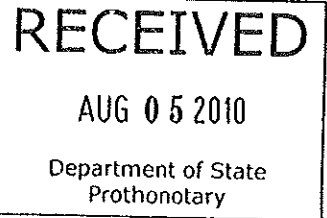


COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF OSTEOPATHIC MEDICINE



Commonwealth of Pennsylvania, :
Bureau of Professional and Occupational Affairs :
 : Docket no. 1230-53-10
 v. :
 : DOS File no. 10-53-05333
Peter Fabulian, D.O., :
Respondent :

MEMORANDUM ORDER CONTINUING TEMPORARY SUSPENSION

This matter comes before a hearing examiner on an Order of Temporary Suspension and Notice of Hearing issued by the probable cause screening committee of the State Board of Osteopathic Medicine (Board) on June 28, 2010.¹ The Board's temporary suspension order was issued upon the submission of a Petition for Immediate Temporary Suspension by the prosecuting attorney for the Department of State, Bureau of Professional and Occupational Affairs, alleging that the continued practice of osteopathic medicine by Peter Fabulian, D.O. (Respondent) poses an immediate and clear danger to the public health and safety.² The petition and order were served upon Respondent at his address of record, 115 Marshall Street, Kennett Square, PA 19348. A notice scheduling a preliminary hearing for July 28, 2010 was issued by the Department of State Prothonotary on June 30, 2010, and was mailed to Respondent at his address of record.

¹ The temporary suspension order was signed by three members of the Board, John P. Bart, D.O., Robit Agrawal, D.O. and Linda P. Meyer, Ed.D., A.T.C.

² The petition and order were filed simultaneously on June 28, 2010.

The Commonwealth's petition comprises a single count, containing the following factual averments:

- Respondent's license to practice osteopathic medicine and surgery, license no. OS008019L, is current through October 31, 2010.
- On September 13, 2006, correspondence was forwarded to Respondent by the Commonwealth's prosecuting attorney advising him of a sexual misconduct complaint against him and recommending that Respondent have a female chaperone present in the room when examining female patients and that Respondent complete a course in boundary violations.
- On June 17, 2010, a police criminal complaint was filed in Magisterial District No. 15-3-04 in the matter of *Commonwealth of Pennsylvania v. Peter Fabulian*.
- According to the police criminal complaint, a female patient (Patient #1) reported to the Kennett Square Police Department that during an appointment she had with Respondent in October 2008, Respondent grabbed the collar of her blouse and looked down at her breasts, and that Patient #1 pushed his hands away from her body.
- Patient #1 reported that Respondent hugged her and kissed her on the neck, that Respondent kissed her approximately ten times, that Respondent licked her neck, and that Respondent told her, "You taste so good."
- According to the police criminal complaint, a female patient (Patient #2) reported to the Kennett Square Police Department that during an

appointment she had with Respondent in May 2010, Respondent hugged her tightly during the examination and kissed her on the lips, telling her he wanted to take in her scent, and that Patient #2 pulled away from Respondent.

- Patient #2 reported that Respondent kissed her on her neck and grabbed her right hand and placed it on his groin area, and that Patient #2 could feel his erection.

On the basis of the above factual averments, the Commonwealth alleged that “Respondent’s practice of osteopathic medicine and surgery makes Respondent an immediate and clear danger to the public health and safety.”

This action is brought under section 14(a) of the Osteopathic Medical Practice Act,³ 63 P.S. § 271.14(a), which provides as follows:

§ 271.14. Temporary and automatic suspension

(a) A license or certificate issued under this act may be temporarily suspended under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice to, the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The provisions of section 15(d) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license or certificate of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license or certificate, the board shall conduct or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license or certificate has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make

³ Act of October 5, 1978, P.L. 1109, No. 261, *as amended*, 63 P.S. § 271.1 *et seq.*

a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license or certificate shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than 180 days [*footnote omitted*].

The preliminary hearing was held as scheduled in Harrisburg on July 28, 2010. Keith E Bashore, Esquire represented the Commonwealth as prosecuting attorney. Respondent attended the preliminary hearing *pro se*.

At the preliminary hearing, the Commonwealth offered testimony from Anita P. Shekletski, Esquire, Senior Prosecutor in Charge for the Department of State's Legal Office, and Detective John A. Trevisan, Jr. from the Kennett Square Police Department. The Commonwealth also presented a copy of a September 13, 2006 letter from Ms. Shekletski to Respondent notifying Respondent of a sexual misconduct complaint against him and recommending that Respondent have a female chaperone present in the room when examining female patients and that Respondent complete a course in boundary violations. The Commonwealth further presented a certification and attestation from Gina Bittner, Administrative Assistant for the Board, as to Respondent's address on record with the Board at the time the September 13, 2006 correspondence was mailed to him, and a certified copy of the police criminal complaint. With this testimony and documentary evidence, the Commonwealth has presented a prima facie case in support of the factual averments of the Commonwealth's petition. These documents also present prima facie support for the conclusion of the Board's screening committee that Respondent's continued practice of osteopathic medicine presents an immediate and clear danger to the public health and safety.

Respondent testified on his own behalf at the preliminary hearing, admitting hat

he is currently under treatment by a psychologist for boundary issues which he claimed are a result of delayed stress disorder from his time serving in Vietnam. Respondent denied any improper sexual misconduct with Patients #1 and #2. Respondent also presented a packet of patient testimonials as to the efficacy of his practice, which primarily involves treatment of Lyme disease and related infections. 63 P.S. § 271.14(a),

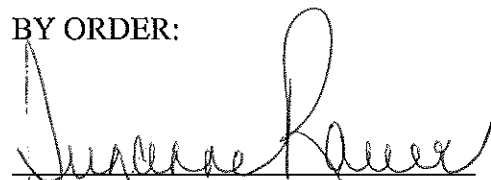
As set forth above, section 14(a) of the Osteopathic Medical Practice Act requires a preliminary hearing to be held within 30 days of an *ex parte* temporary suspension order “to determine that there is a prima facie case supporting the suspension.” The Act does not describe procedures for such a “preliminary hearing” nor does it define what constitutes a “prima facie” case. Those terms are generally part of criminal law and procedure, and appellate direction is provided in that context. As under section 14(a) of the Osteopathic Medical Practice Act, the only issue to be decided at a criminal preliminary hearing is whether there is a prima facie case against the accused. *Commonwealth v. Mullen*, 460 Pa. 336, 333 A.2d 755 (1975). The purpose of a criminal preliminary hearing is not to decide guilt or innocence but to determine whether there is sufficient evidence to imprison or require a defendant to post bail pending a trial. *Commonwealth v. McBride*, 528 Pa. 153, 595 A.2d 589, 592 (1991). Evidence at the preliminary hearing must be viewed in the light most favorable to the prosecution. *Licaga v. Court of Common Pleas of Lehigh County*, 423 Pa. 258, 566 A.2d 246 (1989). In the context of section 14(a) of the Osteopathic Medical Practice Act, then, the purpose of a preliminary hearing is not to decide the guilt or innocence of a respondent but to determine whether there is sufficient evidence to continue the suspension of his or her license for, at most, 180 days pending a formal disciplinary proceeding. As in the

criminal context, such evidence must be viewed in the light most favorable to the Commonwealth.

As stated above, the evidence presented by the Commonwealth at the preliminary hearing constitutes a prima facie case in support of the factual averments of the Commonwealth's petition. This evidence also presents prima facie support for the conclusion of the Board's screening committee that Respondent's continued practice of osteopathic medicine presents an immediate and clear danger to the public health and safety. The testimony of Respondent at the preliminary hearing disputing the information contained in the police criminal complaint and Detective Trevisan's testimony is insufficient to overcome the Commonwealth's prima facie case, as are the testimonials of his patients.

AND NOW, this 4th day of August, 2010, following the preliminary hearing held on July 28, 2010, and in accordance with the foregoing discussion, the undersigned hearing examiner finds that there is a prima facie case supporting the immediate temporary suspension of Respondent's license to practice osteopathic medicine and surgery as ordered by the probable cause screening committee of the State Board of Osteopathic Medicine on June 28, 2010, and it is hereby ordered that said license, no. OS008019L, shall remain suspended until otherwise ordered by the State Board of Osteopathic Medicine but in no event longer than 180 days from June 28, 2010.

BY ORDER:

A handwritten signature in cursive script, appearing to read 'Suzanne Rauer', written over a horizontal line.

Suzanne Rauer
Hearing Examiner

DATE OF MAILING: August 5, 2010

For the Commonwealth:

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