



DEVAL L. PATRICK
GOVERNOR

Commonwealth of Massachusetts Board of Registration in Medicine

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August 7, 2014

Ken Weinstein, Jr.

RE: Your Public Records Request Concerning Vito Cardone, M.D.

Dear Mr. Weinstein:

This is in regard to your request of July 28, 2014 for records held by the Board of Registration in Medicine ("Board"). Specifically, you request copies of records concerning the Statement of Allegations for Vito Cardone, M.D.

Enclosed please find 4 pages of documents that are responsive to your request and subject to disclosure under the Public Records Law.

Pursuant to M.G.L. c. 66, section 10 and 950 CMR 32.08, you may appeal the Board response within 90 days to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth.

Sincerely,

A handwritten signature in blue ink that reads "Zoraida Montes".

Zoraida Montes
Public Information Coordinator

Enclosure



**CODE OF MASSACHUSETTS
REGULATIONS****TITLE 950: OFFICE OF THE SECRETARY OF
THE COMMONWEALTH****CHAPTER 32.00: PUBLIC RECORDS ACCESS**
Current through December 28, 2007, Register
#1094

32.08: Appeals

(1) Denial by Custodian. Where a custodian's response to a record request made pursuant to [950 CMR 32.05\(3\)](#) is that any record or portion of it is not public, the custodian, within ten days of the request for access, shall in writing set forth the reasons for such denial. The denial shall specifically include the exemption or exemptions in the definition of public records upon which the denial is based. When exemption (a) of [M.G.L. c. 4, § 7](#), clause Twenty-sixth is relied upon the custodian shall cite the operational statute(s). Failure to make a written response within ten days to any request for access shall be deemed a denial of the request. The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and [M.G.L. c. 66, § 10\(b\)](#).

(2) Appeal to the Supervisor. In the event that a person requesting any record in the custody of a governmental entity is denied access, or in the event that there has not been compliance with any provision of 950 CMR 32.00, the requester may appeal to the Supervisor within 90 days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. An oral request, while valid as a public record request pursuant to [950 CMR 32.05\(3\)](#), may not be the basis of an appeal under **950 CMR 32.08**.

It shall be within the discretion of the Supervisor whether to open an appeal concerning a request for public records.

The Supervisor may decline to accept an appeal from a requester where the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the request is designed or intended to harass, intimidate or assist in the commission of a crime.

The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the public records request is made solely for a commercial purpose.

Appeals in which there has been no communication from the requester for six months may be closed at the discretion of the Supervisor.

(3) Disposition of Appeals. The Supervisor shall, within a reasonable time, investigate the circumstances giving rise to an appeal and render a written decision to the parties stating therein the reason or reasons for such decision.

(4) Presumption. In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.

(5) Hearings. The Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00. Said rules shall govern the conduct and procedure of all hearings conducted pursuant to **950 CMR 32.08**. Nothing in **950 CMR 32.08** shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.

(6) In-camera Inspections and Submissions of Data. The Supervisor may require an inspection of the requested record(s) *in camera* during any investigation or any proceeding initiated pursuant to **950 CMR 32.08**. The Supervisor may require the custodian to produce other records and information necessary to reach a determination pursuant to **950 CMR 32.08**.

The Supervisor does not maintain custody of documents received from a custodian pursuant to an order by this office to submit records for an *in-camera* review. The documents submitted for an *in-camera* review do not fall within the definition of public

records. See M.G.L. c. 66, § 10(a) (2002 ed.).

Any public record request made to this office for records being reviewed *in-camera* would necessarily be denied as the office would not be the custodian of those records. See 950 CMR 32.03 (defining "custodian" as the government employee who in the normal course of his duties has access to or control over records).

Upon a determination of the public record status of the documents, they are promptly returned to the custodian.

(7) Custodial Indexing of Records. The Supervisor may require a custodian to compile an index of the requested records where numerous records or a lengthy record have been requested. Said index shall meet the following requirements:

(a) the index shall be contained in one document, complete in itself;

(b) the index must adequately describe each withheld record or deletion from a released record;

(c) the index must state the exemption or exemptions claimed for each withheld record or each deletion of a record; and,

(d) the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt. Nothing in **950 CMR 32.08** shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

(8) Conferences. At any time during the course of any investigation or any proceeding, to the extent practicable, where time, the nature of the investigation or proceeding and the public interest permit, the Supervisor, may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding.

The Supervisor does not maintain custody of documents received from a custodian pursuant to an

order by this office to submit records for an *in-camera* review. The documents submitted for an *in-camera* review do not fall within the definition of public records. See M.G.L. c. 66, § 10(a) (2002 ed.).

Any public record request made to this office for records being reviewed *in-camera* would necessarily be denied as the office would not be the custodian of those records. See 950 CMR 32.03 (defining "custodian" as the government employee who in the normal course of his duties has access to or control over records).

Upon a determination of the public record status of the documents, they are promptly returned to the custodian

<General Materials (GM) - References, Annotations, or Tables>

Mass. Regs. Code tit. 950, § 32.08, 950 MA ADC 32.08

950 MA ADC 32.08
END OF DOCUMENT

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2014-028

In the Matter of

VITO R. CARDONE, M.D.

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Vito. R. Cardone, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 14-068.

Biographical Information

I. The Respondent was born on February 2, 1950. He graduated from the Faculte de Medecine, Universite Laval in Quebec City, Canada in 1974. He is certified by the American Board of Obstetrics and Gynecology and specializes in reproductive medicine. He has been licensed to practice medicine in Massachusetts under certificate number 56751 since 1986. He is also licensed to practice medicine in New Hampshire. He is affiliated with Lawrence Memorial Hospital; Melrose-Wakefield Hospital; Northeast Hospital Corporation; and Winchester Hospital.

2. From 1993 until 2003, the Respondent owned the Fertility Centers of New England (FCNE). He was also its Medical Director.

3. In 2003, the Respondent sold FCNE to another physician. The Respondent continued to work at FCNE until 2006.

4. Since 2006, the Respondent has maintained a private practice in Stoneham, MA, where he specializes in reproductive medicine.

Factual Allegations

5. In or about 1994, the Respondent hired Roger Ian Hardy, M.D. as a staff physician at FCNE.

6. Sometime between 1994 and 1998, two FCNE staff members, herein referred to as a Nurse Anesthetist and a Surgical Technician, assisted Dr. Hardy in performing an egg retrieval on an anesthetized patient.

7. As the patient was coming out of anesthesia, the two FCNE staff members witnessed Dr. Hardy's hand on the patient's breast.

8. The Nurse Anesthetist saw Dr. Hardy place his hand on the patient's nipple and roll her nipple between his index finger and thumb.

9. The Surgical Technician saw Dr. Hardy's hand on the patient's nipple.

10. On or about that same day, they reported the matter to the Respondent.

11. On or about that same day, the Nurse Anesthetist and the Surgical Technician also reported the matter to FCNE's nurse manager, herein referred to as the Nurse.

12. The Nurse reported the matter to the Respondent on or about the day that the Nurse Anesthetist and the Surgical Technician reported the matter to her.

13. When the Nurse reported the matter to the Respondent, he replied that Dr. Hardy was a good doctor.

14. The Respondent asked the Nurse Anesthetist and the Surgical Technician to discuss the incident with FCNE's practice manager.

15. The Nurse Anesthetist and the Surgical Technician met separately with the practice manager.

16. The practice manager warned the Nurse Anesthetist not to cause a stink or blow a whistle because she would be labeled as a disgruntled worker.

17. The Respondent is a health care provider as defined in Massachusetts General Laws, chapter one hundred and eleven.

18. As a health care provider, the Respondent had a duty to report to the Board any person who there was reasonable basis to believe was in violation of section five of G.L. c. 112, or any of the regulations of the Board.

19. The Respondent did not report the incident involving Dr. Hardy to the Board as required by law.

Legal Basis for Proposed Relief

A. Pursuant to G.L. c. 112, §5, ninth par. (b) and 243 CMR 1.03(5)(a)2, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician committed an offense against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder. More specifically:

1. G.L. c. 112, §5F, which provides that any health care provider, as defined in section one of chapter one hundred and eleven, shall report to the board

any person who there is a reasonable basis to believe is in violation of section five, or any of the regulations of the board, except as otherwise prohibited by law.

B. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair

Date: July 9, 2014