

State of Rhode Island
Department of Health
Board of Medical Licensure and Discipline



IN THE MATTER OF:
Francisco Gutierrez M.D.
License Number MD 10220
Case # C19-0647

CONSENT ORDER

Francisco Gutierrez, MD ("Respondent") is licensed as a physician in Rhode Island. The Rhode Island Board of Medical Licensure and Discipline ("Board") makes the following

FINDINGS OF FACT

1. Respondent has been a licensed physician in Rhode Island since January 11, 2000.
2. Respondent graduated from Evangelical Faculty of Parana on June 1, 1994.
3. The Board received a self-reported complaint regarding a disciplinary action against Respondent in another jurisdiction. Respondent, who holds license number 257547 in Massachusetts, agreed to a consent order with the Massachusetts Board of Registration in Medicine, case number 2019-020, regarding facts and circumstances relevant to that matter.

4. The Massachusetts Board of Registration in Medicine consent order stated,

[A]t the time of his termination, Respondent was the Medical Director of Southcoast's Rosebrook Medical Office in Wareham.

Medical Assistant 1 was assigned to work for the Respondent in the summer of 2017. On July 24, 2017, Medical Assistant 1 was ordering her lunch on the computer when the Respondent approached her from behind. The Respondent

offered to pay for Medical Assistant 1's lunch; however, she declined his offer. The Respondent then instructed her to follow him into one of the examination rooms where he pulled out some money from his pocket and handed it to her. The Respondent reiterated that he wanted to pay for her lunch and appreciated all of her hard work. The Respondent then leaned in towards Medical Assistant 1 as if he was going to hug her. Instead, he grabbed her face with both hands (one hand on each cheek) and kissed her on the mouth.

Medical Assistant 1 told the Respondent that she was going to collect his next patient and then walked out of the examination room. Medical Assistant 1 subsequently reported the incident to a co-worker and the Clinical Director for the Rosebrook Medical office.

Prior to the incident on July 24, 2017, the Respondent inappropriately touched Medical

Assistant 1 in the following ways:

- a. Rubbing her shoulders and back;*
- b. Kissing her head*
- c. Holding her hand; and*

Prior to the incident on July 24, 2017, the Respondent made inappropriate comments to Medical Assistant 1 including that:

- a. He had dreams about her;*
- b. He wanted to take her on vacation and*
- c. On one occasion he asked for her home address and explained that he would stop by her residence and say hello if he was in the area.*

Medical Assistant 1 was uncomfortable with the Respondent touching her and making inappropriate comments to her.

Medical Assistant 2 was assigned to assist the Respondent during the two years that she worked with him; however, she interacted with him on a regular basis during the course of the workday. The Respondent would occasionally stand behind Medical Assistant 2 while she was seated at her desk and massage her back and shoulders. Respondent hugged Medical Assistant 2 on multiple occasions.

Medical Assistant 3 assisted the Respondent on occasion but was assigned primarily to work with other providers during the four years that he worked at Rosebrook Medical. During the course of the Respondent's employment he touched Medical Assistant 3 inappropriately in the following ways:

- a. Stood behind her and massaged her shoulders on several occasions;*
- b. Kissed her on the cheek on several occasions; and*
- d. Hugged her on two separate occasions.*

On one of those occasions he hugged her so hard that the badge she had clipped to her shirt dug into her chest.

Respondent told Medical Assistant 3 that he dreams about her. Medical Assistant 3 was uncomfortable with the Respondent's behavior and comment to her.

In the summer of 2016, Medical Assistant 4 would occasionally assist the Respondent on days when his assigned medical assistant was unavailable. The Respondent told Medical Assistant 4 on multiple occasions that she was

beautiful. The Respondent hugged medical assistant 4 on multiple occasions. In June 2017, the Respondent approached Medical Assistant 4 and asked her about her prior experience working as a pharmacy technician. Medical Assistant 4 told the Respondent that she wanted to return to working as a pharmacy technician, but the fees associated with renewing her license were expensive. The Respondent instructed Medical Assistant 4 to follow him into an examination room. Once inside the room he removed \$150 from his wallet and gave it to her to use towards renewing her pharmacy technician license. The Respondent also offered to help Medical Assistant 4 obtain a job working in the pharmacy at Southcoast. He further stated that if she got the job she would have to go out with him for a glass of wine to celebrate. Medical Assistant 4 was uncomfortable with the Respondent touching her and making inappropriate comments.

Patient Access Assistant 1 works in the Medical Records Department at Rosebrook Medical and is responsible for scanning documents and providing physicians with medical charts. Patient Access Assistant 1 worked with the Respondent for three or four years before he was terminated. During the course of the Respondent's employment he touched Patient Access Assistant 1 inappropriately in the following ways:

- a. Approximately once every two weeks the Respondent would kiss her on the cheek or on the back of her hand;*
- b. The Respondent also regularly massaged her shoulders; and*

c. On one occasion in July 2017 the Respondent kissed her partially on the mouth and partially on the cheek.

Approximately a year before the Respondent was terminated, he told Patient Access Assistant 1 that they should go for a naked walk around a nearby pond cranberry bog. In the summer of 2017 Patient Access Assistant 1 was standing outside of an examination room where a patient was undergoing a Pap smear. The Respondent, who was also standing in that area, joked that he would like to perform a Pap smear on Patient Access Assistant 1. Patient Access Assistant 1 was uncomfortable with the Respondent touching her and making inappropriate comments to her.

Nurse Practitioner 1 was assigned to work with the Respondent in the summer of 2017. During that time period he shared an office with her and touched her inappropriately in the following ways;

a. Most mornings when the Respondent entered their office, he would give her a hug and a kiss on the head;

b. A few months before he was terminated, he approached her in the walk-through area of the office, thanked her for doing a great job, and kissed her on the mouth; and

c. The Respondent frequently stood behind her and massaged her shoulders. The Respondent also made inappropriate comments to Nurse Practitioner 1 including that they should run away together and get married.

Nurse Practitioner 1 was uncomfortable with the Respondent touching her and making inappropriate comments but did not report her concerns due to fear of losing her job.

At some point in 2015 the Respondent's supervisor, Physician 1, told the Respondent that he should not be hugging staff members. Physician 1 also urged the Respondent to be cognizant of the power differential that existed between him and members of the staff. On July 24, 2017, the Respondent met with Physician 1 to discuss the complaint that Medical Assistant 1 had lodged against him. During the course of that conversation the Respondent admitted to kissing Medical Assistant 1 but denied that the kiss was sexual in nature. On August 4, 2017, the Respondent met with members of Southcoast's Human Resources Department. During the course of that interview the Respondent admitted to the following facts regarding the incident involving Medical Assistant 1:

- a. He offered to pay for her lunch;*
- b. He asked her to follow him into an examination room where he took out money from his pocket and handed it to her;*
- c. He grabbed her shoulders and kissed her partially on the cheek and partially on the lips;*

The Respondent also admitted during his interview to touching Medical Assistant

4, Patient Access Assistant 1, and Nurse Practitioner 1 in the following ways:

- a. Standing behind them and massaging their shoulders;*

- b. *Kissing them on the cheek; and*
- c. *Hugging them.*

The Respondent acknowledged during his interview with members of the Human Resources Department that Physician 1 had told him two years earlier that he should not be hugging staff. The Respondent explained that he followed this directive for a short period of time but then went back to hugging people as that was his custom."

5. Respondent appeared before the Investigative Committee on September 5, 2019, at which time Respondent admitted the facts as stated above in the Massachusetts consent order are true.

6. Respondent's license to practice medicine in Massachusetts was suspended, but the suspension was stayed on satisfaction of the condition that Respondent enter into a probation agreement. The terms of the probation agreement included an evaluation from Acumen Institute and appropriate treatment, Respondent's agreement not to consume any substance of abuse, including alcohol, implementation of a Board approved practice plan and monitor for five years, and Respondent's agreement to follow the recommendations of the Acumen Institute.

7. The Investigative Committee concluded that Respondent violated the above-referenced statute.

8. The Board has reviewed the reports from Acumen Institute and notes Respondent has provided substantial evidence of remediation regarding the above-referenced events.

Based on the foregoing, the parties agree as follows:

- 1. Respondent admits to and agrees to remain under the jurisdiction of the Board.

2. Respondent has agreed to this Consent Order and understands that it is subject to final approval of the Board and is not binding on Respondent until final ratification by the Board.
3. If ratified by the Board, Respondent hereby acknowledges and waives:
 - a. The right to appear personally or by counsel or both before the Board;
 - b. The right to produce witnesses and evidence on his behalf at a hearing;
 - c. The right to cross examine witnesses;
 - d. The right to have subpoenas issued by the Board;
 - e. The right to further procedural steps except for those specifically contained herein;
 - f. Any and all rights of appeal of this Consent Order;
 - g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review; and
 - h. Any objection to the fact that this Consent Order will be reported to the National Practitioner Data Bank and Federation of State Medical Boards and posted to the Rhode Island Department of Health ("RIDOH") public website.
4. Respondent agrees to pay, within 5 days of the ratification of this Consent Order, an administrative fee of \$1050.00 for costs associated with investigating the above-referenced complaint. Such payment shall be made by certified check, made payable to "**Rhode Island General Treasurer**," which payment shall be sent to Rhode Island Department of Health, 3 Capitol Hill, Room 205, Providence, RI 02908, Attn: Lauren Lasso. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of submitting the above-referenced payment.
5. Respondent hereby agrees to this reprimand on his physician license.

6. Respondent's license is suspended for 5 years from ratification of this order. The suspension is and shall remain stayed, for so long as Respondent, to the satisfaction of the Board, adheres to the terms of the Massachusetts Board of Registration in Medicine Probation Agreement.

7. Respondent shall specifically submit to the Board a practice plan, which plan shall include the identification of a Board-approved worksite monitor and chaperones, as applicable. Respondent shall use a worksite monitor or chaperone whenever he examines a female patient, and the monitor/chaperone must document his or her presence for the examination in the medical record. The worksite monitor shall send monitoring reports every 90 days for five years, the first report being due 90 days from ratification of this Order. Each report shall cover the preceding 90-day period. Each report shall be emailed to DOH.PRCCompliance@health.ri.gov no later than 15 calendar days after each 90-day period, and each subsequent 90 period. In total, there will be a minimum of 15 reports to the Board.

8. Each report from the monitor to the Board shall include any and all written or oral or otherwise documented complaints from any source about Respondent relative to his care of and interaction with his patients and all written or oral or otherwise documented complaints about Respondent's interaction with staff, co-workers or business contacts of any type.

9. Respondent shall follow all recommendations for Acumen Institute and ensure all subsequent reports are sent to DOH.PRCCompliance@health.ri.gov no later than 15 calendar days after completion.

10. Respondent, and not the Board, shall be responsible for the payment of any fee or charge occasioned by Respondent's compliance with this Consent Order.

11. If Respondent violates any term of this Consent Order after it is signed and accepted, the Director of RIDOH ("Director") shall have the discretion to impose further disciplinary action, including immediate suspension of Respondent's medical license. If the Director imposes further disciplinary action, Respondent shall be given notice and shall have the right to request an administrative hearing within 20 days of the suspension and/or further discipline. The Director shall also have the discretion to request an administrative hearing after notice to Respondent of a violation of any term of this Consent Order. The Administrative Hearing Officer may suspend Respondent's license, or impose further discipline, for the remainder of Respondent's licensing period if the alleged violation is proven by a preponderance of evidence.

Signed this 1 day of November, 2019.



Francisco Gutierrez, MD

Ratified by the Board of Medical Licensure and Discipline on the 13th day of November, 2019.



Nicole Alexander-Scott, MD, MPH
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