

Public

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 14-88

IN THE MATTER
OF
CALVIN DAY, JR., M.D.

COMMISSIONER'S
SUMMARY
ORDER

TO: Calvin Day, Jr., M.D.
REDACTED

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the Texas State Board of Medicine, has made a finding substantially equivalent to a finding that the practice of medicine by **CALVIN DAY, JR., M.D.**, Respondent, New York license number 149869, in that jurisdiction, constitutes an imminent danger to the health of its people, as is more fully set forth in the Texas Medical Board Order of Temporary Suspension dated July 25, 2011, and allied papers, attached, hereto, as Appendix "A," and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **CALVIN DAY, JR., M.D.** shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN VIOLATION OF THIS ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY DEFINED BY NEW YORK EDUCATION LAW §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in Texas.

The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Referral Proceeding to be provided to Respondent after the final conclusion of the Texas Medical Board proceeding. Said written Notice may be provided in person, by mail or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

RESPONDENT SHALL NOTIFY THE DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, NEW YORK STATE DEPARTMENT OF HEALTH, RIVERVIEW CENTER, 150 BROADWAY, SUITE 510, ALBANY, NY 12204-2719, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE FINAL CONCLUSION OF THE PROCEEDING IMMEDIATELY UPON SUCH CONCLUSION.

**THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-A.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.**

DATE: Albany, New York
April 9, 2014

REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Department of Health

Inquires should be directed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

LICENSE NO. G-1883

IN THE MATTER OF
THE LICENSE OF
CALVIN LEE DAY, JR., M.D.

BEFORE THE DISCIPLINARY PANEL
OF THE
TEXAS MEDICAL BOARD

ORDER OF TEMPORARY SUSPENSION
(WITH NOTICE OF HEARING)

On July 25, 2011, came to be heard before the Disciplinary Panel of the Texas Medical Board (the "Board"), composed of Melinda McMichael, M.D., Chair, Margaret McNeese, M.D., and Paulette B. Southard, members of the Board (the "Panel"), duly in session, the matter of the Application for Temporary Suspension or Restriction (With Notice of Hearing) of the license of Calvin Lee Day, Jr., M.D. ("Respondent"). Respondent appeared in person and with counsel Robert D. Simpson and Louis Leichter. Wendy A. Pajak and Susan Rodriguez represented Board Staff. Based on evidence submitted, the Board through this Panel makes the following Findings of Fact and Conclusions of Law and enters this Order of Temporary Suspension:

FINDINGS OF FACT

1. Respondent is a Texas physician and holds Texas Medical License No. G-1883, issued by the Board on June 15, 1982, which was in full force and effect at all times material and relevant to this Order. All jurisdictional requirements have been satisfied.

2. The President of the Board, Irvin E. Zeitler, Jr., D.O., appointed the Panel to sit as a Disciplinary Panel in this matter, pursuant to the Medical Practice Act, TEX. OCC. CODE ANN. Title 3, Subtitle B (the "Act") §164.059(a) and 22 TEX. ADMIN. CODE §187.56.

3. On or about August 31, 2010, Patient 1¹ reported to the San Antonio Police Department ("SAPD") that she had been assaulted by Respondent at his office. Patient 1 told police that on or about August 22, 2010, after a series of Botox injections, Respondent lured her to the back of his office under the guise that he wanted to show Patient 1 some of his physical fitness equipment, which he kept in a locked room. Respondent told Patient 1 that he needed help with his fitness program and asked for her advice because she was a personal trainer. Patient 1

¹ The Board will provide, under seal, the names of the patients that correspond to their numbers referenced above.

saw that Respondent had a bed in this room and had soft music playing. Once Patient 1 and Respondent were in the room, Respondent closed and locked the door, exposed his genitals to Patient 1, and fondled her breasts and penetrated her vagina against her will. Respondent made unsolicited phone calls to her several times after this incident.

4. On or about January 27, 2011, Respondent was arrested by SAPD for sexually assaulting Patient 1. Following media coverage of Respondent's arrest, additional women came forward with allegations that Respondent sexually assaulted them as well.

5. On or about January 31, 2011, Patient 2 reported to SAPD that Respondent had sexually assaulted her on or about July 29, 2009, at his office during a patient visit. Patient 2 stated to police that after having a skin tag removed, Respondent kissed her, put his tongue in her mouth, indicated that he wanted to perform oral sex on her, and fondled her vagina against her will. According to her statement and phone records, Respondent made unsolicited phone calls to her several times after this incident.

6. On or about January 29, 2011, Patient 3 reported to SAPD that she was sexually assaulted by Respondent sometime in 1999 when she went to Respondent's office on a cold call to sell advertising to Respondent. After her sales presentation, she inquired about laser hair removal. Respondent took Patient 3 to an exam room and asked Patient 3 to see the area from which she was interested in having hair removed. Accordingly, she pulled down her pants so that Respondent could see her bikini line. At such time, Respondent penetrated her vagina with his finger against her will. Patient 3 did not come forward until she saw media coverage of Respondent's arrest because she was scared.

7. On or about February 10, 2011, a former employee of Respondent, Louise Feuge, gave a statement to SAPD. Ms. Feuge reported that she worked for Respondent for approximately four weeks during April 2000 and May 2000. She told police that on or about May 13, 2000, Respondent requested that she perform laser hair removal on his back after regular clinic hours. Respondent disrobed completely for this laser hair removal session, and then demanded that Ms. Feuge apply the laser to his testicles and anus. Respondent then demanded that Ms. Feuge put the laser into his rectum and pull the trigger. Ms. Feuge did as Respondent demanded because she was scared that he would get angry and attack her. Ms. Feuge resigned from her position at the clinic the following week and only reported the incident to police after seeing media coverage of Respondent's arrest.

8. On or about February 9, 2011, Patient 4 reported to SAPD that, during a patient visit sometime in 1986, Respondent made her remove all of her clothing and repeatedly touched a mole near the crevice of her buttocks and kept asking if that was one that she wanted removed. She reportedly felt violated and confused because it was unlike any other appointment she had ever had.

9. On or about February 10, 2011, Patient 5 gave a statement to the SAPD describing her experience as Respondent's patient between 1993 through 2000. Specifically, she told police that Respondent made her disrobe completely during patient visits and Respondent proceeded to spread her buttocks apart while she lay on her stomach. Respondent would demand that she roll over to her back and spread her labia apart to look inside her vagina. Allegedly, Respondent took pictures of "areas he wanted to watch" while she was completely nude. The Patient eventually stopped going to Respondent because she felt uncomfortable with the way Respondent did full body exams.

10. During the investigation, SAPD collected photographic evidence of Respondent's genitalia, which helped substantiate the victims' allegations of sexual assault and indecent exposure because some victims were able to describe Respondent's uniquely identifiable penis.

11. On or about May 11, 2011, Respondent was indicted in Bexar County, Texas, on two counts of intentionally and knowingly causing the penetration of the sexual organ of two patients without their consent and forcing the patients to submit and participate by the use of physical force and violence and by exploiting their emotional dependency on Respondent.

12. Based on the above Findings of Fact, the Panel, including at least one physician licensed to practice medicine in this state, finds that Respondent is a continuing threat to the public welfare and a real danger to the health of Respondent's patients or to the public from the acts or omissions of Respondent caused through Respondent's lack of competence, impaired status, or failure to care adequately for Respondent's patients.

13. Based on the above Findings of Fact, the Panel finds an imminent peril to the public health, safety, or welfare that requires immediate effect of this Order of Temporary Suspension on the date rendered.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Panel concludes the following:

1. Section 164.059 of the Act authorizes the Disciplinary Panel to temporarily suspend or restrict the medical license of Respondent if the Disciplinary Panel determines from evidence presented to it that the Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

2. Based on the evidence presented and the Findings of Fact set forth herein, the Disciplinary Panel finds that Respondent violated various sections of the Medical Practice Act, specifically:

- a. Respondent has committed a prohibited act or practice within the meaning of Section 164.051(a)(4) based on Respondent's inability to practice medicine with reasonable skill and safety to patients as a result of any mental or physical condition;
- b. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) based upon Respondent's unprofessional or dishonorable conduct, as further defined by Board Rules 190.8(2)(E), engaging in sexual contact with a patient; 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient; 190.8(2)(K), behaving in an abusive or assaultive manner towards a patient or patient's family that interferes with patient care; and 190.8(2)(R), violation of federal or state law whether or not there is a complaint, indictment, or conviction; and
- c. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) and 164.053(a)(1) based on Respondent's commission of an act that violates any state or federal law if the act is connected with the physician's practice of medicine; specifically, Texas Penal Code Section 22.011, relating to sexual assault; and Civil Practice and Remedies Code, Chapter 81, relating to exploitation by health care provider.

3. Based on the evidence presented and the above Findings of Fact and Conclusions of Law, the Panel determines that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Panel ORDERS that:

1. Respondent's Texas medical license is hereby temporarily suspended.
2. This Order of Temporary Suspension with Notice of Hearing is final and effective on the date rendered.
3. This Order of Temporary Suspension shall remain in effect until it is superseded by an Order of the Board.

Signed and entered this July 25, 2011.

REDACTED

**Melinda McMichael, M.D., Chair
Disciplinary Panel
Texas Medical Board**

TEXAS MEDICAL LICENSE NO. G-1883

IN THE MATTER OF
THE LICENSE OF
CALVIN LEE DAY, JR., M.D.

BEFORE THE DISCIPLINARY PANEL
OF THE
TEXAS MEDICAL BOARD

ORDER OF TEMPORARY SUSPENSION
(WITHOUT NOTICE OF HEARING)

On June 14, 2011, came to be heard before the Disciplinary Panel ("Panel") of the Texas Medical Board ("Board"), composed of Allan Shulkin, M.D., Chair, David Baucom, and Patricia Blackwell, members of the Board duly in session, the matter of the Application for Temporary Suspension (WITHOUT NOTICE OF HEARING) of the license of Calvin Lee Day, Jr., M.D. ("Respondent"). Respondent did not appear in person and Wendy Pajak, represented Board staff. Based on evidence submitted, the Board through this Panel makes the following Findings of Fact and Conclusions of Law and enters this Order of Temporary Suspension (WITHOUT NOTICE OF HEARING):

FINDINGS OF FACT

1. Respondent is a Texas physician and holds Texas Medical License No. G-1883, issued by the Board on June 15, 1982, which was in full force and effect at all times material and relevant to this Order. All jurisdictional requirements have been satisfied.
2. At the direction and approval of Irvin E. Zeitler, Jr., D.O., President of the Board, Allan Shulkin, M.D., Chair, David Baucom, and Patricia Blackwell, members of the Board were appointed to sit as a Disciplinary Panel in this matter, pursuant to the Medical Practice Act, TEX. OCC. CODE ANN. Title 3, Subtitle B (the "Act") §164.059(a) and 22 TEX. ADMIN. CODE §187.56.
3. The Panel convened without Notice, pursuant to §164.059(c) of the Act.
4. On or about May 11, 2011, Board staff received information that Respondent, a 59 year-old dermatologist in San Antonio, was indicted in Bexar County on two counts of intentionally and knowingly causing the penetration of the sexual organ of two female patients

("Patient 1" and "Patient 2")¹ without their consent and forcing the Patients to submit and participate by the use of physical force and violence and by exploiting their emotional dependency on Respondent.

5. On or about August 31, 2010, Patient 1 reported, to the San Antonio Police, that she had been assaulted by Respondent at his office. Patient 1 told police that, on or about August 22, 2010, after a series of Botox injections, Respondent lured her to the back of his office to ask Patient 1's advice about some training equipment, which he kept in a locked backroom of his office. He indicated that he needed some help with his fitness program and asked for her advice because she was a personal trainer. According to Patient 1's statement, Respondent had a bed in this room, soft music playing, and he proceeded to close and lock the door, expose his genitals and began to fondle her breasts and vagina.

6. On or about January 27, 2011, Respondent was arrested by the San Antonio Police for sexually assaulting Patient 1. Following the local media broadcast of Respondent's arrest, additional females came forward with allegations that Respondent sexually assaulted them as well.

7. On or about January 31, 2011, another female patient ("Patient 2") reported to the San Antonio Police that Respondent had sexually assaulted her on or about July 29, 2009, at his office during a patient visit. Patient 2 stated to police that, after having a skin tag removed, Respondent kissed her, put his tongue in her mouth, indicated that he wanted to perform oral sex on her and proceeded to fondle her vagina until she escaped. According to her statement, and phone records, Respondent called her several times afterwards.

8. On or about January 29, 2011, another patient ("Patient 3") reported to the San Antonio Police that she was sexually assaulted sometime in 1999 when she went to Respondent's office on a cold call to sell advertising to Respondent. After her presentation, she inquired about laser hair removal. Respondent requested that she pull down her pants so that he could view her bikini line and then he penetrated her vagina with two fingers until she escaped. Patient 3 had not come forward until after she heard the news story about his arrest because she was scared.

9. On or about February 10, 2011, a former employee, Louise Fugee, gave a statement to the San Antonio Police about a bizarre incident involving a laser hair removal

¹ The Board will provide, under seal, the names of the patients that correspond to their respective numbers herein.

machine. According to her statement, Ms. Fuege worked for Respondent for approximately four weeks during April 2000 and May 2000. She told police that, on or about May 13, 2000, Respondent requested that she perform laser hair removal on his back at the end of the day, after the clinic had closed. During the hair removal session, Respondent completely disrobed and demanded that Ms. Fuege remove the hair from his testicles and anus. Ms. Fuege told police that Respondent demanded that she put the laser into his anus and pull the trigger. Ms. Fuege did as Respondent requested because she was scared that he would get angry and attack her. Ms. Fuege resigned shortly thereafter and only reported the incident after the recent broadcast about his arrest.

10. On or about February 9, 2011, another female patient ("Patient 4") reported to the San Antonio Police that, during a patient visit sometime in 1986, Respondent made her remove all of her clothing and repeatedly touched a mole near the crevice of her buttocks and kept asking if that was one that she wanted removed. She reportedly felt violated and confused because it was unlike any other appointment she had ever had.

11. On or about February 10, 2011, another female patient ("Patient 5") gave a statement to the San Antonio Police describing her experience as Respondent's patient between 1993 through 2000. Specifically, she told police that Respondent made her disrobe completely during patient visits and he proceeded to spread her buttocks apart while she lay on her stomach. Respondent would demand that she roll over to her back and spread her labia apart to look inside her vagina. Allegedly, Respondent took pictures of "areas he wanted to watch" while she was completely nude. The Patient eventually stopped going to Respondent because she felt uncomfortable with the way he did full body exams.

12. During the investigation, the San Antonio police also collected photographic evidence of Respondent's male genitals, which helped corroborate the victims' descriptions of Respondent's uniquely identifiable penis.

13. Respondent has continued to actively practice medicine since his arrest and indictment.

14. Respondent's actions and pattern of criminal conduct demonstrate that Respondent has impaired judgment and lacks control over his behavior. Such conduct clearly establishes that Respondent is not able to safely practice medicine and, therefore, his continued practice of medicine constitutes a continuing threat to the public health and safety.

15. Based on the above Findings of Fact, the Panel, including at least one physician licensed to practice medicine in this state, finds that respondent is a continuing threat and real danger to the health of a Respondent's patients or to the public from the acts or omissions of Respondent caused through Respondent's lack of competence, impaired status, or failure to care adequately for Respondent's patients.

16. Based on the above Findings of Fact, the Panel finds an imminent peril to the public health, safety, or welfare that requires immediate effect of this Order of Temporary Suspension on the date rendered.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Panel concludes the following:

1. Section 164.059 of the Act authorizes the Disciplinary Panel to temporarily suspend or restrict the medical license of Respondent if the Disciplinary Panel determines from evidence presented to it that the Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

2. Section 164.059(c) of the Act authorizes the Disciplinary Panel to temporarily suspend or restrict the license of the Respondent in a proceeding without notice, if (1) the Board immediately provides notice of the suspension or restriction to the license holder, and (2) a hearing on the temporary suspension or restriction before a disciplinary panel of the Board is scheduled for the earliest possible date after ten days' notice of hearing.

3. Based on the evidence presented and the Findings of Fact set forth herein, the Disciplinary Panel finds that Respondent violated various sections of the Medical Practice Act, specifically:

- a. Respondent has committed a prohibited act or practice within the meaning of Section 164.051(a)(4) based on Respondent's inability to practice medicine with reasonable skill and safety to patients as a result of any mental or physical condition;
- b. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure

the public, as further defined by Board Rule: 190.8(2)(E), engaging in sexual contact with a patient; 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient; 190.8(2)(K), behaving in an abusive or assaultive manner towards a patient or patient's family that interferes with patient care; and 190.8(2)(R), violation of federal and state laws whether or not there is a complaint, indictment, or conviction; and

c. Respondent has committed a prohibited act or practice within the meaning of Section 164.052(a)(5) and 164.053(a)(1) based on Respondent's commission of an act that violates a law of this state that is connected with Respondent's practice of medicine, specifically, Texas Penal Code, Section 22.011(a) and (b), relating to sexual assault.

4. Based on the evidence presented and the above Findings of Fact and Conclusions of Law, the Panel determines that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Panel ORDERS that:

1. Respondent's Texas Medical License No. G-1883 is hereby TEMPORARILY SUSPENDED.

2. This Order of Temporary Suspension (WITHOUT NOTICE OF HEARING) is final and effective on the date rendered.

3. Notice of this Order of Temporary Suspension (WITHOUT NOTICE OF HEARING) shall be given immediately to Respondent.

4. A hearing on the Application for Temporary Suspension (WITH NOTICE) will hereby be scheduled before a Disciplinary Panel of the Board at a date to be determined as soon as practicable, at the offices of the Board, unless such hearing is specifically waived by the Respondent.

5. This Order of Temporary Suspension (WITHOUT NOTICE OF HEARING) shall remain in effect until such time as a hearing on the Application for Temporary Suspension (WITH NOTICE) is conducted and a Disciplinary Panel enters an order or until superseded by a Order of the Board.

Signed and entered this June 14, 2011.

REDACTED

Allan Shulkin, M.D., Chair
Disciplinary Panel.
Texas Medical Board