

STATE OF MAINE BOARD OF OSTEOPATHIC LICENSURE

In Re: Joseph A. Jackson, IV)
)
Appeal of Preliminary Denial) **DECISION AND ORDER**
of Application for Licensure)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. § 9051 et seq., 10 M.R.S. § 8003(5), and 32 M.R.S. § 2591-A, the State of Maine Board of Osteopathic Licensure (“Board”) met in public session at its offices in Augusta, Maine, on February 12, 2015, at 1:00 p.m.¹ The purpose of the meeting was to conduct an adjudicatory hearing to determine whether the application for licensure to practice osteopathic medicine of Joseph A. Jackson, IV, should be granted.

By letter dated January 30, 2015, the Board provided Mr. Jackson² notice that a hearing would be held on February 12, 2015. A Conference Order was issued on February 9, 2015, following a prehearing conference held the same day. An Evidentiary Order was issued on February 11, 2015.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were John F. Gaddis, D.O.; Marty W. McIntyre, Public Member; Natania Piper, D.O.; Scott A. Thomas, D.O.; and Chair Joseph R.D. deKay, D.O. Joseph Jackson was present and represented himself. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine. Rebekah J. Smith, Esq., served as Presiding Officer. The hearing was held in accordance with the requirements of the Administrative Procedures Act, 5 M.R.S. § 9051 et seq.

¹ The hearing started approximately half an hour late due to the late arrival of Mr. Jackson.

² Because Mr. Jackson is not currently licensed, he is not addressed as “Doctor” in this Decision and Order, pursuant to 32 M.R.S. § 3270.

State Exhibits #1 to #21 were admitted without objection. Applicant Exhibits #3 to #5, #7, #9, #10, #13, #17 and #18 were admitted without objection.³ Applicant Exhibits #19 and #20 were admitted over objection. Applicant Exhibit #1 was excluded. Applicant Exhibits #2, #6, #8, #11, #12, and #14 to #15 were withdrawn because they were duplicative of State Exhibits.

The Board took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. Each party presented an opening statement. The State presented the Applicant as a witness. The Licensee presented Dr. Eric Buchalter and Dr. Graham Spruiell as witnesses. Dr. Buchalter and Dr. Spruiell appeared telephonically without objection. Each party made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the fitness of Mr. Jackson for licensure.⁴

II. FINDINGS OF FACTS

1. Joseph Jackson, IV, obtained his degree as a doctor of osteopathic medicine in May 2000 from the New York College of Osteopathic Medicine. (Applicant Exh. #4.) Mr. Jackson obtained a license to practice osteopathic medicine in the state of New York in 2002 and in the state of Massachusetts in 2003. (State Exh. #6 & #7.)
2. Mr. Jackson completed a residency in psychiatry at Long Island Jewish Medical Center in New Hyde Park, New York, in 2003. (Applicant Exh. #4.) Mr. Jackson then completed a fellowship in child and adolescent psychiatry at Massachusetts General Hospital in Boston, Massachusetts, in 2005. (Applicant Exh. #4.) He was board-certified in psychiatry by the

³ The Applicant brought his admitted exhibits to hearing with an alternative numbering system. This Decision and Order utilizes the Applicant Exhibit numbers as they were originally submitted and as is reflected in the prehearing orders.

⁴ Although the Board elected Dr. deKay as incoming Chair during its meeting on February 12, 2015, former Chair Marty McIntyre led the Board deliberations.

American Board of Psychiatry and Neurology. (State Exh. #6.) His subspecialty was child and adolescent psychiatry. (State Exh. #6.)

3. During his fellowship at Massachusetts General Hospital, Mr. Jackson had occasionally moonlighted at various hospitals on nights and weekends. (Testimony of Applicant.)
4. In June 2005, Patient A was 28, married, and the mother of two young children. (State Exh. #6.)
5. On June 27, 2005, at approximately 9:00 p.m., Patient A drove herself to the emergency room at Newton Wellesley Hospital because she was feeling depressed and suicidal following a fight with her husband. (State Exh. #6.) Patient A, who was under the care of a psychotherapist and psychiatrists and was taking Klonopin for anxiety and Celexa for depression, was seen by Mr. Jackson, who was working as a psychiatrist-on-call in the emergency room. (State Exh. #6.) Mr. Jackson did not have access to the electronic medical record at Newton-Wellesley Hospital. (Testimony of Applicant.)
6. Beginning at approximately 3:00 a.m. on June 28, 2005, Mr. Jackson spent an hour talking with Patient A, who told him that she had thought of ways of committing suicide and talked about problems in her marriage. (State Exh. #6.) While describing her condition and history, Patient A told Mr. Jackson that she taught violin, to which he responded that he played the violin and sometimes suffered from performance anxiety. (State Exh. #6.) Mr. Jackson began to compliment Patient A and told her that she seemed like a wonderful person and that she reminded him of a friend of his who was a wonderful person. (State Exh. #6.) Mr. Jackson told Patient A that she presented very strongly with symptoms of bipolar disorder. (State Exh. #6.) At the end of the session, Mr. Jackson gave Patient A one of his business cards and wrote his cell phone number on the back. (State Exh. #6.) He told Patient A where he would be practicing that summer and set up an appointment for a few

days later, June 29, 2005, at Massachusetts General Hospital, where he was completing his fellowship, even though he had no authority to make such an appointment there. (State Exh. #6.) Mr. Jackson testified at hearing that he did so because Patient A was concerned about getting insurance to approve an appointment with another provider. (Testimony of Applicant.) Mr. Jackson told Patient A that if she needed someone with whom to talk, she could contact him. (State Exh. #6.) Following the session, Patient A thought that Mr. Jackson “seemed taken with” her. (State Exh. #6.) At hearing, Mr. Jackson testified that he considered Patient A to be his patient, who was vulnerable and seeking help, but denied that he committed any misconduct that evening. (Testimony of Applicant.)

7. Patient A met Mr. Jackson for a second session that lasted approximately 90 minutes on June 29, 2005, at Massachusetts General Hospital. (State Exh. #6.) It was the first time that Mr. Jackson had ever made an appointment to see a patient privately. (Testimony of Applicant.) During the appointment, Mr. Jackson talked about himself and his personal history, discussed his performance anxiety again, and indicated that he had stopped playing classical violin. (State Exh. #6.) After Patient A told Mr. Jackson of her first experience getting drunk, he told her about his first time getting drunk and also shared that he had smoked marijuana. (State Exh. #6.) After the appointment, Patient A felt good that someone seemed to pay attention and care about her. (State Exh. #6.) Mr. Jackson considered that he and Patient A had an ongoing physician-patient relationship at that point and that he would see her when he returned from a planned vacation. (Testimony of Applicant.) At hearing, Mr. Jackson agreed that Patient A was vulnerable and seeking his help at the June 29, 2005, appointment, but denied that he committed any misconduct or boundary violations. (Testimony of Applicant.)

8. At the end of the meeting on June 29, 2005, Mr. Jackson told Patient A that he was leaving on a two-week vacation and provided Patient A with his contact number at the new position he would be at when he returned. (Testimony of Applicant.) Mr. Jackson also prescribed Abilify to Patient A. (State Exh. #6.) Patient A was unsure of all the side effects but filled the prescription and took a dose at night just before going to bed. (State Exh. #6.) Patient A woke up about an hour later and was violently vomiting. (State Exh. #6.) Patient A felt dizzy, fell on the floor, and was unable to get up. (State Exh. #6.) She was sick throughout the night and into the next morning. (State Exh. #6.) Driving to an appointment, Patient A vomited again and her body felt numb. (State Exh. #6.) She called her husband and then Mr. Jackson, who she was unable to reach because he was out of the country. (State Exh. #6.) At hearing, Mr. Jackson described the message left by Patient A as very dramatic. (Testimony of Applicant.) Patient A then called for an ambulance and was transported to the Metro West Medical Center. (State Exh. #6.)
9. In mid-July 2005, approximately two weeks after Patient A reacted badly to Abilify, Mr. Jackson received her message and called her three times. (Testimony of Applicant; State Exh. #6.) Patient A answered the third call and informed Mr. Jackson that she had experienced what she believed was a bad reaction to the Abilify. (State Exh. #6.) She told him that she was seeing a therapist who had referred her to a psychopharmacologist. (State Exh. #6.) Despite this, Mr. Jackson wanted Patient A to come in for another session with him. (State Exh. #6.) When Patient A indicated that it was difficult for her to come into Boston because she had an infant, Mr. Jackson persisted and told her that she did not need an appointment to come and see him and that if she needed to talk, he was at McLean Hospital on certain dates. (State Exh. #6.)

10. Several days later, it mid-to-late July 2005, Patient A met Mr. Jackson at his office at McLean Hospital in Belmont, Massachusetts, where he maintained staff privileges as an Assistant Child Psychiatrist in order to conduct psychiatric research, beginning on July 18, 2005. (State Exh. #6.) It was not a clinical office but rather an office affiliated with Mr. Jackson's research position there; he did not have permission to treat patients in his office at McLean Hospital. (Testimony of Applicant.) Mr. Jackson took no notes during the meeting. (State Exh. #6.) Mr. Jackson revealed more personal information including that he was in therapy and that his therapist told him that he was neglected as a child. (State Exh. #6.) Mr. Jackson called Patient A's husband a "loser" and told her that she was a "beautiful, smart, funny, talented and fascinating person." (State Exh. #6.) Patient A felt "awesome" that Mr. Jackson thought she was so fascinating. (State Exh. #6.) At the end of the meeting, Patient A asked Mr. Jackson if she could hug him and the two hugged, even though Mr. Jackson was aware at the time that such contact with a patient was improper. (State Exh. #6.) As they walked to the door, Mr. Jackson stared at Patient A's buttocks and told her that if things did not work out with her husband, to "save me as your trump card." (State Exh. #6.) Mr. Jackson told Patient A that if she ever needed to talk to anyone, she could call his cell phone or beeper, giving her both numbers. (State Exh. #6.) Mr. Jackson told Patient A that she was a very special person and leaned over to kiss her, but because Patient A dodged the kiss, it landed on her neck. (State Exh. #6.) Mr. Jackson was never paid for the appointment. (State Exh. #6.) Patient A left the appointment feeling very confused. (State Exh. #6.) Mr. Jackson testified at hearing that he considered his therapeutic relationship with Patient A to be concluded even though he did not maintain any medical record for Patient A in which he could notate such a termination. (Testimony of Applicant.)

11. Several months later, at approximately 11:00 p.m. on a Sunday in January 2006, Patient A paged Mr. Jackson. (State Exh. #6.) When he returned the page, Patient A told him that things were horrible, that she wanted to talk to him, and that she had already asked for a great deal of support from her friends and her therapists. (State Exh. #6.) Mr. Jackson told Patient A to call back the next day. (State Exh. #6.) When Patient A called him the next afternoon, he told her that he could meet her at 6:00 p.m. at 1488 Beacon Street, Brookline. (State Exh. #6.) At hearing, Mr. Jackson testified that he agreed to meet with Patient A in the context of a physician-patient relationship because he was interested to find out what she needed. (Testimony of Applicant.) Mr. Jackson did not tell Patient A that the address was actually his sometimes residence and had never been his office. (State Exh. #6.) At the time, Mr. Jackson was aware that Patient A was taking Klonopin. (State Exh. #6.) She was also taking Prozac for depression and Adderall for Attention Deficit Disorder. (State Exh. #6.)
12. During January 2006, Mr. Jackson was having difficulty in his relationship with his girlfriend. (State Exh. #6.)
13. When Patient A arrived at the Brookline address, she realized it was an apartment building, but she thought Mr. Jackson might have an office inside. (State Exh. #6.) When she got to the apartment, she realized it was a furnished residence. (State Exh. #6.) When she entered the apartment, Mr. Jackson offered her a glass of wine, which she accepted. (State Exh. #6.) Patient A and Mr. Jackson sat on the couch and Patient A told Mr. Jackson that her marriage was falling apart and she was having difficulty at school. (State Exh. #6.) Mr. Jackson revealed more personal information, including his age, that he had a girlfriend who was a child psychiatrist, that he had traveled to China, that he played music at psychiatry conferences, and that he had a clientele that included teenage girls. (State Exh. #6.) Mr. Jackson also told Patient A that he had thought about her since their last meeting. (State Exh.

#6.) Mr. Jackson drank one or two glasses of wine during the conversation and offered Patient A a second glass of wine. (State Exh. #6.) Patient A had not eaten anything that day. (State Exh. #6.)

14. When Mr. Jackson brought Patient A her second glass of wine, they discussed music and he put on a Barry White CD. (State Exh. #6.) Mr. Jackson then began kissing Patient A and removing her clothing. (State Exh. #6.) Patient A felt very light-headed. (State Exh. #6.) Mr. Jackson then undressed and began to perform oral sex on Patient A. (State Exh. #6.) Mr. Jackson brought Patient A to the floor and laid her on her back. (State Exh. #6.) Patient A was in and out of awareness. (State Exh. #6.) Mr. Jackson and Patient A had sexual intercourse. (State Exh. #6.) When Mr. Jackson asked Patient A if she was “fixed,” she said she was not and asked if he had a condom, which he said he did not. (State Exh. #6.) Mr. Jackson then turned Patient A over and attempted to perform anal intercourse. (State Exh. #6.) Patient A screamed and Mr. Jackson said he had not meant to do that. (State Exh. #6.) Mr. Jackson turned Patient A over, straddled her chest, and forced her to perform fellatio. (State Exh. #6.) After finishing the sex act, Mr. Jackson sat on Patient A’s full bladder. (State Exh. #6.) Patient A screamed for him to get off and he did not respond initially. (State Exh. #6.) When he did respond, he handed her a tissue to wipe the semen from her face and began dressing her. (State Exh. #6.) Mr. Jackson stated that he needed to get back to his office. (State Exh. #6.) Patient A laughed in disbelief since it was 10:00 p.m. (State Exh. #6.) Mr. Jackson’s tone changed and he stated that he needed to get back to his life. (State Exh. #6.) Patient A felt shocked and horrible and began to cry. (State Exh. #6.) Mr. Jackson asked Patient A to keep their encounter a happy experience and also to keep it between the two of them. (State Exh. #6.) Patient A began asking Mr. Jackson a series of questions about why he had sex with her, to which he answered that he thought that she was

his soul mate. (State Exh. #6.) Mr. Jackson indicated that he had told his girlfriend about Patient A and their mutual interests after Patient A's first session with him and his girlfriend had warned him not to fall in love with Patient A. (State Exh. #6.)

15. When they left his apartment, Mr. Jackson was very jovial while Patient A continued to cry. (State Exh. #6.) He told her that he knew she was studying psychology and if she became a therapist she would see how hard it was, noting that she was an attractive woman. (State Exh. #6.) He also stated that she did not understand how much power he had in the situation. (State Exh. #6.) Mr. Jackson told Patient A that he needed to chalk their encounter up to a manic episode because he was also bipolar and he had just switched his medication. (State Exh. #6.) Mr. Jackson drove Patient A to her car and she continued to cry in disbelief. (State Exh. #6.) When Patient A asked Mr. Jackson if he would want to be with her if things did not work out with his girlfriend, he responded that he really did not know her that well. (State Exh. #6.) Upon reaching her car, Mr. Jackson gave Patient A a kiss and left her standing by her car. (State Exh. #6.) Patient A drove to a nearby gas station to use the restroom since Mr. Jackson had not offered for her to use the one at his apartment. (State Exh. #6.) She felt humiliated and used and became increasingly depressed. (State Exh. #6.) Patient A's depression continued over the ensuing weeks and she had trouble caring for her children. (State Exh. #6.)

16. At hearing, Mr. Jackson testified that Patient A was not vulnerable at the time of their encounter and he was overwhelmed by her overtures. (Testimony of Applicant.) Mr. Jackson testified that exhaustion had affected his health and his judgment. (Testimony of Applicant.) Mr. Jackson denied that he had exploited his physician-patient relationship with Patient A. (Testimony of Applicant.) Mr. Jackson testified that he was experiencing a period of "unprecedented personal vulnerability" at the time of his sexual encounter with

Patient A. (Testimony of Applicant.) Even though Mr. Jackson had met with Patient A in July 2005 following her reaction to the prescription Abilify, he testified that he scheduled the final meeting with her in January 2006 because of a lingering obligation he felt due to the drug reaction she had experienced, suggesting he believed he still had a physician-patient relationship. (Testimony of Applicant.) He also testified, however, that as he drove to the final encounter with Patient A, he thought that perhaps she was seeking a romantic relationship. (Testimony of Applicant.) Mr. Jackson testified that he did not know that sexual relations with Patient A, whom he insisted he considered was a former patient, would constitute misconduct. (Testimony of Applicant.)

17. Mr. Jackson left two messages for Patient A approximately a month after this encounter, one of which was on Valentine's Day; in his message he indicated that he hoped she was doing well. (State Exh. #6.) Mr. Jackson testified at hearing that he called her because he felt particularly reflective since it was the day after his 40th birthday and he felt terrible about what had happened between him and Patient A. (Testimony of Applicant.) Patient A left Mr. Jackson a message asking him not to contact her again. (State Exh. #6.)
18. Mr. Jackson did not tell his employer or his treating psychiatrist about the sexual encounter with Patient A. (State Exh. #6; Testimony of Applicant.)
19. In May 2007, Patient A filed a civil lawsuit against Mr. Jackson. (State Exh. #6.) She also sought a temporary restraining order but the request was denied. (State Exh. #6.) On or about June 1, 2007, Mr. Jackson received a letter from his malpractice insurance carrier instructing him not to discuss the lawsuit with anyone except his attorney and an insurance company representative. (State Exh. #6.)
20. In September 2007, Mr. Jackson married his long-time girlfriend. (State Exh. #6.)

21. In November 2007, Mr. Jackson settled the lawsuit with Patient A. (State Exh. #6.) Patient A was paid \$300,000. (State Exh. #6.)
22. By letter dated January 14, 2008, Mr. Jackson's attorney filed a letter from Mr. Jackson with the Massachusetts Board of Registration in Medicine that was to serve as a self-report of the event that occurred between him and Patient A. (State Exh. #6.) Mr. Jackson's self-report did not comport with the facts as later found by the magistrate in several respects. (State Exh. #6.)
23. On January 28, 2008, Mr. Jackson entered into a voluntary agreement with the Massachusetts Board of Registration in Medicine not to practice medicine. (State Exhibit #6.)
24. On November 19, 2008, the Massachusetts Board of Registration in Medicine issued an order to show cause why Mr. Jackson should not be disciplined on the basis of allegations of sexual misconduct with Patient A. (State Exh. #6.) A five day hearing was held on dates in July, September, and November 2009, at which Mr. Jackson was represented by legal counsel. (State Exh. #6.) Mr. Jackson's former supervisor testified at the hearing that sex with a former patient was a long-standing prohibition that was taught in medical school, residency, and child fellowship. (State Exh. #6.)
25. On April 29, 2010, an administrative magistrate issued a Recommended Decision, in which she found that Mr. Jackson attempted to discredit Patient A by depicting her as untruthful, overly emotional, confused, and in pursuit of him from their first meeting. (State Exh. #6.) The magistrate also found that Mr. Jackson tried to put himself forward as a maligned professional who had been seduced while he was in a confused mental and weakened physical state, insinuating that he had been victimized by Patient A. (State Exh. #6.) The magistrate specifically found Patient A's account concerning the improper relationship with

Mr. Jackson to be credible. (State Exh. #6.) The magistrate concluded that the record reflected a downwardly escalating professional relationship that quickly turned social, then manipulative, sexual, and exploitive. (State Exh. #6.) She found that Mr. Jackson betrayed Patient A's trust, exploited her need for his nurturing and approval, abrogated his responsibility toward her as a psychiatrist, and used her as a sexual object, hoping that the event would remain secret. (State Exh. #6.) The magistrate found that Mr. Jackson worsened the depression and emotional turmoil that Patient A was experiencing when she initially sought help. (State Exh. #6.) The magistrate recommended that the board impose a sanction on Mr. Jackson. (State Exh. #6.)

26. In a Partial Final Decision dated July 21, 2010, the Massachusetts Board of Registration in Medicine adopted the factual findings of the magistrate, with one amendment, and denied Mr. Jackson's request to overturn the magistrate's credibility determinations. (State Exh. #6.)

27. By Final Decision and Order dated October 6, 2010, the Massachusetts Board of Registration in Medicine terminated Mr. Jackson's voluntary agreement not to practice medicine, which he had entered into on January 22, 2008, and revoked his license to practice medicine, retroactive to January 22, 2008. (State Exh. #6.) The board found that Mr. Jackson engaged in conduct that called into question his competence to practice medicine and undermined public confidence in the integrity of the medical profession. (State Exh. #6.) The board found that Mr. Jackson repeatedly committed boundary violations, beginning at his first meeting with Patient A, occurring at each succeeding meeting, and culminating in a sexual encounter with her at a time when she was vulnerable and seeking help. (State Exh. #6.) The board found that Mr. Jackson crossed the boundary that separates reasonable and appropriate professional conduct from unacceptable personal relations. (State Exh. #6.) The board noted that it had considered the mitigating factors proffered by Mr. Jackson as well as

the harm done to the patient and the public trust in reaching the conclusion that the appropriate sanction was revocation of Mr. Jackson's license. (State Exh. #6.)

28. On November 2, 2010, Mr. Jackson requested reconsideration of the decision of the Massachusetts Board. (Applicant Exhibit #7.)
29. By letter dated November 18, 2010, Mr. Jackson inquired of the State of Maine Board of Osteopathic Licensure about his eligibility to apply for licensure in Maine given the actions of the Massachusetts Board of Registration in Medicine. (Applicant Exh. #3.)
30. On February 26, 2011, the Massachusetts Board of Registration in Medicine denied Mr. Jackson's request for reconsideration. (Applicant Exh. #7.)
31. On June 23, 2011, the New York State Department of Health held a hearing regarding the allegations against Mr. Jackson. (Applicant Exh. #9.) Mr. Jackson appeared pro se. (Applicant Exh. #9.) On July 26, 2011, the New York State Board for Medicine revoked Mr. Jackson's New York license on the basis of the action taken by the Massachusetts Board. (State Exh. #8 & Applicant Exh. #9.) The New York Board found that Mr. Jackson's actions that resulted in the disciplinary action by the Massachusetts Board would constitute misconduct under the laws of New York state. (Applicant Exh. #9.) The New York Board concluded that Mr. Jackson violated New York law by having been found guilty of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York which prohibited physical contact between a licensee and a patient in the practice of psychiatry. (Applicant Exh. #9.)
32. On June 5, 2013, Mr. Jackson requested reinstatement of his license to practice medicine in Massachusetts. (State Exh. #6.) On February 19, 2014, Mr. Jackson's application for

reinstatement was denied by the Massachusetts Board of Registration in Medicine. (State Exh. #8.)

33. On March 5, 2014, Mr. Jackson submitted a uniform application for physician licensure to the State of Maine Board of Osteopathic Licensure. (State Exh. #5.) In his application, Mr. Jackson identified his city of residence as Somerville, Massachusetts. (State Exh. #5.)
34. Mr. Jackson undertook many continuing medical education programs and readings between January 2009 and July 2014. (State Exh. #6; Applicant Exh. #17 & #18.)
35. By letter dated November 18, 2014, the Board informed Mr. Jackson that his application for licensure had been preliminarily denied on the bases that prior discipline by another licensing board sanctioning him for sexual misconduct with a patient/former patient called into question his competence to practice medicine and undermined public confidence in the integrity of the profession. (State Exh. #2.) Mr. Jackson filed a timely notice of appeal and requested a hearing in December 2014. (State Exh. #3.)
36. By letter dated February 9, 2015, Eric Buchalter, D.O., an adult and geriatric psychiatrist, reported to the Board that he had been working with Mr. Jackson since 1991. (Applicant Exh. #20.) Mr. Jackson has traveled to Dr. Buchalter's office in Mineola, New York, once a month since the start of treatment. (Testimony of Buchalter.) Dr. Buchalter reported that he found Mr. Jackson to have valuable skills that could help many people and that Mr. Jackson was remorseful about his previous actions. (Applicant Exh. #20.) At hearing, Dr. Buchalter testified that Dr. Buchalter testified that Mr. Jackson did not disclose his sexual encounter with Patient A to him in 2005, but did so only after the Massachusetts Board of Medicine had been made aware of the incident in 2008. (Testimony of Buchalter.) Dr. Buchalter testified that he believed Mr. Jackson was aware of his error of judgment and the boundary violations he had committed. (Testimony of Buchalter.)

37. By letter dated February 10, 2015, Graham Spruiell, M.D., indicated his support of Mr. Jackson's application for Maine licensure. (Applicant Exh. #19.) Dr. Spruiell is a licensed physician in Massachusetts who is board-certified in psychiatry and psychoanalysis. (Applicant Exh. #19.) He has been providing Mr. Jackson psychotherapy on a weekly basis since 2008. (Applicant Exh. #19; Testimony of Spruiell.) Dr. Spruiell reported that Mr. Jackson's treatment has focused on symptoms of depression associated with shame and remorse regarding the incident with Patient A. (Applicant Exh. #19.) Dr. Spruiell stated that he was not aware of any episodes of substance abuse, conduct problems, impulsive behaviors, or problems with boundaries over the six years of his treatment of Mr. Jackson. (Applicant Exh. #19.)

III. GOVERNING STATUTES AND RULES

1. An applicant for licensure to practice osteopathic medicine in Maine may not be licensed unless the Board finds that the applicant is qualified and that no cause exists, as set forth in 32 M.R.S. § 2591-A, that would be considered grounds for disciplinary action against a licensed physician. 32 M.R.S. § 2571.
2. When an individual applies for a license to practice osteopathic medicine, the Board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The Board may deny a license based on the record of the applicant in other states. 32 M.R.S. § 2591-A(1).
3. The Board may refuse to grant the application of an individual who has engaged in unprofessional conduct. An applicant is considered to have engaged in unprofessional conduct if the individual violates a standard of professional behavior that has been established in the practice for which the applicant seeks licensure. 32 M.R.S. § 2591-A(2)(F).

4. The Board may refuse to grant the application of an individual who violates a rule adopted by the Board. 32 M.R.S. § 2591-A(2)(H).
5. If the Board finds that a licensee has engaged in sexual misconduct the licensee shall be disciplined. Sexual violation, the higher of two levels of sexual misconduct, is defined as conduct by a physician with a patient that is sexual or may be reasonably interpreted as sexual, even when initiated by or consented to by a patient, including but not limited to sexual intercourse; genital to genital contact; oral to genital contact; and kissing in a sexual manner. A finding of a sexual violation is egregious enough to warrant revocation of a physician medical license. (02-383) Rules of Board of Osteopathic Licensure, Chapter 10, Section (1)(3)(A) & (2).
6. For any violation of applicable laws, rules, or conditions of licensure, the Board may refuse to the grant an application. 10 M.R.S. § 8003(5)(A-1).

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein determined as follows:

1. By unanimous vote, that Joseph Jackson, IV, committed unprofessional conduct in violation of 32 M.R.S. § 2591-A(2)(F).
2. By unanimous vote, that Joseph Jackson, IV, while licensed in another state, committed the violation of sexual misconduct, which would have been a violation under the rules governing Maine licensees at Chapter 10, Section (1)(3)(A) & (2).
3. By unanimous vote, that the application of Joseph Jackson, IV, should be denied based on his record in the State of Massachusetts, pursuant to 32 M.R.S. 2591-A(1), as well as on the basis of the requirement that an applicant may not be licensed unless the Board finds that the

applicant is qualified and no good cause exists that would be considered ground for disciplinary action against a licensed physician, pursuant to 32 M.R.S. § 2571.

So Ordered.

Dated: March 12, 2015



Joseph R.D. deKay, D.O.
State of Maine Board of Osteopathic Licensure

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 11002(3), 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 State of Maine Board of Osteopathic Licensure, all parties to the agency proceedings, and the Attorney General.