, as well as the absence of personality characteristics felt to be dangerous or unlikely to change, the Program and University may elect to consider that information and define conditions under which training may be allowed to continue. This would require further evaluation at the time of the petition based upon available information.

The Report also stated, under subsection d, that they at a minimum would require Respondent to meet many conditions, one of which was that Respondent was to have no contact with the former patient (A.F.) involved in this case [*sic*].

7. The Respondent continued his relationship with A.F. and eventually moved in with A.F. This continued relationship was obviously not condoned by the Program and the University [*sic*].

8. On or about June 3, 2010, the Respondent formally was dismissed from the general psychiatry residency program.

9. Between July 14 and 16, the Respondent underwent a Board-ordered evaluation by Gene G. Abel, MD, the results of which are as follows:

Diagnoses:

- a. Major Depressive Disorder, single episode, mild;
- b. Occupational Disorder;
- c. Dependent Personality Disorder; and
- d. Global Assessment of Functioning (GAF) of 65.

Treatment and Other Recommendations:

- a. If allowed to hold a medical license, the Respondent's practice should be limited to treating male patients;
- b. Because the Respondent continues to have contact with his patient, the MUSC Graduate Medical Educational Program will not reinstate him in order to allow him to complete the remainder of his psychiatric residency training. However, if Respondent is allowed to hold a medical license, it would be beneficial for him to complete the remainder of his training at another residency institution;
- c. The Respondent should continue treatment with his psychiatrist, Kevin H. Spicer, MD, who treats his depression with psychopharmacology and addresses some of the relationship and dependency issues in therapy; and
- d. To more formally address the professional-boundary violation, which is not a focus of Dr. Spicer's therapy, the Respondent should attend a three-day professional sexual boundaries and ethics course.

10. The Respondent's wife was able to access and view A.F.'s psychiatric records which the Respondent kept at his home.

11. The Respondent prescribed medications to himself and his wife for his own personal use. In 2008, he prescribed a prophylactic course of *Ivermectin* for his wife and himself. In 2010, he prescribed *Citalopram* to his wife for his own use.

12. The Respondent admits the aforementioned acts by him present grounds that constitute misconduct as alleged.

13. Should a finding of fact constitute a conclusion of law, or *vice versa*, it is adopted as such and directed that it be treated accordingly.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. § 40-47-200, *supra*, has the authority to order the revocation or suspension of a license to practice medicine or osteopathy, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board, or imposing restraint upon the medical or osteopathic practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a fine of up to Twenty-five Thousand Dollars and the costs of disciplinary action.

2. The Respondent violated S.C. Code Ann. §§ 40-1-110(f) and 40-47-110(B)(9) in that he committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public, as evidenced by the admitted facts described above.

3. The Respondent violated S.C. Code Ann. § 40-1-110(g) in that he lacks the professional or ethical competence to practice the profession, as evidenced by the admitted facts described above.

4. The Respondent violated S.C. Code Ann. §§ 40-1-110(k) and 40-47-110(B)(14) in that he violated a provision of this article or of a regulation promulgated under this article, as evidenced by the admitted facts described above.

5. The Respondent violated S.C. Code Ann. §§ 40-1-110(l) and 40-47-110(B)(13) in that he violated the Board's code of ethics, as evidenced by the admitted facts described above.

6. The Respondent violated S.C. Code Ann. § 40-47-110(B)(18) in that he engaged in disruptive behavior or interaction, or both, with physicians, hospital personnel, patients, family members, or others than interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient (this behavior may include, but is not limited to, inappropriate sexual behavior), as evidenced by the admitted facts described above.

7. The Respondent violated S.C. Code Ann. § 40-47-110(B)(19) in that he engaged in behavior that exploits the physician-patient relationship in a sexual way. This behavior is non-diagnostic and non-therapeutic, may be written, verbal, or physical and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably be construed by a patient as sexual (this behavior includes sexual contact with patient surrogates or key third parties), as evidenced by the admitted facts described above.

8. The Respondent violated S.C. Code Ann. § 40-47-110(B)(24) in that he improperly managed medical records, including failure to maintain timely, legible, accurate, and complete medical records, as evidenced by the admitted facts described above.

9. The Respondent violated S.C. Code Regs. 81-60(A) in that he failed to be dedicated to providing competent medical service with compassion and respect for human dignity, as evidenced by the admitted facts described above.

10. The Respondent violated S.C. Code Regs. 81-60(D) in that he failed to respect the rights of patients, of colleagues, and of other health professionals and failed to safeguard patient confidence within the constraints of the law, as evidenced by the admitted facts described above.

11. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified medical doctors against the countervailing concern that society be protected from professional ineptitude and misconduct.

12. The sanction imposed is designed not to punish the physician, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The Memorandum of Agreement and Stipulations is accepted.
2. The Respondent is Publicly Reprimanded.
3. The Respondent shall pay a fine of Five Thousand Dollars (\$5,000.00) within twelve (12) months of the date of this Final Order. This fine is not deemed to be paid until the Board receives it, and failure to pay it may result in further action against the Respondent's license.
4. The Respondent's license is suspended immediately, stayed upon compliance with the following conditions:
 - a. Payment of costs in the amount of Eight Hundred, Forty-six Dollars and Fifty Cents (\$846.50). These costs are not deemed to be paid until the Board receives them, and failure to pay them may result in further action against the Respondent's license; and
 - b. Successful completion of an ethics course as recommended by Gene Abel, MD, and approved by the Board in advance, at the Respondent's expense. Thereafter, he must file written proof of compliance with the Board. Failure to complete this requirement may result in further action against the Respondent's license.
5. The Respondent shall continue psychiatric treatment with a provider approved by the Board

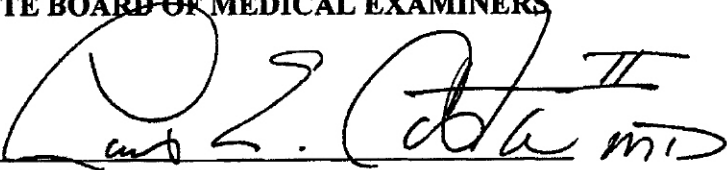
in advance, with quarterly reports to the Board.

6. The Respondent may treat only male patients until the Board approves him to treat all patients.

7. This Final Order shall take effect upon service of this order on the Respondent.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: 
Louis E. Costa II, MD
President of the Board

May 3, 2011

**South Carolina Department of Labor, Licensing & Regulation
Before the South Carolina State Board of Medical Examiners**

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

In the Matter of:

Kevin Curtis Schuller, MD
License No. MMD.28925

Respondent

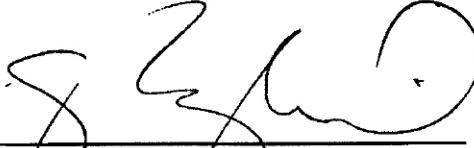
Case No. 2010-0159

Respondent

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date, May 5, 2011, served the **Final Order** in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s) to the following address:

Kevin Curtis Schuller, MD



Sherry Bailey
Administrative Assistant
Office of Disciplinary Advice Counsel

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING, AND REGULATION
BEFORE THE STATE BOARD OF MEDICAL EXAMINERS**

In the Matter of:

Kevin C. Schuller, M.D.,
License No. MD.28925,

Respondent.

Case No. 2010-159

**ORDER ON THE RESPONDENT'S MOTION
TO BE RELEASED FROM TERMS AND
CONDITIONS
(Public)**

This matter came before the Board of Medical Examiners (the Board) for hearing on November 5, 2012, as a result of the Respondent's Motion to be released from Terms and Conditions. A quorum of Board members was present. The hearing was held pursuant to appropriate provisions of the S.C. Administrative Procedures Act (the APA), S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). Patrick D. Hanks, Assistant Agency Counsel, appeared on behalf of the State. The Respondent appeared and was not represented by counsel.


In a Final Public Order dated May 3, 2011, the Respondent was found to be in violation of the Board practice act and its regulations, specifically S.C. Code Ann. §§ 40-1-110(f),(g) and (k), 40-47-110(B)(13),(14),(18),(19) and (24) and S.C. Code of Regulations, Chapter 81-60(A) and (D).

The Respondent requested to be released from the terms and conditions of the 2011 Order. Evidence and testimony presented at the hearing established that the Respondent should provide an updated assessment performed by Dr. Gene Abel, M.D., prior to the Board's consideration of Respondent's request. Dr. Abel is to provide the information from his assessment to the Board for its consideration after which Respondent may reappear before the Board to request release from the terms and conditions of his 2011 Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that based upon the evidence and testimony presented at the hearing, the Respondent's motion to be released from those terms and conditions may not be granted at this time.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: 

Louis E. Costa, II, DMD, MD
President of the Board

November 30, 2012