

Hugo Benalcazar, M.D.

Harbhajan Ajrawat, M.D., Chair
Disciplinary Panel B
Maryland State Board of Physicians
4201 Patterson Avenue, 4., Floor
Baltimore, MD 21215-2299

Re: Surrender of License to Practice Medicine
Hugo Benalcazar, M.D.
License Number: D56356
Case Number: 7723-0083

Dear Dr. Ajrawat and Members of Disciplinary Panel B:

Please be advised that, pursuant to Md. Code Ann., Health Occ. ("Health Occ.") §14-403 (2021 Repl. Vol.), I have decided to **SURRENDER** my license to practice medicine in the State of Maryland. License Number D56356, effective immediately. I understand that upon surrender of my license, I may not give medical advice or treatment to any individual, with or without compensation, and cannot prescribe medications or otherwise engage in the practice of medicine in the State of Maryland as it is defined in the Maryland Medical Practice Act (the "Act"), Health Occ. §§ 14-401 *et seq.* and other applicable laws. In other words, as of the effective date of this Letter of Surrender, I understand that the surrender of my license means that I am in the same position as an unlicensed individual in the State of Maryland.

I understand that this Letter of Surrender is a **PUBLIC DOCUMENT** and, upon Disciplinary Panel B's ("Panel B") acceptance, becomes a **FINAL ORDER** of Panel B of the Maryland State Board of Physicians (the "Board").

I acknowledge that, on July 2, 2021, Panel B summarily suspended my license to practice medicine in the State of Maryland and issued charges based on an investigation that determined that I engaged in a pattern of unprofessional conduct that included, but was not limited to, sexual harassment of hospital staff, both verbal and physical, sexual propositioning, and unconsented-to physical contact of at least one patient. Following an evidentiary hearing at the Office of Administrative Hearings ("OAH"), and an exceptions hearing, Panel B issued a Final Decision and Order on Order for Summary Suspension of License to Practice Medicine, on August 1, 2022, which affirmed the July 2, 2021 summary suspension, and ordered that my license to practice medicine in Maryland remain suspended.

I acknowledge that, on August 27, 2021, the Board issued Amended Charges that charged me with immoral conduct in the practice of medicine, unprofessional conduct in the practice of

Harbhajan Ajrawat, M.D., Chair and Members of Disciplinary Panel B

RE: Hugo Benalcazar

Letter of Surrender

medicine, and violations of the sexual misconduct regulations. Following an evidentiary hearing at OAH and exceptions hearing, Panel B issued a Final Decision and Order on Amended Charges,

On May 18, 2023, when Panel B concluded that I was guilty of immoral and unprofessional conduct in the practice of medicine, in violation of 14-404(a)(3)(i) and (ii), and ordered that the summary suspension, issued on July 2, 2021, and affirmed in a Final Decision and Order on August 1, 2022, be terminated as moot upon the reinstatement of my expired license. Additionally, I was reprimanded; my license to practice medicine in Maryland was suspended for a minimum period of one (1) year, commencing when my Maryland medical license was reinstated;¹ ordered that I enroll in and comply with the Maryland Professional Rehabilitation Program ("MPRP"); and required me to complete courses in boundaries and professionalism within six (6) months. A copy of the Order for Summary Suspension of License to Practice Medicine, Final Decision and Order on Order for Summary Suspension of License to Practice Medicine, and Final Decision and Order on Amended Charges are attached and incorporated by reference as Attachments 1, 2 and 3.

I acknowledge that, on February 2, 2024, MPRP closed my case for cause, based on my refusal to comply and cooperate with their referrals, rules and requirements.

I have decided to surrender my license to practice medicine in the State of Maryland to avoid prosecution for failing to comply with the terms and conditions of the Final Decision and Order on Amended Charges. I acknowledge that the Final Decision and Order on Amended Charges will remain and will continue to be a valid Final Order of the Board, however, upon acceptance of the Letter of Surrender, I will not be required to comply with the conditions of the Final Decision and Order on Amended Charges as long as I do not have or possess an active medical license in Maryland.

I wish to make clear that I have voluntarily, knowingly, and freely chosen to submit this Letter of Surrender to avoid the issuance of charges and prosecution for refusing to comply with the terms and conditions of the Final Decision and Order on Amended Charges. I do not wish to contest these allegations of refusal to comply. I understand that by executing this Letter of Surrender, I am waiving my right to contest any charges of refusal to comply that would issue from Panel B's investigative findings in a formal evidentiary hearing, at which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and all other substantive and procedural protections provided by law, including the right to appeal to circuit court.

I understand that the Board will advise the Federation of State Medical Boards and the National Practitioner Data Bank of this Letter of Surrender. I also understand that, in the event I would apply for licensure in any form in any other state or jurisdiction, this Letter of Surrender may be released or published by the Board to the same extent as a final order that would result from disciplinary action, pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 Repl. Vol. & 2017 Supp.), and that this Letter of Surrender constitutes a disciplinary action by Panel B.

¹ The Respondent's license was reinstated as suspended on November 2, 2023.

Harbhajan Ajrawat, M.D., Chair and Members of Disciplinary Panel B

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I further recognize and agree that by submitting this Letter of Surrender, my license in Maryland will remain surrendered unless and until the Board grants reinstatement. In the event that I apply for reinstatement of my Maryland License, I understand that Panel B or its successor

is not required to grant reinstatement, and, if it does grant reinstatement, Panel B or its successor may impose any terms and conditions Panel B or its successor considers appropriate for public safety and the protection of the integrity and reputation of the profession. I further understand that, if I file a petition for reinstatement, I will approach Panel B or its successor in the same position as an individual whose license has been revoked.

I acknowledge that I may not rescind this Letter of Surrender in part or in its entirety for any reason whatsoever. Finally, I wish to make clear that I have been advised of my right to be represented by an attorney of my choice throughout proceedings before Panel B, including the right to consult with an attorney prior to signing this Letter of Surrender. I understand both the nature of Panel B's actions and this Letter of Surrender fully. I acknowledge that I understand and comprehend the language, meaning and terms and effect of this Letter of Surrender. I make this decision knowingly and voluntarily.

Very truly yours,

Signature On File

Hugo Benalcazar, M.D.

Harbhajan Ajrawat, M.D., Chair and Members of Disciplinary Panel B
RE: Hugo Benalcazar
Letter of Surrender

NOTARY

STATE OF Maryland
CITY/COUNTY OF PRINCE GEORGE'S

I HEREBY CERTIFY that on this 18 day of March, 2024 before me, a Notary Public of the City/County aforesaid, personally appeared Hugo Benalcazar, M.D., and declared and affirmed under the penalties of perjury that the signing of this Letter of Surrender was his voluntary act and deed.

AS WITNESS my hand and Notarial seal.

Shelley McKay Christie
Notary Public

My commission expires: APRIL 13, 2025

ACCEPTANCE

On behalf of Disciplinary Panel B, on this 21st day of March, 2024, I, Christine A. Farrelly, accept Hugo Benalcazar, M.D.'s, **PUBLIC SURRENDER** of his license to practice medicine in the State of Maryland.

Signature On File

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

Attachment 1

IN THE MATTER OF	*	BEFORE THE MARYLAND
HUGO BENALCAZAR, M.D.	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: D56356	*	Case Number: 2221-0051

**ORDER FOR SUMMARY SUSPENSION OF LICENSE
TO PRACTICE MEDICINE**

Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) hereby **SUMMARILY SUSPENDS** the license of Hugo Benalcazar, M.D. (the “Respondent”), License Number D56356, to practice medicine in the State of Maryland. Panel A takes such action pursuant to its authority under Md. Code Ann., State Gov’t § 10-226(c) (2014 Repl. Vol. & 2020 Supp.), concluding that the public health, safety, or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS¹

Based on information received by, and made known to Panel A, and the investigatory information obtained by, received by, and made known to and available to Panel A, including the instances described below, Panel A has reason to believe that the following facts are true:

¹ The statements regarding Panel A’s investigative findings are intended to provide the Respondent with reasonable notice of the basis of the suspension. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

I. BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on August 3, 2000, under License Number D56356. The Respondent's license is current through September 30, 2022.
2. The Respondent is board-certified in neurological surgery.
3. The Respondent is the proprietor and sole practitioner of a neurosurgery, physical therapy and pain management practice in Harford County, Maryland. The Respondent also holds privileges at four hospitals in the Baltimore metropolitan area.²

II. THE COMPLAINTS

4. On or about September 3, 2020, the Board received a complaint ("Complaint 1") from a surgical nurse and former colleague of the Respondent ("Complainant 1"). In her complaint, Complainant 1 alleged that when she worked with the Respondent at a hospital in Harford County, Maryland (the "Hospital") the Respondent behaved inappropriately, both verbally and physically, with herself and other female staff members. Complainant 1 stated that the Respondent would touch her on a daily basis, which included rubbing her shoulders and back,

² To ensure confidentiality and privacy, the names of individuals and entities involved in this case, other than the Respondent, are not disclosed in this document. The Respondent may obtain the identity of all individuals/entities referenced in this document by contacting the Administrative Prosecutor.

and that he would often comment on her undergarments. She complained that the Respondent once touched her “skin at the V-neck in her scrub shirt while looking her in the eyes.” Complainant 1 detailed an incident in the operating room (the “O.R.”) when some ball-shaped instrumentation fell to the floor and the Respondent stated to her “why don’t you put them in your mouth.” Complainant 1 stated that she reported some of her concerns about the Respondent through to Hospital authorities, but no disciplinary action was taken.

5. On or about November 30, 2020, Board staff received a complaint (“Complaint 2”) from a surgical technologist (“Complainant 2”) who previously worked with the Respondent at the Hospital. Complainant 2 described an incident taking place on April 19, 2017, when she was working with the Respondent in the operating room with a patient anesthetized and lying face-down on the operating table. The Respondent came into the O.R. and began making “extremely unprofessional and inappropriate remarks” about the patient’s body. The Respondent commented on “her butt shape saying how round it was, how nice it looked for her age,” then forcefully smacked the patient’s backside.
6. Complainant 2 went on to describe an incident wherein she was experiencing severe lower back pain while she was assisting the Respondent in performing a procedure. The Respondent asked Complainant 2 if she would like him to “check [her] out in between cases.” Complainant 2 stated that she would, and the Respondent later escorted her into an empty office and began to examine her. Complainant 2 stated that while touching her lower back and “without

permission or hesitation he lifts up [her] scrub shirt and tells [her] to loosen [her] pants.” Complainant 2 stated that because she trusted the Respondent to behave like a professional, she complied and loosened her pants. She further stated that “without warning he pulled [her] underwear down...he then started commenting on how “cute” [her] underwear was and how “nice” [she] looked from where he was standing. The entire time still touching [her] lower back and butt.” Complainant 2 stated that she felt “mortified,” pulled herself together and left the room.

7. On or about December 29, 2020, Board staff received another complaint (“Complaint 3”) from Complainant 2. In Complaint 3, she stated that, among other things, the Respondent has a reputation of “being very flirtatious and very forward with ‘pretty girls.’” Complainant 2 stated that the Respondent touches her “multiple times a day every time [she is] with him but [she doesn’t] know what to do about it.” Complainant 2 also stated that she had previously heard the Respondent threaten nurses before saying that he “all he has to do is say the word and he will have them fired.”

III. BOARD INVESTIGATION

8. The Board conducted an investigation of the Respondent’s conduct, and as part of its investigation, Board staff conducted under-oath interviews with twelve current and former colleagues of the Respondent. In addition, Board staff subpoenaed the Respondent’s personnel records from the various institutions at

which he has worked and conducted an under-oath interview with the Respondent.

9. The Board's investigation determined that for a period of several years, the Respondent engaged in a pattern of unprofessional conduct that included, but was not limited to, sexual harassment of hospital staff, both verbal and physical, sexual propositioning, and unconsented-to physical contact of at least one patient. The Respondent's conduct proceeded largely unchecked over a period of time due in-part to staff members' perceptions that any complaints about his conduct would not be acted upon at the organizational level.
10. The investigation of the Respondent's conduct is set forth in pertinent part below.

Complainant 1

11. On or about January 20, 2021, Board staff conducted an interview with Complainant 1, a surgical nurse who worked at the Hospital from 2004 through 2018. In the under-oath interview, Complainant 1 stated:
 - a. For a while her working relationship with the Respondent was unremarkable. Eventually the Respondent began to make comments about her underwear saying, "sometimes you just lean down, your scrubs are loose and say whoa, I see your pink underwear, your black underwear or whatever it is...it was never really any more than that until the one day."
 - b. She described an incident during a procedure where they were using a piece of equipment that "has all these silver balls on it." She stated that at the end of the case the balls fell on the floor, so she picked one of them up and put it in the Respondent's pocket. The Respondent then asks Complainant 1 "why don't you put them in your mouth?" Complainant 1

responded by telling the Respondent, “that’s gross.” After that exchange, Complainant 2 went over to the computer to finish her paperwork when the Respondent approached her and put his hand in the V-neck area of her scrub shirt and “touched the top of [her] chest in the cleavage area.”

- c. She reported the incident to the Nursing Director and the two of them had a meeting with the Respondent. During the meeting, Complainant 1 told the Respondent that he was inappropriate and unprofessional and asked him not to touch her again. Complainant 1 stated that during the meeting the Respondent “just kind of blew [her] off.”
- d. Complainant 1 stated that after the meeting with the Nursing Director, the Respondent did not speak to her very much.

Complainant 2

12. On or about December 28, 2020, Board staff conducted an interview with Complainant 2, a nurse technologist who worked with the Respondent at the Hospital. In her under-oath interview, Complainant 2 stated:

- a. She previously worked in the O.R. with the Respondent exclusively two days per week, and that “he just had a way of commanding the room and making people feel incompetent.” She described the Respondent’s conduct as “disrespectful” and “extremely degrading towards others.”
- b. In or around 2016, she was pregnant and suffering from severe lower back pain while she was in the O.R. with the Respondent. While she was discussing her pain with one of her colleagues, the Respondent overheard and interjected, offering to examine her. The Respondent took her into an empty room and grabbed her lower back. He told her that he needed to get a better feel, so she needed to lift her scrub shirt up. She lifted her shirt “about midway to [her] back.” He then told her that “in order to really see where [her] pain was coming from [she] needed to lower [her] pants.” She described lowering her pants midway down and holding them because she did not want to lower them all the way. The Respondent then put his hands around her waist and used his thumbs to pinpoint on her lower back, “he was touching [her] butt...pushing on my underwear and that’s when he made the comments about how nice everything looked and how he liked [her underwear].” At this point she pulled her pants up, the Respondent started giggling, and she left the room.

- c. The Respondent would ask her about her sex life with her fiancée. He would talk to her about the size of his genitals and offer comparisons of his genitals to surgical instruments.
- d. The Respondent would look down her shirt and other staff member's shirts and comment on their undergarments. He would state to her, "You're wearing my favorite bra." She stated she would offer only short responses or state that she was not in the mood for his behavior.
- e. During Halloween season the Respondent would show her pictures of provocative costumes on his phone suggesting that she should wear them. She stated that there were multiple times when the Respondent would take pictures of her with his phone. He would remove her eyewear and photograph her eyes. He said he wanted to "stare at them later."
- f. On April 19, 2017, she witnessed the Respondent hit a patient's buttocks after making inappropriate comments about the patient's body while the patient was anesthetized and lying face down on the operating table. "He just started commenting about how nice her butt looked, especially in this position that we had her in for surgery...he proceeded to say her butt looked so good I just needed to be smacked...and before we knew it, he did it. He smacked her butt. Started giggling."
- g. The Respondent would talk about getting people fired which caused Complainant 2 to be afraid to report him. She stated that she asked her supervisors to change her schedule but did not state that it was because of the Respondent. She believed that her supervisors knew the reason that she wanted to change because she had told them many times before about how uncomfortable she was, but they would never ask why.

Individual 3

13. On or about February 5, 2021, Board staff conducted an interview with Individual 3, an administrative assistant, who had worked with the Respondent since he started practicing at the Hospital. In her under-oath interview, Individual 3 stated:

- a. The Respondent behaves in a manner that is very arrogant, very pompous and womanizing. Multiple staff members reported to her that they were uncomfortable working with him.
- b. Complainant 2 expressed to her multiple times that she did not like the Respondent and did not want to work with him but was initially wary of reporting him out of fear of losing her job.
- c. She observed once instance where the Respondent was interacting with Complainant 2 and said to her, "I'd like to put you over my knee and spank you, spank you, spank you...and she just rolled her eyes and walked away."

Individual 4

14. On or about February 11, 2021, Board staff conducted an under-oath interview with Individual 4, an Operating Room Secretary who previously worked with the Respondent. In her interview, Individual 4 stated:

- a. She changed her work schedule to avoid the Respondent after his interactions with her started to become "eerie." The Respondent would call her by a nickname "Strawberry" and began bringing her coffee without her asking him to do so. He began calling her frequently when she was working and texting her personal cell phone. The Respondent would make comments about her body and her attire. In one instance he stated "for a skinny girl, you have a nice butt."
- b. The Respondent once telephoned her at work while he was sitting a short distance away from her and asked her to come sit on his lap.
- c. While she was walking down a hallway, the Respondent grabbed her and pulled her into an office and closed the door. "I said no, eight times super loud before he let me out of that room." She stated that the Respondent had an erection and was trying to get her to sit on his lap and touch it.
- d. The Respondent once followed her to her car while screaming her name. She ran to her car and called a friend who worked in security and asked him to meet her at her car so that she could hide for a few minutes.

Individual 5

15. On or about March 5, 2021, Board staff conducted an under-oath interview with Individual 5, a nurse who previously worked with the Respondent. In her interview, Individual 5 stated:

- a. She worked in the O.R. with the Respondent and found him to be disrespectful, inappropriate, and unprofessional.
- b. In 2017 she was present in the O.R. when the Respondent slapped the buttocks of the anesthetized patient referenced above. She reported the incident because “that’s not typical behavior of a surgeon.”
- c. Working in the O.R. with the Respondent made her feel “impaired” because in addition to her responsibilities to the patient she had to worry about avoiding conversations with the Respondent, which is impossible in a surgical area, but the Respondent’s conduct made it a very difficult working environment.

Individual 6

16. On or about February 2, 2021, Board staff conducted an under-oath interview with Individual 6, a technologist who previously worked with the Respondent.

In her interview, Individual 6 stated:

- a. At the beginning of her time working with the Respondent she was told by colleagues “you’ll be fine” working with the Respondent because “he just likes being around pretty women.” Individual 6 stated that she understood that to mean that she should be “on guard” while working with the Respondent.
- b. She described the Respondent as “very touchy,” and stated that he attempted to massage her neck on multiple occasions. The Respondent would touch other staff members on their lower backs and would make inappropriate comments about patients’ bodies.
- c. She observed the Respondent getting “really close” and whispering to Complainant 2. Individual 6 stated that this made her feel uncomfortable, so she looked away and started working on her computer. After the Respondent left the room Complainant 2 approached her and asked, “did you see that?” Individual 6 responded that she did not because she was looking away. Complainant 2 told Individual 6 that the Respondent “got in [her] face,” and asked that in the future “please don’t turn around when he gets this close to me.”

Individual 7

17. On or about March 4, 2021, Board staff conducted an under-oath interview with Individual 7, a Hospital staff member who worked in the Respondent's O.R. In her interview, Individual 7 stated:

- a. She knew the Respondent as a surgeon in the O.R. who made her feel uncomfortable.
- b. On one occasion, the Respondent remarked to her that she had a "cute little butt that could squeeze through the doorway."
- c. Individual 4 told Individual 7 that the Respondent also made her feel uncomfortable calling her by the nickname "Strawberry," and on one occasion had followed her into the parking garage.

Individual 8

18. On or about February 24, 2021, Board staff conducted an under-oath interview with Individual 8, a nurse who worked with the Respondent. In her interview, Individual 8 stated:

- a. Many of her colleagues expressed a reluctance to work in the Respondent's O.R., and that she sometimes felt uncomfortable for others because the Respondent tends to be very flirtatious.
- b. She observed the Respondent asking Complainant 2 to go to the movies with him and commenting on her body.
- c. The last time she remembers working with Complainant 2 was when Complainant 2 asked that Individual 8 not leave her alone in the O.R. with the Respondent.

Individual 9

19. On or about January 11, 2021, Board staff conducted an under-oath interview with Individual 9, a Physician Assistant who worked with the Respondent. In his interview, Individual 9 stated:

- a. They had a patient in the O.R. prepared for a surgical procedure when the Respondent came into the room and did not like how Individual 9 had prepared the patient's buttocks area. The Respondent "starts slapping her

rear end and dancing around and...singing the butt song... 'Baby's Got Back', or something like that."

- b. He observed the Respondent constantly hugging staff, massaging their necks, and asking them about their sex lives.

20. Board staff interviewed other current or former colleagues of the Respondent who corroborated the Respondent's reputation for being touchy with staff members, and/or making inappropriate comments to staff members.

The Respondent

21. On or about May 21, 2021, Board staff conducted an under-oath interview with the Respondent. In the interview, the Respondent stated:

- a. He would typically greet staff when he arrived at the O.R. by touching their cap or their neck and expected that staff would be comfortable expressing their discomfort if they were so inclined.
- b. There was non-sexual touching from both sides in his interactions with Complainant 1. He denied making unprofessional comments toward her or telling her to put any surgical instruments into her mouth.
- c. He acknowledged touching Complainant 2's hands and neck at her request because "touch is a calming thing." He stated that none of his comments to Complainant 2 were meant in a sexual way, and if they talked about sex, it was primarily in the context of her pregnancy.
- d. Complainant 2 asked him to examine her for joint dysfunction and he did so to be courteous but will not ever do so again. He took her into a room to examine her because it was not appropriate to do it in the hallway. He asked her to loosen her waistband and pull it down a little bit. Afterwards, Complainant 2 seemed to be thankful, not offended.
- e. He denied pulling Individual 4 into an empty office and trying to make her touch his erection.
- f. In April 2017 he did not slap the patient's buttocks but was illustrating to staff that they had placed a frame in an incorrect position. "I said look, the buttock tissue moves like this...you have to touch the tissue...it's moving here. Here it's not moving." He denied making any inappropriate comments about the patient's body.

22. Following this interview, Respondent's counsel informed Board staff that the Respondent had recalled additional information. A second under-oath interview of the Respondent was conducted on May 25, 2021. In this interview, the Respondent stated:

- a. That he initially did not recall Individual 4 because he called her by her nickname "Strawberry." He acknowledged bringing her coffee and stated that the two of them began a romantic relationship outside of work. He recalled an occasion wherein he invited her into his administrative office, and she drove there specifically to have an encounter with him. The Respondent stated that he ended the relationship after Individual 4 demanded money from him.
- b. He could not tell Board staff the whole truth in the first interview not because he could not remember, but because he had to "put some type of coherent thing together."

CONCLUSIONS OF LAW

Based on the foregoing Investigative Findings, Panel A concludes as a matter of law that the public health, safety or welfare imperatively requires emergency action in this case, pursuant to Md. Code Ann., State Gov't. § 10-226(c)(2) (2014 Repl. Vol. & 2020 Supp.) and Md. Code Regs. ("COMAR") 10.32.02.08B(7)(a).

ORDER

It is, by a majority of the quorum of Panel A, hereby:

ORDERED that pursuant to the authority vested in Panel A by Md. Code Ann., State Gov't § 10-226(c)(2) and COMAR 10.32.02.08B(7)(a), the Respondent's license to practice medicine in the State of Maryland, is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED that a post-deprivation hearing in accordance with COMAR 10.32.02.08B(7) on the Summary Suspension will be held on **Wednesday, July 14, 2021, at 12:30 p.m.** before Panel A at the Maryland State Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215-0095; and be it further

ORDERED that at the conclusion of the post-deprivation hearing before Panel A, the Respondent, if dissatisfied with the result of the hearing, may request within ten (10) days an evidentiary hearing, such hearing to be set within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and be it further

ORDERED that a copy of this Order of Summary Suspension shall be filed with the Board in accordance with Md. Code Ann., Health Occ. § 14-407 (2014 Repl. Vol. & 2020 Supp.); and be it further

ORDERED that this is an Order of Disciplinary Panel A, and, as such, is a **PUBLIC DOCUMENT**. See Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Provisions §4-333(b)(6).

Signature on File

07/02/2021

Date

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

Attachment 2

IN THE MATTER OF	*	BEFORE THE MARYLAND
HUGO BENALCAZAR, M.D.	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: D56356	*	Case Number: 2221-0051
* * * * *		

**FINAL DECISION AND ORDER
ON ORDER FOR SUMMARY SUSPENSION
OF LICENSE TO PRACTICE MEDICINE**

On July 2, 2021, pursuant to § 10-226(c)(2) of the State Government Article, Md. Code Ann., Disciplinary Panel A of the Maryland State Board of Physicians (the “Board”) issued an Order for Summary Suspension of License to Practice Medicine, which immediately suspended Respondent Hugo Benalcazar, M.D.’s license to practice medicine in Maryland. On July 14, 2021, Disciplinary Panel A held a postdeprivation hearing on the summary suspension and, on July 15, 2021, affirmed the summary suspension.

On October 4, 7, and 8, 2021, a contested case, evidentiary hearing was held before an Administrative Law Judge (“ALJ”) at the Office of Administrative Hearings (“OAH”). The State presented the following witnesses: a Compliance Analyst of the Board; Complainant 1, a registered nurse; Complainant 2, a surgical technologist; Individual 3, an Operating Room (“O.R.”) unit secretary; Individual 4, an O.R. unit secretary; and Individual 9, a physician assistant. The Respondent did not present any testimony or witnesses at the OAH hearing. On December 15, 2021, the ALJ issued a proposed decision recommending that the Order for Summary Suspension be reversed.

Both the State and the Respondent filed exceptions. The State filed exceptions arguing that the ALJ’s finding—that any threat that the Respondent may have posed had been

ameliorated by the time the summary suspension was issued—was unsound. The Respondent’s exceptions focus on his claim that the ALJ did not properly address his contention that exculpatory evidence was purposely not presented to the Board panel before the panel issued the order summarily suspending his license. Both parties filed a reply to the opposing party’s exceptions.

On March 23, 2022, an exceptions hearing was held before Board Disciplinary Panel B (“Panel B” or the “Panel”).

I. FINDINGS OF FACT

Panel B finds that the following facts were proven by the preponderance of evidence:

1. The Respondent was originally licensed to practice medicine in Maryland on August 3, 2000. The Respondent continually had his license renewed, and he was authorized to practice medicine in Maryland from August 2000 until his medical license was summarily suspended on July 2, 2021. The conduct of the Respondent that is the focus of this case occurred while he was licensed by the Board. The Respondent is male.

2. The Respondent is board-certified in neurological surgery.

3. The Respondent has practiced neurosurgery, physical therapy, and pain management in Maryland. The Respondent has held privileges at four hospitals in Maryland.

Complainant 1

4. Complainant 1, a female, has been a registered nurse for over 20 years and works in the O.R. as a registered nurse.¹ Complainant 1 worked at a hospital in Maryland (the “Hospital”) from May 2004 until October 2018.

¹ The Panel has used generic terms for individuals and facilities where possible in order protect their reasonable expectation of privacy and for patients, their confidentiality. In addition, this case involves issues of sexual harassment and inappropriate sexual conduct, and thus the Panel does its best to keep the names of the victims confidential.

5. In 2013, Complainant 1 was working at the Hospital with the Respondent treating a patient. They were using a 3D navigational system instrument that had silver balls. At the end of the procedure, the balls fell on the floor. Complainant 1 picked up some of them off the floor and put them in the Respondent's pocket. The Respondent then said to Complainant 1, "Why don't you put them in your mouth?" Complainant 1 responded, "[T]hat is gross." Later that day, Complainant 1 was working in a computer area in the Hospital, and the Respondent walked over to her and placed his hand through the V-neck opening of her scrub shirt, and he placed his hand on Complainant 1's chest. He did not touch Complainant 1's breasts.

6. Complainant 1 reported the incidents to the Hospital's perioperative director at the time and the two of them had a meeting with the Respondent. The Hospital took no action against the Respondent at this time, and Complainant 1 felt her concerns were not taken seriously by the perioperative director or by the Respondent.

7. The Respondent made other inappropriate comments to Complainant 1, for instance, stating to Complainant 1 that he could see her bra straps and underwear.

Complainant 2

8. Complainant 2, a female, is a surgical technologist. Complainant 2 works at the Hospital. She began working at the Hospital in June 2015.

9. Complainant 2 previously worked in the O.R. with the Respondent two days per week.

10. In 2016, Complainant 2 had lower back pain while she was pregnant. On one occasion, Complainant 2 was in the O.R. and mentioned her pain to one of her colleagues. The Respondent overheard and offered to examine her in between cases. The Respondent escorted her into a Hospital room and closed the door. No one else was in the room. Complainant 2

turned so the Respondent was behind her, so she could point to where the pain was. He asked her to raise her shirt, which she did, about midway up her back. The Respondent placed his hands on her waist and started to feel her lower back with his thumbs while asking her where the pain was. The Respondent then asked her to lower her pants. She lowered her pants about halfway down her buttocks. The Respondent then commented on how good Complainant 2 looked from behind and that her underwear was "very cute." The Respondent was giggling. Complainant 2 felt she was being taken advantage of, so she lifted her pants back up and left the room.

11. When Complainant 2 came back from maternity leave in October 2016, she worked with the Respondent two days per week, Mondays and Wednesdays. She maintained this schedule until May 2017. The Respondent asked her about her sex life with her fiancé and told her that she would have a better time with him than with her fiancé. The Respondent also physically touched her on days that they worked together. The touching was unwanted by Complainant 2. He stroked her neck and massaged it. He also grabbed Complainant's 2's hair and then would use it to turn her head. He showed her pictures of other women wearing risqué Halloween costumes and said that he would love to see her in these costumes. The Respondent physically grabbed Complainant 2 and pulled her close to him. He made comments about her bra. At the scrub sink, the Respondent embraced her from behind. He felt her legs to see whether she had shaved her legs. Complainant 2 testified, "I would describe it as it was a daily occurrence. Every day he physically touched me. He verbally harassed me every day, every shift I was there with him." (T. 239.)

12. On April 19, 2017, Complainant 2 observed the Respondent slap the buttocks of an anesthetized patient ("Patient 1").

13. The Respondent talked about how he could get people fired, which caused Complainant 2 to be afraid to report him. Complainant 2 stated that she asked her supervisors to change her schedule but did not state that it was because of the Respondent. She believed that her supervisors knew the reason that she wanted to change because she had told them many times before about how uncomfortable she was, but the supervisor did not ask for the reason. Ultimately, Complainant 2 was able to get her schedule changed so she did not have to work with the Respondent any longer. On October 16, 2018, Complainant 2 filed a complaint with the Hospital's Human Resources department.

Patient 1

14. On April 19, 2017, a female patient, Patient 1, was in the O.R. and unconscious after being anesthetized. Patient 1 was positioned for a lumbar procedure on her spinal column. Patient 1 was lying on her abdomen, face down, and her buttocks were fully exposed. From her neck to her feet there were no clothes or sheets covering her. The Respondent came into the room and did not like the way a physician assistant had taped the skin of the patient, and the Respondent ripped the tape off the patient. The Respondent made comments about how good Patient 1 looked and that her buttocks looked great. The Respondent then forcefully slapped Patient 1's buttocks, which made a loud noise. The Respondent then sang the verse "Baby Got Back" and was giggling. The Respondent told Individual 9 (a physician assistant) to re-tape the patient. At least three O.R. workers witnessed this incident: Individual 9, Complainant 2, and Individual 5. There was no medical justification for the Respondent to slap the patient's buttocks.

Individual 3

15. Individual 3 is a O.R. unit secretary at the Hospital, and she has worked at the Hospital for 21 years.

16. Individual 3 observed that Complainant 2 had a lot of issues involving the Respondent regarding “offhand, off-color, sexual comments” the Respondent made. Individual 3 witnessed the Respondent and Complainant 2 come out the O.R. after a case and the Respondent glared at Complainant 2 and said to her, “I’d like to put you over my knee and spank you, spank you, spank you.” (T. 381.)

17. Individual 3 testified that “[p]eople were a little leery of going to anyone about his behavior because they felt that nothing would be addressed.” (T. 382.) Individual 3 further explained, “I think there was -- a lot of people were afraid that with his -- that they would get fired if they tried to bring something to the forefront about him.” (*Id.*)

Individual 4

18. Individual 4, a female, began working at the Hospital in 2013. In 2015, Individual 4 began working as an O.R. unit secretary. At the time of the evidentiary hearing, Individual 4 was no longer working at the Hospital. The Respondent often called Individual 4 “Strawberry.”

19. One time at work, the Respondent was sitting at a desk close to where Individual 4 was sitting, and the Respondent called Individual 4 on her desk telephone and asked Individual 4 “to sit on his lap.” (T. 319.) On another occasion, the Respondent told Individual 4 that, for a skinny girl, she had a “nice butt.” (T. 329.)

20. On another occasion, Individual 4 was walking down a Hospital hallway, and the Respondent grabbed her wrist, led her into an office, and closed the door. No one else was in the office. The Respondent then aggressively asked Individual 4 to touch his penis. The

Respondent asked eight times for Individual 4 to touch his penis. She “said no quite a few times.” Individual 4 was “petrified.” (T. 325.) Individual 4 did manage to leave the office without touching Respondent’s penis. Individual 4 told her best friend at work about this incident. Individual 4 also spoke to the Hospital’s perioperative director about her concerns about the Respondent, although Individual 4 does not recall how specific she was. Individual 4 did not think her concerns were properly handled by the perioperative director.

21. Individual 4 explained before the ALJ why she had not reported these incidents to the Hospital’s Human Resources department: “Fear, knowing that he had said to people before that he, you know, kind of had control over jobs.”

22. Individual 4 and the Respondent were never in a romantic relationship together and never had sex with each other, Individual 4 never demanded money from the Respondent, and Individual 4 did not send a racy photograph of herself to the Respondent.

Individual 5

23. Individual 5, a female, worked as a registered nurse at the Hospital. Individual 5 worked in the O.R. with the Respondent when she worked at the Hospital. Individual 5 now works at a surgery center at another facility.

24. In April 2017, Individual 5 observed the Respondent slap the buttocks of Patient 1. Individual 5 noticed that everyone who saw him slap the patient looked shocked. Individual 5 was interviewed by Board staff and said, “You know, that’s not typical behavior of a surgeon, at least not a good one, and I do remember reporting it.” Individual 5 reported the incident to the charge nurse, but stated, “And I don’t know that anything after that point was ever done.” (State’s Ex. 15, T. 10.)

25. Working in the O.R with the Respondent was impairing for Individual 5.

Individual 5 explained:

I don't want to say it impairs you 100 percent, but you definitely are – are impaired, because you're also worried about how you have to avoid another conversation with a surgeon – which is impossible to avoid when you're working in a surgical area like that, because you need to talk to him, you need to have open communication, and you kind of have to forget those things happened, and treat every day like a new day, and that's really difficult when you do experience things and know things that have happened.

Individual 6

26. Individual 6, a female, worked at the Hospital as a neuromonitoring tech for approximately two years, from 2015 to 2017.

27. The Respondent tried to give Individual 6 a neck massage at least twice.

Individual 9

28. Individual 9 is a surgical physician assistant for surgery. He has been a physician assistant since 1993. Individual 9 was employed by the Respondent from July 2016 to November 2017. He has worked for the Hospital since December 2017.

29. In April 2017, Individual 9 was in the O.R. with Patient 1, when Patient 1 was anesthetized, and the Respondent came into the room. Individual 9 testified that the Respondent was “slapping [the patient’s] rear end and dancing around and saying -- like singing the butt song [“Baby’s Got Back”] or whatever.” (State’s Ex. 7, T. 16.)

30. Individual 9 also observed the Respondent constantly hugging staff, massaging their necks, and asking them about their sex lives.

Proceedings

31. In June 2018, counsel for Complainant 2 sent a letter (“Demand Letter”) to the Respondent stating that the Respondent had sexually harassed Complainant 2. The Demand

Letter attached draft filings with the EEOC and a circuit court in Maryland. The Demand Letter asked for five million dollars in exchange for Complainant 2 not filing actions and complaints against the Respondent. The Respondent did not pay Complainant 2.

32. On October 4, 2018, Complainant 2 met with a person from the Hospital's Human Resources department and the Hospital's perioperative director to discuss the Respondent's behavior.

33. In October 12, 2018, Complainant 2 filed a lawsuit in a circuit court in Maryland against the Respondent, the Respondent's private practice, and the Hospital, alleging sexual harassment, assault, battery, and intentional infliction of emotional distress.²

34. On October 16, 2018, Complainant 2 filed a formal complainant against the Respondent with the Hospital's Human Resources department.

35. As a result of the lawsuit filed in circuit court, the Hospital's Performance Improvement Committee appointed an Ad Hoc Committee to investigate the allegations in the lawsuit against the Respondent. The Ad Hoc Committee interviewed the Respondent and a number of other individuals involved in the surgical units of the Hospital. The Ad Hoc Committee wrote that it did not consider the incident in which the Respondent slapped the buttocks of Patient 1, because the incident "involved a patient" and thus the Ad Hoc Committee "did not consider this incident to be within the specific scope of its investigation," but the report did state that the Respondent "acknowledged the incident, though he explained it by saying that he was not happy with the way the patient was taped, removed the tape and moved the patient's buttocks." The report also did not reference the incident involving Individual 4 in which the Respondent tried to get her to touch his penis. But the report did mention that two Hospital employees stated that the Respondent put his hands around the neck of a female staff member,

² At the time of the evidentiary hearing at OAH, the lawsuit was still ongoing.

and one of those employees stated that the Respondent refused to let go “even when she asked him to.” The report further stated that Complainant 2 had not previously reported incidents of inappropriate behavior to the Human Resources department because “she feared losing her job or other repercussions.” The report also mentioned that, in addition to Complainant 2, other employees interviewed said that the Hospital O.R. had a culture that was inhospitable to complaints against physicians.

36. On March 6, 2019, the Hospital issued the Respondent a Letter of Reprimand.

The Letter of Reprimand stated:

Based on the investigation, the Ad Hoc Committee, Performance Improvement Committee, and Medical Executive Committee concluded that you had behaved inappropriately towards members of the Hospital staff by inappropriate touching female employees and by making inappropriate comments of a sexual nature to female employees. The Committees felt that you lacked an appreciation for how your behavior was perceived and exercised extremely poor judgment in your lack of appreciation for appropriate boundaries of professional behavior. Your behavior and words were seriously inappropriate.

The Hospital required the Respondent to attend a course in Professional Boundaries and advised the Respondent that his behavior would be “monitored. However, any further reports of this type of unacceptable behavior, at any time in the future, would be reviewed for additional disciplinary action, up to and including termination of medical staff appointment and/or clinical privileges.”

The Letter of Reprimand further stated that the Letter of Reprimand “will not be reported to the Maryland Board of Physicians” and that “this action does not constitute grounds for a hearing.”

37. On August 30, 2020, the Board received a complaint from Complainant 1 (dated August 25, 2020). In her complaint, Complainant 1 alleged that, when she worked with the Respondent at the Hospital, the Respondent behaved inappropriately, both verbally and physically, with Complainant 1 and other female staff members.

38. On November 30, 2020, the Board received two complaints from Complainant 2 against the Respondent. In the first November 30, 2020 complaint (dated November 19, 2020), Complainant 2 described an incident in which the Respondent slapped the buttocks of Patient 1. In the second November 30, 2020 complaint (dated November 19, 2020), she stated that the Respondent was inappropriate when examining her for lower back pain. On December 29, 2020, the Board received a third complaint (dated Nov. 19, 2020) from Complainant 2 against the Respondent, detailing an instance when Complainant 2 was orienting a new surgical technologist at the Hospital and the Respondent stroked her neck. Complainant 2 felt “extremely uncomfortable” and “embarrassed.” The complaint also indicated that the Respondent touched her multiple times a day when they worked together, that she did not like it, and that she did not know what to do about it.

39. On July 2, 2021, Disciplinary Panel A of the Board issued the Respondent the Order for Summary Suspension of License to Practice Medicine.

40. The Respondent presented a substantial likelihood of risk of serious harm to the public health, safety and welfare. Thus, the order for summary suspension was imperatively required to protect the public health, safety, and welfare, under State Gov’t § 10-226(c)(2).

II. CREDIBILITY

The Respondent did not testify at the OAH hearing, but, on May 21, 2021, and, on May 25, 2021, he was interviewed by Board compliance analysts. When the Respondent was interviewed by the Board’s compliance analysts, he denied slapping or spanking Patient 1’s buttocks. He said that he was pushing the tissue on her buttocks to show the O.R. staff where to place the frame of a navigational instrument, indicating that the frame should not be placed on fatty tissue where it would be unstable. The Panel does not find his denial credible.

The Respondent's statements have been inconsistent on this matter. The Hospital's Ad Hoc Committee investigation report states that the Respondent "acknowledged the incident, though he explained it by saying that he was not happy with the way the patient was taped, removed the tape and moved the patient's buttocks." Individual 9 also said that the Respondent was upset at how the patient was taped. The Respondent's testimony during his interview with the Board's compliance analysts in which he stated that he was showing the O.R. staff where to place a navigational instrument's frame conflicts with his statement to the Hospital's Ad Hoc Committee.

Moreover, the Respondent's version during his interview is contradicted by three eyewitnesses to the incident: Complainant 2, Individual 5, and Individual 9. (Individual 5 did not testify at the hearing, but she was interviewed by the Board's compliance analysts.) The Panel credits the testimony of Complainant 2, Individual 9, and Individual 5, who each testified that he slapped and/or smacked the patient's buttocks. Individual 9 said the Respondent was "joking around" and sang the verse of "Baby Got Back." (State's Ex. 7, T. 18.) Complainant 2 testified that the Respondent was making comments about how good [Patient 1] looked for her age, that she was in great shape, and that her backside looked great. (T. 247.) Complainant 2 also testified that she was "in complete disbelief." (*Id.*) Individual 5 testified, "it felt extremely unprofessional and that's why I reported it." (State's Ex. 15, T. 12.) There were some differences with the details of the incidents between these three witnesses, but those discrepancies are relatively minor and understandable considering how shocking the Respondent's conduct was to the witnesses.

Concerning Individual 4, when the Respondent was interviewed by the Board compliance analysts, he denied the incident involving Individual 4 in which Individual 4 testified that the

Respondent repeatedly asked her to touch his penis. In fact, when the Respondent was initially interviewed, he initially denied even knowing who Individual 4 was:

Q. Are you familiar with [Individual 4]?

[The Respondent] A. No.

Q. Okay. She was an OR – or she is an OR secretary at [the Hospital]. You have no recollection of her, [Individual 4]?

[COUNSEL FOR THE RESPONDENT]: [Spells the last name of Individual 4]?

[COMPLIANCE ANALYST]: Correct.

[COMPLIANCE ANALYST]: [Blank in transcript]

[The Respondent] A. I don't.

Q. Okay. [Individual 4] reported that she changed her schedule at [the Hospital] in order to avoid you after you began bringing her coffee, started calling her by the name Strawberry, commenting on her body and clothes and again texting and calling her personnel cell phone. Do you have any – can you respond to that, or you have no recollection of who she is?

A. No. I do – I do recall that we had a – again, a playful relationship there which I thought was mutual.

Q. Okay. She stated that she told you that it made her uncomfortable, asked you to stop bringing her coffee and began wearing jackets to avoid your comments. Were you bringing her coffee?

A. I have very little recollection of this but certainly possible that that would be the case. And if anyone asked me to stop bringing them coffee, I would stop bringing them coffee.

* * *

Q. Okay. And you don't remember anybody that you would call by the nickname Strawberry?

A. No. I do – I do recall that. I called her that once because her hair was red.

Q. Okay.

A. And I said your hair looks like a strawberry.

Q. Okay. And do you remember if that was [Individual 4]?

A. I don't remember.

Q. Okay.

A. I don't remember the name.

(State's Ex. 19, T. 58-61.)

After the interview, however, counsel for the Respondent contacted a Board compliance analyst and said that after the Respondent had time to reflect on the interview, he was able to recall additional important information regarding Individual 4. A second interview, therefore,

was held four days after the first. At the second interview, the Respondent provided the following testimony:

The, other person was [Individual 4] and [Individual 4], you know, first of all, the allegation, never happened, never, I didn't understand that whole thing at all, but there is more to [Individual 4] that's very important, again, for context.

[Individual 4], I, I would bring coffee to [Individual 4]. I didn't know what kind of coffee she liked, you know, and people are very particular about their coffee, so [Individual 4] would tell me what coffee she wanted. This isn't something where I'm forcing coffee on someone.

And that sort of sparked a friendly relationship at the hospital and that friendly relationship morphed into a romantic relationship outside of the hospital.

And on one occasion she drove to my administrative office, which is about a mile or so away from the hospital, after hours, specifically to have an encounter with me. She drove her own car, you know, I wasn't there with her.

And, and that lasted a very short time, but the reason that it ended was strictly on – I ended it. And the reason it ended was because she made a demand for money to me and that, you know, freaked me out. I was extremely concerned, obviously, because there was no talk of that at all.

And obviously it is an implied threat to me, and so, and so that's how it ended.

* * *

Q. But you had a sexual relationship with her?

[The Respondent] A. We had a romantic relationship, yes.

Q. Okay. And when you say romantic, was there sexual intercourse?

A. Well, yes, there was.

Q. Okay.

A. The one time.

* * *

Q. Mm-hmm. And how did she end up coming to the office?

A. Oh, I, probably I invited her there.

(State's Ex. 20, T. 6-10.) The Respondent then said there was no specific amount of money that was requested by Individual 4. The Respondent then testified that he communicated with Individual 4 by phone, by text, and by Snapchat. Later in the interview, the discussion turned back to the first interview when he denied knowing who Individual 4 was:

[BOARD COMPLIANCE ANALYST]: I guess you're talking about someone that you had sex with that threatened you and we, you know,

gave some reference to and that you didn't remember it on Friday, that's what I'm just kind of confused about.

[THE RESPONDENT]: Yeah; no, I, it's not that I didn't remember it, it's that I couldn't, I have to put some kind of coherent thing together, you know, for you guys.

I have to – you want the whole truth and, you know, I, I probably should have asked for a break or something like that, but the next thing I know we were ending and my mind was, you know, running around all over the place.

So, you know, [Individual 4] is not a name I used and so that threw me off, the allegation is barbarous and untrue and threw me off.

So, yeah, this isn't like I had forgot this person, but it is something where if I started talking at that moment, I don't think I could have put, put two and two together. And I didn't want to do that, so.

And there is one other thing, too, and that is that, that this person sent me a picture of herself which is, let's just say, highly suggestive and, again, I just want to underscore the sort of consenting mutual aspect of the relationship.

BY [BOARD COMPLIANCE ANALYST]

Q. When did she send you a suggestive picture?

A. Pretty much right before she – my best recollection is pretty much right before she asked me for the money.

Q. And I know it's been awhile, do you have any proof of her asking for the money or anything like that?

A. I don't think I have any proof of her asking for the money, but I do have the picture that she sent.

(State's Exhibit 20, T. 13-14.)

At the evidentiary hearing before the ALJ, Individual 4 testified. Individual 4 testified that she had not been in a relationship with the Respondent, that she had not had sex with him, and did not ask him for money. On cross examination, Individual 4 did state that she had had a traumatic brain injury and thus could not be 100 percent positive of her recollections, but that she did not have any recollection of a relationship, sex, or money discussions with the Respondent. On cross examination, she was shown the racy photograph. Individual 4 acknowledged that the photograph was of her but said that she did not send it to the Respondent. She testified that she and an anesthesiologist at the Hospital sent photographs to each other. On redirect, Individual 4 was asked about how the photograph could have come into the possession of the Respondent:

Q. Now, just to clarify, do you know how Dr. Benalcazar would have come into possession of that picture of you?

[Individual 4] A. Like I said, the only reasonable explanation I can come up with is that someone else showed him, gave it to him. I'm not – that's the only reasonable explanation I have.

(T. 371-72.)

The Panel does not find the Respondent's testimony regarding Individual 4 trustworthy. When he was initially interviewed by the Board compliance analysts, he denied even knowing who Individual 4 was. When he was interviewed the second time, he explained that he had not forgotten who Individual 4 was when he was asked about her in the first interview, but he was not about to "put some kind of coherent thing together." He further said, "So, yeah, this isn't like I had forgot this person, but it is something where if I started talking at that moment, I don't think I could have put, put two and two together. And I didn't want to do that, so." The Panel finds that the Respondent simply lied to the Board compliance analysts. At first, he denied even knowing who she was, and then four days later he stated that he had a romantic relationship with her, had sex with her, that she threatened him for money, and that he has a racy photograph of her. The extent to which he deliberately gave false statements to the Board compliance analysts indicates that his statements are not reliable. The Panel finds that the Respondent is not credible. The evidence in this case does not indicate that he had sexual intercourse with Individual 4, does not indicate that she demanded money from him, and does not indicate that she sent him the racy photograph. The Panel cannot find that Individual 4 fabricated information when she was interviewed or testified before the ALJ. In determining which of these two individuals the Panel relies upon, the only reasonable determination is to believe Individual 4 over the Respondent. The Panel finds Individual 4's testimony credible.

III. EXCEPTIONS

1. STATE'S EXCEPTIONS

A. Whether the Respondent Posed a Continuing Danger Requiring the Order for Summary Suspension

The State took exception to the ALJ's finding that the Respondent did not pose a danger at the time the order for summary suspension was issued. The crux of the ALJ's decision is that any real danger the Respondent may have posed had disappeared by the time the order for summary suspension was issued. The ALJ found that there is no evidence of the Respondent's misconduct after he was issued a Letter of Reprimand from the Hospital, demonstrating, to the ALJ, that the Letter of Reprimand by the Hospital was sufficient to suppress any threat of serious harmful conduct by the Respondent. There are, however, a number of flaws in the ALJ's proposed finding.

To support the finding that the order for summary suspension was not imperatively required, the ALJ attempted to distinguish the *Mullan* case. *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 173 (2004). In *Mullan*, the Board summarily suspended the license of a pediatrician, Dr. Mullan, because Dr. Mullan treated patients while intoxicated. *Id.* at 161. The Court of Appeals affirmed the summary suspension. *Id.* at 173. The ALJ's reasoning in the Respondent's case was that no new allegations of wrongdoing after the Letter of Reprimand was issued demonstrated no continuing danger. The ALJ contrasted that to *Mullan*, finding that, in *Mullan*, unlike in the Respondent's case, "there was no evidence that the situation had been ameliorated in any way." (ALJ's Proposed Decision ("PD") at 13.) In *Mullan*, however, there was only one episode of proven wrongdoing, which was that, on one day, April 10, 2000, Dr. Mullan treated patients while intoxicated. There were no complaints of Dr. Mullan treating patients while intoxicated other than the one complaint about April 10, 2000, which

actually led the Court of Special Appeals to “reverse[] the Board’s finding that summary suspension was ‘imperatively required.’” *Mullan*, 381 Md. at 162.

The approach taken by the Court of Special Appeals was the same taken by the ALJ in the Respondent’s case. The Court of Special Appeals had found that the lack of complaints between complaint to the Board and the order to summarily suspend “vitiates” any evidence that the order for summary suspension was imperatively required. *Mullan*, 381 Md. at 161-62. The Court of Appeals, in *Mullan*, then reversed the Court of Special Appeals, rejecting the reasoning of the Court of Special Appeals. *Id.* at 173. Thus, *Mullan* specifically rejects the approach and reasoning applied by the ALJ in the Respondent’s case.

The Court of Appeals, in *Mullan*, explained why Dr. Mullan continued to pose a danger requiring order for summary suspension despite there being only one day in which it was proven that he saw patients while intoxicated:

When a pediatrician, with a history of severe alcoholism, renders medical care to children while visibly intoxicated, he exhibits a remarkable lack of sound judgment by his failure to decide not to see patients on that day, even if he could not refrain from using alcohol. Such a lack of sound judgment is sufficient evidence for a reasonable Board to conclude the incident might repeat itself, requiring immediate suspension of the doctor’s license and posing a danger that imperatively requires emergency action.

Mullan, 381 Md. at 173. The Respondent demonstrated his remarkable lack of sound judgment by his long-term sexual harassment and offensive touching.

The real difference between *Mullan* and the Respondent’s case is that *Mullan* demonstrated his poor judgment on one day, while the Respondent’s deleterious behavior and remarkable lack of sound judgment at the Hospital was evident on numerous occasions over the course of years.

Additionally, the Respondent's egregious, long-term behavior was a real distraction to the medical professionals at the Hospital, jeopardizing the health, safety, and welfare of patients in the Hospital. The Respondent jeopardized patient care because he degraded the Hospital environment by being a distraction from the focus that is supposed to be on the practice of medicine, and he impaired the "teamwork approach of health care in the which requires participation from a variety of hospital personnel in order to deliver effective patient care." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 75 (1999). The medical professionals working with him on neurosurgery cases in the O.R. should be entirely focused on the medical case, and should not have to worry about protecting themselves and the patients from the Respondent's improper behavior. Individual 5 described the negative effect the Respondent had:

So, you know, your focus is just making sure that the patient is going to come out okay and it definitely --I don't want to say it impairs you 100 percent, but you definitely are -- are impaired, because you're also worried about how you have to avoid another conversation with a surgeon -- which is impossible to avoid when you're working in a surgical area like that, because you need to talk to him, you need to have open communication, and you kind of have to forget those things happened, and treat every day like a new day, and that's really difficult when you do experience things and know things that have happened.

(State's Ex. 15 at 33.)

And when the Respondent slapped Patient 1's buttocks while she was completely defenseless and when he pulled Individual 4 into a room and tried to make her touch his penis, the Respondent demonstrated a mindset so depraved that the Panel finds that, at the time the order for summary suspension was issued, there was a strong likelihood that this type of conduct would be repeated. The record does not show that the Respondent's mindset, which led him to act in the manner he did against Patient 1 and Individual 4, had been improved to any significant

degree, which made him a continuing threat to cause serious harm, requiring the order for summary suspension.³

The Panel finds that the ALJ placed far too much weight on the lack of additional reports of misconduct occurring after the Letter of Reprimand, especially because the ALJ did not take into account that the Hospital was disinclined to forcefully act on employee complaints brought to its attention against the Respondent. It was only after allegations against the Respondent's conduct became a lawsuit, filed by Complainant 2 in circuit court against the Respondent and the Hospital, that the Hospital moved to address his behavior. Complainant 1 thought that the Hospital did not take her complaints against the Respondent seriously. (T. 39-40.) This was also expressed by Complainant 2. (T. 250.) Individual 4 did not believe her concerns about the Respondent were properly handled by the Hospital's perioperative director. Individual 5 reported the Respondent's behavior to the charge nurse, and she testified, "where it went from there, I don't know." (Ex. 15 at 36.) Individual 5 complained to the Hospital about the Respondent, and she "was pretty much told to – to shut up and leave it alone . . . that there was nothing we could do to – to really fix the situation at hand." (Ex. 15 at 31.) And it is most likely that the Hospital's lenient handling of the Respondent imparted upon the Hospital employees that the Hospital would not provide protection against the Respondent, further discouraging complaints against him. In sum, the environment at, and lack of strong action by, the Hospital

³ The Panel also certainly does not accept the ALJ's statement that a dangerous situation may not have ever existed. The ALJ wrote, "There was no evidence before the Board that a dangerous situation, *if one ever existed*, continued at the time of the Order for Summary Suspension. (PD at 13) (italics added). There, however, were three eyewitnesses, at least, to Respondent slapping the buttocks of Patient 1 while she was anesthetized. Patient 1 was slapped on her buttocks for no medical reason. When the Respondent attempted to have a hospital employee touch his penis, this was actual harm. The Panel does not accept the ALJ's suggestion that there may never have been a danger. There already was serious actual harm with actual victims.

certainly left the impression that any complaints against the Respondent would not result in action that would properly address his conduct.

Even more, employees felt there could be retaliation against them for complaining about the Respondent. This was expressed by Individual 3, Individual 4, and Complainant 2. Complainant 2 felt there would have been a “target on [her] back” if she made these complaints to the Hospital. In her interview, Complainant 2 stated that the Respondent “would mention how he could get [Individual 5] fired.” (Ex. 5 at 8.) And the Respondent did his part to impart upon Hospital personnel that he would retaliate against those who complained about him. Individual 3 testified that the Hospital personnel were afraid to report him, because they felt he could get them fired.

The incident in which the Respondent’s slapped Patient 1’s buttocks also militates against placing too much weight on the lack of complaints after the Letter of Reprimand. Here, the Respondent demonstrated that he is not above abusing someone who was not conscious. If he engaged in this type of conduct again against someone who was not conscious and there was no one else present to observe, it would not have been reported.

The Panel rejects the ALJ’s conclusion that the lack of complaints after the Hospital issued the Letter of Reprimand meant that the Respondent’s conduct had been ameliorated. The Panel gives minimal weight to the lack of further allegations after the Letter of Reprimand. The lack of further allegations after the Letter of Reprimand does not convince the Panel that the Respondent no longer presented a significant risk of serious harm to the public health, safety, and welfare.

The Respondent continued to be a serious danger when the order for summary suspension was issued due to his astonishing lack of sound judgment, his utter lack of boundaries, the

distraction he caused at the Hospital, and the seriousness of his egregious behavior. The ALJ's proposed finding that there was no real danger at the time the Order for Summary Suspension was issued is rejected by the Panel. The State's exception is granted.

B. Articulation of Theory for Summary Suspension

The ALJ found that the Board did not articulate a theory in the order for summary suspension stating how the Respondent posed a serious risk of harm at the time the order for summary suspension was issued. (PD at 10-11.) The State took exception.

The ALJ's proposed decision states, "While the Board detailed its Investigative Findings in the Order for Summary Suspension, nowhere did it explicitly state in what way the Respondent's alleged behavior would form the grounds for a revocation under section 14-404 of the Health Occupations Article of the Maryland Code." (PD at 10.) The order for summary suspension, however, does not concern a revocation under § 14-404 of the Health Occupations Article. The summary suspension was based upon § 10-226(c)(2) of the State Government Article, which requires the agency to give the licensee "written notice of the suspension, the finding, and the reasons that support the finding." State Gov't § 10-226(c)(2)(ii)1. The order for summary suspension notified the Respondent of the suspension, stating that "the Respondent's license to practice medicine in the State of Maryland, is hereby **SUMMARILY SUSPENDED.**" (Capitals and bold in original.) The order for summary suspension provided the finding, stating "Based upon the foregoing Investigative Findings, Panel A concludes as a matter of law that the public health, safety or welfare imperatively requires emergency action in this case, pursuant to Md. Code Ann., State Gov't § 10-226(c)(2) (2014 Repl. Vol. & 2020 Supp.) and Md. Code Regs. (COMAR") 10.32.02.08B(7)(a)." The order for summary suspension also provided the reasoning upon which the finding of the imperative need for the summary suspension was based:

9. The Board's investigation determined that for a period of several years, the Respondent engaged in a pattern of unprofessional conduct that included, but was not limited to, sexual harassment of hospital staff, both verbal and physical, sexual propositioning, and unconsented-to physical contact of at least one patient. The Respondent's conduct proceeded largely unchecked over a period of time due in-part to staff members' perceptions that any complaints about his conduct would not be acted upon at the organizational level.

The order for summary suspension then detailed over the next seven pages the specific alleged facts supporting the order's reasoning as to why the summary suspension was imperative. Based on the order for summary suspension, it is clear that the reason the summary suspension was imperative was because the Respondent's long-term conduct at the Hospital was so outrageous, so menacing and deleterious, and so outside the bounds of appropriate hospital behavior that he persisted as a serious danger. The Panel finds this a reasonable understanding of the order of summary suspension. And Panel B agrees with, and accepts, this reason. The ALJ may not have agreed with it, but that does not mean that the order for summary suspension was deficient. The ALJ erred. The State's exception is granted.

C. Length of Time of Investigation

As to when an agency issues an order for summary suspension, if the agency chooses to issue such an order, is left to the discretion of the agency. *Mullan*, 381 Md. at 168. The ALJ inferred that the issuance of the summary suspension was an abuse of the panel's discretion, because the order of summary suspension was issued 10 months after the Board received the first complaint against the Respondent. The State took exception.

An abuse of discretion is established if no reasonable person would take the same action that was taken by the agency. *See Sibly v. Doe*, 227 Md. App. 645, 658 (2016). The burden of demonstrating an abuse of discretion is on the one challenging the discretionary action taken by

the agency. *See State v. Brown*, 355 Md. 89, 98 (1999). The ALJ's analysis for finding an inference of an abuse of discretion was as follows:

The length of delay here, from the first complaint filed with the Board on August 30, 2020, to the date of suspension, July 2, 2021, was ten months. While there is no allegation that the Respondent in any way contributed to this delay, the COVID-19 pandemic certainly must have. Nevertheless, the Board was able to interview witnesses and meet remotely, giving rise to the inference that suspending summarily based on an allegation that it was imperatively required was an abuse of the Board's discretion.

(PD at 12.) Essentially, the ALJ established a 10-month deadline for the issuance of an order for summary suspension after an agency receives a complaint against a licensee, indicating that the ALJ believed that a 10-month investigation is just too long. The ALJ erred.

The ALJ's creation of a 10-month deadline was without regard to the circumstances of the case and the investigation needed. The ALJ's analysis is devoid of any facts or information about the investigation, other than it took 10 months to issue the order for summary suspension from the date of the first complaint. The ALJ did not consider the nature or complexity of the investigation or the amount of material involved or any of the numerous reasons that might explain the investigation period (other than the investigation taking place during the COVID-19 pandemic).⁴ The ALJ also did not consider whether the Respondent was prejudiced by the length of the investigation, in contravention of the caselaw set forth in *Mullan*. 381 Md. at 169. As articulated by the Court of Appeals, there simply has to be more than just the length of the investigation to support the finding that the issuance of the order for summary suspension was arbitrary or capricious. *Mullan*, 381 Md. At 170 (quoting *State v. Chavis*, 261 S.C. 408, 200

⁴ The ALJ also calculated the 10-month period from the date the Board received the first complaint. But there were three complaints that the Board received later. Two were received three months after the first complaint and another was received four months after the first complaint. It does not make sense to the Panel to impose a 10-month deadline and not factor in the Board receiving three more complaints months after receiving the first complaint.

S.E.2d 390, 392 (1973) (“when ‘there is nothing other than an unexplained delay on the part of reporting officials, unaccompanied by any showing of prejudice to the driver, the driver is not entitled to any relief because of a delay in imposing the suspension. . . .’”) The ALJ’s analysis does not comport with the vast discretion expressly afforded agencies investigating potential summary suspension cases: “When investigating potential summary suspensions, an agency should not compromise the thoroughness of its investigation because of the threat of judicial reversal should the investigation take ‘too long.’” *Id.*

It is also significant that the *Mullan* decision cites a New York board case in which the summary suspension was upheld despite the investigation taking six years. *See Mullan*, 381 Md. at 170 (citing *John P. v. Axelord*, 97 A.D.2d 950, 468 N.Y.S.2d 951-53 (N.Y.App.Div. 1983)). And the Board has summarily suspended a physician’s license after seven years from when the Board received the first complaint against the physician and six years after receiving the second complaint. *Roane v. Maryland Board of Physicians*, 213 Md. App. 619 (2013). The Panel does not accept the ALJ’s finding or inference that the order for summary suspension was an abuse of discretion simply because the investigation took 10 months. The ALJ’s proposed decision does not set forth any basis for concluding that the order for summary suspension was an abuse of the panel’s discretion. *See Mullan*, 381 Md. at 168-73. The State’s exception is granted.

2. RESPONDENT’S EXCEPTIONS

The Respondent argues that the Board violated the Respondent’s due process rights. The Respondent claims that the Board staff withheld exculpatory evidence from the disciplinary panel at the time the panel voted to issue the order for summary suspension. The Respondent contends that the Board’s staff either did not obtain, or purposely kept away, exculpatory

material, such as the Demand Letter, from the disciplinary panel because the material was, or would have been, “inconsistent with their theory of the case.”

The first question is whether the Respondent possessed due process rights prior to the issuance of the order for summary suspension. The Respondent argues, “cross examination and the ability to present evidence was not afforded to the Respondent.” The Respondent quotes *Travers v. Baltimore Police Dep’t*: “a ‘basic tenet of fairness in administrative adjudications is the requirement of an opportunity for reasonable cross-examination.’” 115 Md. App. 395, 417 (1997). *Travers’* guidance on cross-examination, however, pertained to the evidentiary hearing, not to the investigation stage. The appellant in *Travers* argued that the admission of hearsay evidence during the evidentiary hearing violated his due process right to cross examination. But the *Travers* court ruled that the right to cross examine was not violated, because the appellant had the opportunity to subpoena the witnesses to testify at the evidentiary hearing but did not do so. *Id.* at 418. Moreover, in *Rosov v. Maryland Bd. of Dental Exam’rs*, 163 Md. App. 98, 115 (2005), the court explained that there is “‘no requirement, either in law or investigative technique, that compels an investigative agency, prior to charging, to include the investigation target or counsel in the interview process.’” *Travers* does not convince the Panel that the right to cross examine applies during an agency’s investigation prior to the issuance of the order for summary suspension.

It may be the case that the Respondent’s due process rights could have been violated if the Board’s actions during the investigation and prior to the issuance of the order for summary suspension compromised the evidentiary hearing to such an extent that the Respondent was deprived of a fair evidentiary hearing. It does not appear to the Panel that the Respondent made such an argument, but, even if he had, the Panel does not find that the Board staff’s actions

impaired the Respondent's due process rights. The Respondent claims that Board staff purposely withheld exculpatory material, specifically the "Demand Letter" (Resp.'s Ex. 7), from the panel that issued the order for summary suspension. But the investigative material contained the fact that Complainant 2 asked for \$5,000,000 in exchange for her not pursuing actions against the Respondent. (State's Ex. 19 at 3, T. 9; State's Ex. 26 at 7.) And the Respondent entered the Demand Letter into evidence at the hearing before the ALJ (R. 174), and counsel for the Respondent cross examined Complainant 2 about the Demand Letter. (T. 292-303.) The Panel does not find any intent to keep exculpatory information away from the panel that issued the summary suspension.

Furthermore, the concern that the Respondent has expressed over the information before the disciplinary panel at, or prior, to the issuance of the order for summary suspension, is addressed by the post-deprivation hearing that is promptly held before a disciplinary panel after the order for summary suspension is issued. Under COMAR 10.32.02.08B(7)(c), "[t]he respondent is provided with a postdeprivation opportunity to be heard within 15 days by the disciplinary panel, that voted to summarily suspend the license." If the panel affirms the summary suspension after the postdeprivation hearing, the Respondent has the right to a full evidentiary hearing before an ALJ. The order for summary suspension was issued on July 2, 2021, and the postdeprivation hearing was held on July 15, 2021. At the postdeprivation hearing, the Respondent had the opportunity to present his concerns about the summary suspension, including presenting to the panel any relevant information he felt the panel should have been apprised of.

Moreover, the significance of the Demand Letter in this case is not as consequential as the Respondent argues. The Panel is aware that Complainant 2 has a financial stake in her

lawsuit, which could diminish her credibility. The Panel also understands that the Demand Letter offered a deal that in exchange for \$5,000,000 Complainant 2 would not file the lawsuit or report the Respondent to various entities and agencies with jurisdiction over the Respondent, which could indicate that Complainant 2 places a large sum of money for herself above her interest in protecting others, which could also diminish her credibility. But the analysis does not stop there. The Panel also must look at other indicators that weigh on her credibility, such as whether her testimony is corroborated by, or conflicts with, the testimony and statements of others. Complainant 2's testimony was extensively corroborated by other witnesses. For instance, Complainant 2's testimony that the Respondent slapped an anesthetized patient's buttocks was corroborated by Individuals 5 and 9; Individual 3 corroborated Complainant 2's testimony that the Respondent made demeaning sexual comments to Complainant 2, such as saying to Complainant 2, "I'd like to put you over my knee and spank you, spank you, spank you"; and Individual 6 alleged that the Respondent tried to massage her [Individual 6's] neck, like Complainant 2 testified that the Respondent massaged her [Complainant 2's] neck. Considering the extent to which Complainant 2's testimony was corroborated, the Demand Letter does not undermine Complainant 2's testimony to any significant degree.

The Respondent also argues that the Board initially did not interview the Hospital's perioperative director, because, "from the investigator's perspective, the investigator knew or had reason to believe that the account provided by the witness was already known." (Resp.'s Exceptions at 8.) During the investigation, Respondent's counsel asked the Board to interview the perioperative director. (Resp.'s Ex. 6.) Board staff then interviewed the perioperative director. Neither party, however, offered the interview transcript into evidence or subpoenaed the

perioperative director to testify.⁵ At the evidentiary hearing before the ALJ, the Respondent had the opportunity to subpoena any witness he felt would help his position. OAH has extensive procedures furnishing parties with the power to subpoena witnesses. Upon request of a party, OAH may issue subpoenas requiring the attendance and testimony of witnesses. COMAR 28.02.01.14A. Likewise, an ALJ may authorize the issuance of a subpoena pursuant to § 9-1605(c)(1) of the State Government Article. Under § 9-1605(d)(2), an ALJ may apply to a circuit court to enforce a subpoena. Under COMAR 28.02.01.14F, “If a person fails to comply with a properly served subpoena, at the request of an administrative law judge, the Office may apply to the appropriate circuit court for an order to show cause why the person should not be committed to jail for refusal to comply with a subpoena.” Therefore, even if due process rights attached to evidentiary hearings could be tied to the Board’s actions during the investigation stage, the record does not indicate that the Respondent’s evidentiary hearing process rights were affected by the Board’s actions during the investigation stage. The Respondent’s exceptions are denied, and the Panel does not adopt the ALJ’s proposed decision.

IV. CONCLUSIONS OF LAW

Panel B concludes that the order, issued on July 2, 2021, pursuant to § 10-226(c)(2) of the State Government Article, which summarily suspended the Respondent’s license to practice medicine in Maryland was imperatively required to protect the public health, safety, and welfare.

ORDER

It is, thus, by an affirmative vote of a majority of the Board Disciplinary Panel B members present,⁶ hereby

⁵ During closing arguments, however, the ALJ stated that, because the transcript of the interview of the perioperative director was on the computer disk (Respondent’s Ex. 3) containing the Board’s investigative file, “Then it is in evidence.” (T. 443.)

⁶ Panel B had a quorum at the time it voted.

ORDERED that the Order for Summary Suspension of License to Practice Medicine, issued on July 2, 2021, against the license of Respondent Hugo Benalcazar, M.D. to practice medicine in Maryland, and the order, issued on July 15, 2021, affirming the order for summary suspension, are **AFFIRMED**; and, thus, it is further

ORDERED that the license of the Respondent to practice medicine in Maryland remains **SUSPENDED**, and thus, while the Respondent's license is suspended, the Respondent shall not practice medicine in Maryland; and it is further

ORDERED that this final decision and order is a public document.

08/01/2022
Date

Signature On File

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, the Respondent has the right to seek judicial review of this final decision and order. Any petition for judicial review must be filed in court within 30 days from the date this final decision and order was sent to the Respondent. The final decision and order was sent on the date that it was issued. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If the Respondent petitions for judicial review of this final decision and order, the Board is a party and should be served with the court's process. Also, a copy of the petition for judicial review should be sent to the Maryland Board of Physicians, 4201 Patterson Avenue, Baltimore,

Maryland 21215. In addition, the Respondent should send a copy of the petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201 and by email at david.wagner@maryland.gov The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.

Attachment 3

IN THE MATTER OF
HUGO BENALCAZAR, M.D.

Respondent

License Number: D56356

* BEFORE THE
* MARYLAND STATE BOARD
* OF PHYSICIANS
* Case Number: 2221-0051

* * * * *

**FINAL DECISION AND ORDER
ON AMENDED CHARGES**

On August 27, 2021, Disciplinary Panel A of the Maryland State Board of Physicians (the “Board”) issued Amended Charges Under the Maryland Medical Practice Act,¹ which charged Respondent Hugo Benalcazar, M.D. (the “Respondent” or “Dr. Benalcazar”) with immoral conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(i); unprofessional conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(ii); and violations of the sexual misconduct regulations, *see* Health Occ. § 1-212; COMAR 10.32.17 *et seq.*

A contested case, evidentiary hearing was held before an Administrative Law Judge (“ALJ”) of the Maryland Office of Administrative Hearings. On October 12, 2022, the ALJ issued a Proposed Decision with the proposed conclusions of law that the Respondent was guilty of: immoral conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i); and unprofessional conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(ii). The ALJ also found that the Respondent violated the sexual misconduct regulations. *See* COMAR 10.32.17 *et seq.* As a sanction, the ALJ proposed that the Respondent’s license to practice medicine in Maryland be revoked and that the Respondent may not apply for the reinstatement of his license until one-year has passed from the date of the revocation order.

¹ The Maryland Medical Practice Act is under §§ 14-101 – 14-702 of the Health Occupations Article, Annotated Code of Maryland.

The Respondent filed exceptions to the ALJ's proposed decision, and the State filed a response to the Respondent's exceptions. On January 25, 2023, an exceptions hearing was held before Board Disciplinary Panel B (the "Panel" or "Panel B").

STIPULATION OF FACT

The parties entered into the following stipulation of fact:

The Respondent was not responsible for actual sterilization and sanitization of or handling or applying any cleaning supply, antiseptic, or other sterilization product and that function was unique to the housekeeping staff.^[2]

FINDINGS OF FACT

Panel B finds that the following facts were proved by the preponderance of evidence³:

Background

1. The Respondent, a neurosurgeon, was initially issued a license to practice medicine in Maryland in 2000. At the time of the Board's investigation in this matter, the Respondent was board-certified in neurosurgery and held privileges at multiple hospitals in Maryland. The Respondent maintained his license and was authorized to practice medicine in Maryland until July 2021, which was when Disciplinary Panel A of the Board summarily suspended the Respondent's Maryland medical license.

2. As part of his medical practice, the Respondent performed craniotomies; lumbar laminectomies; brain, back, and neck surgeries; ventricular shunts, and other neurological surgery procedures.

3. The Respondent also maintained a private practice office in Maryland.

² Panel B accepts the stipulation.

³ All of Panel B's factual findings in this decision were proved by the preponderance of evidence.

4. The pertinent events in this matter took place at a hospital (the “Hospital”), which is located in Maryland, and at the Respondent’s private practice office, which was also in Maryland. And the pertinent events involved employees and medical professionals, who worked at the Hospital, as well as patients of the Hospital.⁴ The Respondent performed neurological surgical procedures in an operating room (“OR”) at the Hospital. Personnel in the OR during his surgeries typically included an anesthesiologist or a certified registered nurse anesthetist, a surgical nurse, a physician assistant, an OR nurse, a circulating nurse, a surgical technologist, a medical device manufacturer’s representative, and a neuromonitoring technician.

Complaint No. 1, filed by Complainant 1

5. Complainant 1, a woman, is a veteran surgical nurse, who was employed by the Hospital from May 2004 to October 2018. During certain operations, the Respondent used the Medtronic Stealth surgical navigation system. This high-tech system enables a surgeon to precisely track the location of surgical instruments throughout the procedure. A key component of the Stealth system is a reference frame that holds several gumball-sized balls or spheres coated with a reflective, silver-colored surface (“Medtronic balls”). At the end of the procedure, the Medtronic balls can be detached from the frame for either sterilization and reuse or disposal.

6. In or around 2013, after an operation performed by the Respondent at the Hospital was completed and the patient was still anesthetized and asleep, Medtronic balls detached from the reference frame, fell to the floor, and rolled. Several people were in the OR at the time, including the Respondent, a manufacturer’s representative, one or two x-ray techs, and nurses,

⁴ This decision uses, where possible, generic terms and names for medical facilities and witnesses in order to maintain confidentiality and privacy for the witnesses and patients involved in this matter.

including Complainant 1. When the Medtronic balls fell, some of the people in the OR commented with innuendo about the Medtronic balls rolling on the floor.

7. In a playful, silly manner, Complainant 1 picked up one ball from the floor and put it in the Respondent's shirt pocket, saying, "Here you go." The Respondent was no longer gowned at the time, so the pocket of his shirt was accessible.

8. The Respondent looked at Complainant 1 and said, "Why don't you put them in your mouth?" Complainant 1 responded, "Ooh that's gross."

9. Later the same day, while Complainant 1 was documenting the surgery on her computer, the Respondent came around behind her and put his right hand approximately six inches down Complainant 1's V-neck scrub shirt onto her chest at the bottom of the V-neck and the top of Complainant 1's cleavage area.

10. On other occasions, the Respondent commented a few times about Complainant 1's underwear and bra. He touched her upper shoulder blade and back.

11. On one occasion, before the incident with the Medtronic balls, Complainant 1 had an outburst with the Respondent when he chastised her for leaving the OR during a procedure and she told him she had to change her tampon.

12. On August 30, 2020, Complainant 1 filed her Complaint (Complaint No. 1) with the Board. The complaint was dated August 25, 2020. Complainant 1 alleged in the Complaint that the Respondent asked her to put ball-shaped pieces of a surgical instrument in her mouth, after which he touched her skin at the V-neck of her scrub shirt, and that he would touch her back and shoulders and comment on the color of her undergarments.

**Complaint No. 2, filed by Complainant 2 (Respondent's Slapping
an Anesthetized Patient's Buttocks before Surgery in the OR)**

13. Complainant 2, a female surgical technologist, began working at the Hospital in 2015. She was responsible for assuring that instruments and equipment were at hand in the OR for the surgeon and that the OR was sterile for the safety of the patient and the surgical team.

14. In or about April 2017, a female patient was brought into the Respondent's OR for a lumbar fusion. The patient was moved onto a Jackson table, a specialized table used for prone surgical procedures. The patient's buttocks were up in the air and her back was exposed. Individual 9, the Respondent's physician assistant at the time, taped down the patient's buttocks to expose the surgery area. The patient was already prepped for surgery and was totally unconscious from anesthesia.

15. Individual 9 was scrubbed and gowned, ready to drape the patient, when the Respondent entered the OR. The Respondent saw that the patient was taped down but indicated he did not like the way the patient was taped.

16. The Respondent went over and pulled tape off the patient. The Respondent looked at the patient, whose buttocks had folded back over onto the lumbar area. The Respondent slapped⁵ the patient's buttocks with a horizontal wrist movement of one hand, causing the patient's buttocks to jiggle. The Respondent's hand was in a vertical position with the fingers extended but not spread apart. His hand moved horizontally from his wrist. He slapped only one cheek of the patient's buttocks. As the Respondent slapped the patient's buttocks, the Respondent said, "Baby's

⁵ The witnesses (Complainant 2, Individual 5, and Individual 9) referred to the Respondent's action as both a slap and a smack, and slap and smack were used interchangeably. The Panel does not find any inconsistency. The Panel finds that both "slap" and "smack" accurately describe the Respondent's action. However, unless smack is used in a quotation, this decision refers to the slap or smack as a "slap."

got back,” a reference to a popular song whose lyrics refer to a woman’s buttocks, and he briefly moved back and forth in a rhythmic manner. There was no medical reason for slapping the patient’s buttocks.⁶

17. The Respondent told Individual 9 to re-tape the patient and left the OR. Individual 9 re-taped the patient the same way he first taped the patient.

18. The Respondent performed the operation successfully. The patient was not bruised or injured as a result of the Respondent slapping her buttocks.

19. Complainant 2, Individual 5 (a registered nurse), Individual 9 (a physician assistant), and an anesthesiologist⁷ were present with the Respondent in the OR when the Respondent slapped the patient’s buttocks.

20. Individual 9 did not report the incident.

21. Complainant 2 told Individual 9 that she would report the buttocks-slapping.

22. On November 30, 2020, Complainant 2 filed with the Board Complaint 2, the first of Complainant 2’s three successive Complaints against the Respondent, in which she alleged, in part, that the Respondent made inappropriate and unprofessional remarks about a patient’s body and slapped the patient’s buttocks.

**Complaint No. 3, filed by Complainant 2 (Respondent’s Examination of
Complainant 2’s Lower Back)**

23. In or about April 2015, Complainant 2 was having lower back pain. She was shifting her body back and forth in the OR while working. The Respondent’s physician assistant

⁶ In this decision, where Panel B states that there was no medical reason for a particular act of the Respondent, Panel B used its “experience, technical competence, and specialized knowledge in the evaluation of evidence.” Md. Code Ann., State Gov’t § 10-213(i).

⁷ The anesthesiologist did not testify at the ALJ hearing.

at the time, Individual 12, noticed and asked Complainant 2 if everything was okay. Individual 12 suggested some light exercises for Complainant 2 to perform.

24. The Respondent asked what Complainant 2 and Individual 12 were discussing. When Complainant 2 said she had back pain, the Respondent offered to check her out between surgical cases. Later, he escorted Complainant 2 into an empty office between the OR and the post-anesthesia care unit and offered his help.

25. Complainant 2 went willingly into the empty office. The Respondent closed the door. There was no one else in the room other than the Respondent and Complainant 2.

26. The Respondent asked Complainant 2 to point out the location of the pain. She turned around and pointed to her lower back area, above the buttocks and below the spine. She was wearing scrubs. The Respondent asked her to lift up her scrub shirt so he could get a better visual and put his hands around her waist and felt her back with his thumbs to ascertain the location of her pain.

27. The Respondent asked Complainant 2 to lower her pants so he could get a better visual. She did so willingly, untying and holding the draw strings to her pants so they would not fall to the floor. The Respondent felt her back and commented on her underwear, that they were cute, and on how good she looked from his point of view. Complainant 2's mid-buttocks and skin were exposed. He pushed on her lower back and below her underwear line. He made a sound, "like a groan. In a sense, like, mm-hh."

28. Complainant 2 felt extremely uncomfortable and quickly pulled up her pants and left the room. She went to the OR front desk and told the charge nurse that she was uncomfortable and did not want to return to the Respondent's OR that day. The charge nurse assigned Complainant 2 to a different room for that day.

29. On November 30, 2020, the Board received Complainant 2's second complaint (Complaint No. 3, which she initially dated August 27, 2020, but on which she changed the date by interlineation to November 19, 2020), in which she complained about the manner the Respondent examined her lower back.

**Complaint 4, filed by Complainant 2 (Other Comments and Behavior
that the Respondent Subjected Complainant 2 to)**

30. Complainant 2 took maternity leave sometime after the Respondent's examination of her back. When she returned to work, the Respondent told her how good she looked after just giving birth. He also asked her how her sex life was after having the baby. She kept her answers short, saying it was fine and everything was great.

31. On one occasion when Complainant 2 mistakenly handed the Respondent's small blade to him he told her to hand him the big blade, saying that he is a big boy and that she would prefer his big boy over her husband. Complainant 2 interpreted the comment comparing a surgical instrument to male genitalia.

32. Around Halloween one year, the Respondent showed Complainant 2 a photo of a sexy nurse costume and suggested she buy and wear it for Halloween. She responded that the costume was not her style or taste.

33. On another occasion, the Respondent commented on Complainant 2's bra and bra strap, saying that it must be her favorite one because she wore it often.

34. On one occasion, the Respondent followed Complainant 2 out of the OR toward the front desk. In proximity to the OR secretary, the Respondent said that he wanted to take Complainant 2 over his knee and spank her.

35. The Respondent said on one occasion that he wanted Complainant 2 to get on the back of his motorcycle and they could run away if they wanted. He said she would look good on his bike.

36. On another occasion, the Respondent took a photograph of Complainant 2's eyes while she was wearing a mask and cap, saying he took a picture of her eyes so he could look at it later.

37. The Respondent regularly touched the back of Complainant 2's neck. He would stroke it up and down with his hands and comment that her neck was long and he could not stop touching it. She would tell him to stop touching her neck.

38. The Respondent would grab Complainant 2's "hair bun" and move her head up and down.

39. On one occasion, the Respondent put his hand up Complainant 2's pant leg when she had trouble with her sock, saying he was impressed that she shaved.

40. The Respondent's behavior made Complainant 2 uncomfortable and embarrassed.

41. On December 29, 2020, the Board received Complainant 2's third complaint (Complaint 4, which she dated August 27, 2020, but changed the date by interlineation to November 19, 2020), in which she alleged the Respondent frequently touched her.

Complaint No. 5, filed by Individual 10

42. For the past sixteen years, Individual 10, a woman, has worked as a nurse at a hospital in another State, most recently as Director of the Operating Room and Central Sterile. She supervises forty-four employees, including techs, nurses, and scrubs.

43. From 1996 to 2006, Individual 10 worked at a hospital in the Baltimore region (which is not the Hospital) as both a circulating and scrub nurse and as a coordinator for this hospital's neurosurgery, orthopedic surgery, ENT (ear, nose, and throat) and eye divisions.

44. For two years in the early 2000's, Individual 10 worked with the Respondent at the Baltimore area hospital as a circulating or scrub nurse in his OR. When she circulated, she helped to position and prep the patient, enter documentation, and get equipment. When she scrubbed, she would be next to the Respondent handing him instruments.

45. Individual 10's working relationship with the Respondent was cordial.

46. Individual 10 did not witness any unprofessional behavior on the part of the Respondent at the Baltimore area hospital.

47. Early in 2017, Individual 10 had severe back pain. She had an MRI or X-ray taken in another State that revealed a synovial cyst in her back at L4 (the lowest portion of the lumbar spine). The cyst had to be removed surgically so it would not push painfully on a nerve.

48. Individual 10 consulted the Respondent because when she worked at the Baltimore area hospital the Respondent performed a complicated lumbar surgery on her father's back, and her father had an excellent outcome.

49. In March 2019, while she was working in another State, Individual 10 made an appointment to see the Respondent at the Respondent's private practice medical office in Maryland. Individual 10 went to the appointment alone, was greeted at the front desk and taken into an exam room. A female medical assistant or nurse came in, asked for her height and weight and took her blood pressure, pulse, and respirations, went over her history of medications and past surgeries, then excused herself and said the Respondent would see her in a few minutes.

50. The Respondent entered the exam room, shut the door, and introduced himself. Individual 10 said, "Hey, do you remember me? I'm [Individual 10] from [the Baltimore area hospital]." The Respondent became jovial. He sat down on a round stool that had no back on it that wheeled. He wheeled over to Individual 10 and touched both of her breasts with one hand with open fingers on each breast and said, "I've always wanted to do this."

51. Individual 10 said, "Oh stop." She did not consent to the Respondent touching her breasts, and there was no medical reason for the Respondent to touch her breasts.⁸

52. The Respondent removed his hands. He and Individual 10 discussed her films that she had brought or sent to his office. The Respondent showed Individual 10 the cyst and his recommendation for its surgical removal.

53. The Respondent asked Individual 10 to stand up so he could examine her back. She was fully clothed. The Respondent then told how "nice" her "ass" was.

54. Individual 10 giggled nervously and said, "Oh, stop." The Respondent excused her to make a surgery appointment at the desk. An appointment was made for her to have surgery on March 29, 2017, at the Hospital.

55. Individual 10 did not tell anyone at the time about what happened at the Respondent's private practice office.

56. On March 29, 2017, Individual 10 went to the Hospital for the scheduled surgery. Her sister accompanied her.

57. She went into the pre-surgical area, where patients are prepared for surgery.

58. A woman put her in a room and told her to undress, put non-slip socks on Individual 10's feet, and gave her a blanket for covering up. The room had a curtain for access. Individual

⁸ See footnote 6.

10 asked to stay flat on the stretcher because she could not sit at the time. The woman took her vital signs.

59. Individual 10 was wearing a hospital gown, which was open in the back, socks, and a blanket. She was not wearing undergarments.

60. A pre-op nurse came in and went over Individual 10's medications and past surgeries. Individual 10 was told the Respondent would be in soon, followed by anesthesia and the OR nurse. While Individual 10 was in the pre-op room, an IV line was inserted.

61. Individual 10's sister was sitting in the room on Individual 10's left side.

62. The Respondent entered the pre-op room and asked everyone to step out so he could mark Individual 10's back. In the pre-op room at that time were Individual 10, her sister and the pre-op nurse. When her sister and the pre-op nurse stepped out, the Respondent took the marker.

63. The Respondent had the marker in his left hand. With his left hand, he quickly lifted the blanket and the patient's gown and, with the closed index and middle fingers of his right hand, touched the top of Individual 10's vagina. Individual 10 did not consent to the Respondent touching her vagina, and there was no medical reason for the Respondent to touch her vagina.⁹ The Respondent was ungloved in the pre-op room. There was no vaginal penetration.

64. Individual 10 hit the Respondent's hand and said, "Stop it. What are you doing?"

65. He then laughed and took his fingers to his nose and inhaled, smelling his fingers. Individual 10 said, "Please stop. I am very nervous. And this is making it worse." Then the Respondent laughed and told Individual 10 to sit up so he could mark her back.

66. Individual 10 sat up. The Respondent marked her back and left the room. When he left the room, Individual 10's sister, an anesthesiologist, and the OR nurse came in. The

⁹ See footnote 6.

anesthesia consent was signed. The OR nurse asked Individual 10 her name and birthdate and if she knew what kind of surgery she was having.

67. After the Respondent interacted with Individual 10 in the pre-op room and the anesthesia consent was signed, Individual 10 received the medication Midazolam, whose trade name is Versed. Versed can produce amnesia. Individual 10 had not yet been administered the Versed when she saw the Respondent or when she signed the anesthesia consent. She received Versed either in the pre-op room after the interaction with the Respondent or on the way to the OR or in the OR.

68. The cyst removal surgery was performed, after which Individual 10 was taken to the recovery room. Her pain had vanished, but she was unable to stand. The Respondent was called and said the nerve was angry but that would go away.

69. Individual 10 was discharged the same day, March 29, 2017.

70. In a post-operative follow-up telephone call from a person at the Hospital, on March 30, 2017, Individual 10 rated her "overall experience" at the Hospital as "Excellent."

71. On March 31, 2017, Individual 10 returned to the Hospital, where the Respondent performed a second surgery. The reason for the second surgery was that, after the first surgery, Individual 10's pain continued to worsen when she stood and she had trouble walking from the pain. On March 31, 2017, the date of the second surgery, Individual 10 asked the Respondent if her former fiancé, a Medtronic representative, would be present during the operation. She asked because the second operation involved the placement of screws and a rod to stabilize her back. Individual 10's first surgery did not involve screws and a rod, it involved only the removal of the synovial cyst.

72. As a Medtronic representative, Individual 10's former fiancé dealt with screws and rods. The former fiancé's presence in the OR would have made Individual 10 uncomfortable.

73. In response to Individual 10 asking before the second surgery if her former fiancé would be present, the Respondent said the former fiancé would not be there for her case. The former fiancé was not present.

74. In the second surgery, the Respondent successfully installed screws and a rod on her right side to stabilize Individual 10's back.

75. On July 11, 2021, Individual 10 emailed to the Board a complaint (Complaint 5) against the Respondent, in which she alleged that the Respondent touched her vagina and smelled his fingers prior to her first March 2017 operation.

Individual 4

76. Individual 4, a woman, began working at the Hospital as an environmental services ("EVS") aide in November 2013. After progressing to team leader, she worked as an OR EVS aide and a patient advocate for EVS. As a patient advocate, she would confirm with newly admitted patients that their room was clean and ask if they had any concerns. She applied for and obtained the position of OR secretary and served in that capacity from December 2015 through July 2016.

77. As an OR secretary, Individual 4's responsibilities were scheduling surgeons' operations, updating the charge nurse about supplies and paperwork, and making sure the proper staff were present.

78. Individual 4's first interaction with the Respondent was when she was a patient advocate, before she became a secretary. She was in business travel clothes with a clipboard. The Respondent approached her, looked her up and down, and said, "Oh you're wearing black on black."

I like that.” Individual 4 was uncomfortable and did not know if she knew who the Respondent was.

79. Shortly after Individual 4 began working part-time in the OR, the Respondent walked by her and said he was going to call her “Strawberry” as a nickname, which he did not explain but which was an apparent reference to her strawberry blonde hair. He called her Strawberry in passing once or twice a day while she was working in the OR, which was two days a week. Individual 4 found the nickname distracting.

80. While Individual 4 was an EVS OR aide, the Respondent told her, “For a skinny girl you have a really nice butt.”

81. The Respondent brought Individual 4 coffee twice after she asked him not to. He asked her three times if she wanted to go to the nearby Starbucks with him. She declined each time.

82. On one occasion, the Respondent called Individual 4 from a phone about 15 feet away from Individual 4’s area and asked her to come over and sit on his lap. She responded by asking the Respondent if he knew the phones were recorded (they were not).

83. Individual 4 reported to the Hospital’s director of perioperative services that the Respondent was making her uncomfortable by calling her Strawberry and sitting down next to her desk, and it was making her anxious at work. She did not mention that he asked her to sit on his lap because she felt she had handled it by indicating to him that the phones were recorded.

84. The director of perioperative services listened and said that she would supervise Individual 4 better and keep an eye on the Respondent.

85. Another time, the Respondent commented approvingly on a tank top Individual 4 was wearing under her scrubs.

86. One day, about three or four months before Individual 4 left the OR in 2016, as Individual 4 went home for the day and was on the hospital's parking deck, the Respondent said, "Strawberry[,] wait." She ran and hid in her car and called the EVS supervisor to ask him to have security keep an eye on the parking deck from the cameras at the exit.

87. Individual 4 left her job at the Hospital in July 2016.

88. Complainant 2 told Individual 4 that she (Complainant 2) had hired an attorney, and Individual 4 called the attorney.

89. In 2020 or 2021, Individual 4 suffered a concussion that caused memory impairment.

90. A topless selfie photo of Individual 4 that she took at her current home in another State after she no longer worked at the Hospital came into the Respondent's possession.

Individual 6

91. Individual 6, a woman, is a neuromonitoring tech who worked successively for two companies that provided neuromonitoring services to the Hospital's OR. Individual 6 worked with the Respondent in his OR. Her function was to use technology to monitor patients' spinal cord, nerve and brain activity during surgery so the surgeon could avoid impinging on or cutting a patient's nerve and know if the patient was in distress. She would attach electrodes to the patient and monitor her screen while the Respondent operated.

92. On three occasions, the Respondent touched Individual 6's shoulders while she was at her desk before surgeries as if to give a massage. She did not consent to the Respondent touching her shoulders.

93. On one occasion, the Respondent found fault with Individual 6 for leaving the OR for a comfort break. Shortly after, Individual 6 stopped working at the Hospital but continued her employment with the neuromonitoring company that employed her.

94. Individual 6 spoke once with Complainant 2's attorney when the attorney called her.

Individual 7

95. From 2014-2016, Individual 7, a woman, worked at the Hospital as an OR housekeeper.

96. On one occasion, the Respondent followed Individual 7 into the OR and said, "It's a good thing you have that cute little butt so you can squeeze through."

Individual 11

97. From November 2017 to August 2018, Individual 11 was a circulating nurse in the OR at the Hospital.

98. On one occasion, the Respondent came from behind Individual 11 and tickled her sides. She recoiled, and the Respondent said he guessed she did not like that. She said she did not like being touched. He never touched her again.

99. On another occasion, the Respondent commented on how her pants looked tight.

Complainant 2's Attorney's Demand Letter, Complainant 2's Lawsuit, and the Hospital's Investigation

100. On June 7, 2018, attorneys representing Complainant 2, sent a letter ("Demand Letter") to the Respondent. Through her attorneys, Complainant 2 demanded that the Respondent pay her \$5,000,000 over two years in exchange for a nondisclosure agreement and her release of all sexual harassment and other claims against the Respondent. The Demand Letter stated that only Complainant 2 and her husband knew she had spoken with an attorney and that she had not

yet spoken with the Hospital in regard to her possible future legal action. The Demand Letter further stated that, if Complainant 2's demand was not met within 14 days, she would take the following actions: notify the Hospital's HR department and request an investigation of the Respondent, file a formal charge against him with the Equal Employment Opportunities Commission (EEOC), file a lawsuit against the Respondent in the Circuit Court for Harford County, "send the letter with attachments sent to the EEOC to the Maryland Board of Physicians," and reserve the right to seek any and all other remedies available to her under the law of the State of Maryland whether they were civil and/or criminal in nature as applicable to the facts of the matter.

101. The Respondent declined to make a payment to Complainant 2 in response to the Demand Letter.

102. In October 2018, Complainant 2 reported her allegations against the Respondent to the Hospital's HR department.

103. On October 12, 2018, Complainant 2 filed a lawsuit in the Circuit Court for Harford County against the Respondent, the Respondent's private practice, and the Hospital as defendants. She alleged sexual harassment and other claims. The lawsuit remains pending.

104. Following Complainant 2's report and the Hospital's learning of her lawsuit, the Hospital appointed an Ad Hoc Committee to investigate the allegations against the Respondent. On March 6, 2019, the Ad Hoc Committee issued a report and a letter of reprimand to the Respondent.

105. The authorship of the Ad Hoc Committee's report is unknown, except that the committee members themselves did not write the report.

106. The Respondent attended a course in professional boundaries, and the Hospital monitored his behavior. There have been no complaints or allegations of misconduct against the Respondent for any conduct after 2017.

107. Complainant 1 and Complainant 2 drafted their Complaints against the Respondent. Complainant 1 filed her Complaint, on August 30, 2020. Complainant 2 dated her three Complaints in August 2020, but filed her first two Complaints, in November 2020, and her third Complaint, in December 2020. In July 2021, Individual 10 emailed her Complaint to the Board.

DISCUSSION

I. LEGAL AUTHORITIES AND STANDARDS OF CONDUCT

The grounds for imposing a reprimand, probation, or suspension or revocation of a license under the Maryland Medical Practice Act are set forth under § 14-404 of the Health Occupations Article and include the following:

Health Occ. § 14-404

(a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand, place any licensee on probation, or suspend or revoke a license if the licensee:

* * *

- (3) Is guilty of:
 - (i) Immoral conduct in the practice of medicine; or
 - (ii) Unprofessional conduct in the practice of medicine[.]

The Maryland Medical Practice Act provides a statutory definition of “practice medicine”:

Health Occ. § 14-101(o)

- (1) “Practice medicine” means to engage, with or without compensation, in medical:
 - (i) Diagnosis;
 - (ii) Healing;
 - (iii) Treatment; or
 - (iv) Surgery.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:

(i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment of an individual:

1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or .

The scope of "in the practice of medicine," in the context of Health Occ. § 14-404(a)(3), was broadened in *Board of Physician Quality Assurance v. Banks*, 354 Md. 59 (1999), where the court rejected Dr. Banks' argument that his sexual harassment of co-workers in a hospital was not "in the practice of medicine." While Dr. Banks' misconduct did not occur simultaneously with him performing a medical procedure on any patient and did involve non-direct care employees of the hospital, the court ruled that his behavior was "sufficiently intertwined with patient care to constitute misconduct in the practice of medicine." *Id.* at 76-77.

In *Shirazi v. Maryland State Board of Physicians*, 199 Md. App. 469 (2011), without medical purpose and without the patients' consents, the physician placed his fingers inside the vaginas of four patients and, in two cases, smelled his fingers immediately afterward. The Board found the physician guilty of immoral and unprofessional conduct in the practice of medicine and revoked his license. The Court of Special Appeals affirmed the Board's decision.

In *Finucan v. Board of Physician Quality Assurance*, 380 Md. 577 (2004), the court affirmed the Board's decision to revoke Dr. Finucan's medical license for unprofessional or immoral conduct in the practice of medicine for having consensual sexual relationships with three patients he was actively treating. The court found that unprofessional conduct or immoral conduct refers to "conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." *Id.* at 593.

COMAR 10.32.02.16 states, “The Board and the disciplinary panels may consider the Principles of Ethics [“Principles”] of the American Medical Association [“AMA”], but these principles are not binding on the Board or the disciplinary panels.” The AMA’s Principles (as revised in June 2001), provide:

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care;
- VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
- VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
- IX. A physician shall support access to medical care for all people.

(State’s Ex. 31A, at S-530.)

The AMA’s Council on Ethical and Judicial Affairs promulgates Opinions interpreting the Principles. AMA Opinion 9.4.4 (2016) addresses “Physicians with Disruptive Behavior.” AMA Opinion 9.4.4 provides in pertinent part:

The importance of respect among all health professionals as a means of ensuring good patient care is foundational to ethics. Physicians have a responsibility to address situations in which individual

physicians disruptively, that is, speak or act in ways that may negatively affect patient care, including conduct that interferes with the individual's ability to work with other members of the health care team, or for others to work with the physician.

Disruptive behavior is different from criticism offered in good faith with the aim of improving patient care and from collective action on the part of physicians.

(State's Ex. 31, S-521-22.) AMA Opinion 9.045 (June 2000) states, in pertinent part, "Personal conduct, whether verbal or physical, that negatively affects or that potentially may negatively affect patient care constitutes disruptive behavior." (State's Ex. 31, S-520)

The ALJ also found violations of the sexual misconduct regulations. COMAR 10.32.17 *et seq.* However, the sexual misconduct regulations that the ALJ addressed and which were cited in the amended charges, were amended in 2019. Because these amended regulations went into effect after the incidents at issue occurred, the amended regulations are inapplicable and thus the Panel has not considered whether the Respondent violated these amended regulations. For this reason, the Panel does not find that the Respondent violated COMAR 10.32.17 *et seq.* (as amended May 20, 2019). However, a violation of the sexual misconduct regulations is not a requirement and is not necessary for there to be a violation of § 14-404(a)(3) of the Health Occupations Article.

II. PANEL B'S CREDIBILITY DETERMINATION OF THE RESPONDENT

There are several findings that depended upon credibility determinations. In making its credibility determination of the Respondent, the Panel found the Respondent's testimony concerning three incidents especially significant: (A) the slapping of the anesthetized patient's buttocks, (B) the Respondent saying to Complainant 2 that he wanted to spank her, and (C) his interactions with Individual 4.

A. Slapping Anesthetized Patient's Buttocks

The Respondent testified that he did not slap the anesthetized patient at issue in Complaint No. 2. The Respondent testified that he was annoyed at the taping that Individual 9 performed on the patient for a framed navigational system and asked for the patient to be re-taped.¹⁰ The Respondent testified that he touched the patient's buttocks, but he described the touching as part of a lesson on taping that he purportedly gave to the individuals working on the case:

Okay. So the contact would be at the speed and at the force of a touch. The movement would be slow speed and if you put your fingers in a vertical orientation, maybe you know, little kids might do this and you know, think that it looks like a fishtail going back and forth, my hand moved back and forth with only enough force to move the patient's tissue to illustrate the danger that was present should someone rely on that for stereotactic navigation.

The Respondent did acknowledge that the other individuals watching him were shocked. However, the Respondent testified that they were shocked, not because he slapped the patient, but because he asked Individual 9 to take off the tape. The Respondent's testimony on the incident was fundamentally different from the testimony of the three people who testified for the State on the incident (Individuals 5 and 9 and Complainant 2).

Individual 5, in a straightforward manner, testified about what she witnessed of the incident, "He slapped her." She testified as to how she determined it was a slap, "The sound and the visual. It's kind of hard to mistake a slap." She further testified, "Made me feel extremely uncomfortable. It honestly threw me into a state of shock when it happened, because I really didn't know how to respond to it at all. It had definitely been the first time I had ever encountered something like that[.]" When asked again as to what she observed, Individual 5 testified, "I saw a slap and heard the sound."

¹⁰ When interviewed by Board investigators, Individual 9 stated that he re-taped the patient as he had taped the patient the first time: "Yeah, it was exactly how I had it before."

Individual 9 testified that he observed the Respondent slap the patient. According to Individual 9, the Respondent “just sort of was walking around and he slapped it” Individual 9 also said that the Respondent slapped the patient’s buttocks while saying “baby’s got back” and moving in a rhythmic manner. Individual 9 also said that he was “surprised” because “I’ve never seen anybody do that in the operating room before.” When asked whether the Respondent gave him any medical reason for slapping the patient’s buttocks, Individual 9 testified, “No.”

Complainant 2 testified that the Respondent “proceeded to smack his patient’s butt. All the while laughing like it was a joke. Like giggling. He seemed very happy. He was very happy about it.” Complainant 2 further testified, “I remember looking at [Individual 5]. And I was in shock. I could not even believe what had transpired. That he would do such a thing to his patient”

While the three witnesses for the State who testified to the slapping did have some differences in certain details, those differences were relatively peripheral. At the core, their statements were essentially the same. Each of the three witnesses testified that he or she saw the Respondent slap the patient’s buttocks, that they were shocked or surprised that the Respondent slapped the patient, and none of these three testified that the Respondent provided a medical reason behind it, and they certainly did not testify that the Respondent gave a medical lesson to them that related to him slapping or touching the patient’s buttocks. In contrast to the Respondent’s testimony, none of the three testified that they were “shocked” because the Respondent asked Individual 9 to remove the tape. To a major extent, each of these three witnesses corroborated each other, while the Respondent’s testimony was in a different realm. Based upon the testimony of Complainant 2 and Individuals 5 and 9, the Panel finds that the Respondent’s testimony on this incident was false.

B. Respondent Telling Complainant 2 that Wanted to Spank Her

Complainant 2 testified that on one occasion she

walked out of the OR – towards the OR front desk to sit down. It was near the end of my shift. Dr. Benalcazar shortly followed me out saying that he wanted to, ‘take me over his knee and spank me.’”

Complainant 2’s testimony was corroborated by Individual 3, who testified that Complainant 2

came out the room a little flustered, came up to where – it’s like a counter where I sit. Shortly after that, Dr. Benalcazar came out and stood next to her at the counter and looked at her and said I would like to put you over me knee and spank you, spank you, spank you.

When asked about telling Complainant 2 that he wanted to take her over his knee and spank her, the Respondent testified, “No. I do not recall that.” The evidence decisively shows that the Respondent told Complainant 2 that he wanted to spank her. The Respondent’s testimony on this incident indicates that the Respondent is not a reliable witness.

C. The Respondent and Individual 4

When the Respondent was initially interviewed by Board investigators, he was asked whether he was “familiar” with Individual 4 (an OR secretary), who was referred to by her first and last name. The Respondent answered, “No.” Individual 4’s last name was then spelled (correctly) by the Respondent’s attorney. The Respondent still testified that he had no recollection of Individual 4. The Board investigators mentioned that she avoided the Respondent after the Respondent began bringing her coffee. Still, the Respondent said he had no recollection of her. The investigators mentioned that she asked him to stop bringing her coffee because it made her uncomfortable and asked the Respondent whether he brought her coffee. The Respondent responded that he did have a “very little recollection of this but certainly possible that that would

be the case.” When asked whether he ever called someone by the nickname “Strawberry,” the Respondent testified that he did recall that: “I called her that once because her hair was red.” Asked whether the person whom he called Strawberry was Individual 4, the Respondent said he did not remember.

About an hour after the interview, the Respondent’s counsel emailed a Board investigator and said that the Respondent recalled “additional important information concerning [Individual 4].” Thus, four days later, the Respondent was interviewed a second time.

At the second interview, the Respondent testified,

[Individual 4], I, I would bring coffee to [Individual 4]. I didn’t know what kind of coffee she liked, you know, and people are very particular about their coffee, so [Individual 4] would tell me what coffee she wanted. This isn’t something where I’m forcing coffee on someone.

And that sort of sparked a friendly relationship at the hospital and that friendly relationship morphed into a romantic relationship outside of the hospital.

And on one occasion she drove to my administrative office, which is about a mile or so away from the hospital, after hours, specifically to have an encounter with me. She drove her own car, you know, I wasn’t there with her.

And, and that lasted a very short time, but the reason that it ended was strictly on – I ended it. And the reason it ended was because she made a demand for money to me and that, you know, freaked me out. I was extremely concerned, obviously, because there was no talk of that at all.

And obviously it is an implied threat to me, and so, and so that’s how that ended.

The Respondent was then asked whether he knew who Individual 4 was at the first interview. The Respondent testified:

A. No, not, no, I didn’t. It took me a while to sort of put two and two together.

At the very end when we were talking about strawberry, it, it hit like that, because I didn’t call her by her name.

Q. Oh, okay.

A. There are plenty of people in the, believe it or not, in the O.R. I wouldn't be able to tell you their whole name frequently.

Q. But you had a sexual relationship with her?

A. We had a romantic relationship, yes.

Q. Okay. And when you say romantic, was there sexual intercourse?

A. Well, yes, there was.

Q. Okay.

A. The one time.

The Respondent further testified at the second interview that he communicated with Individual 4 by text and telephone. He then explained that, at the first interview, "it's not that I didn't remember, it's that I couldn't, I have to put some type of coherent thing together for you guys." The ALJ found that this "response did not reflect positively on his credibility." The Respondent also said at the second interview, "So, yeah, this isn't like I had forgot this person." The Respondent also told the investigators that he possessed a topless selfie of Individual 4 which he said he obtained by Individual 4 sending it to him.

The Respondent's change from denying knowing a person to testifying that: (1) he had a sexual relationship with that person, (2) who subsequently "freaked [him] out" when that person threatened him by demanding an unspecified amount of money, and (3) that he kept a topless selfie of that person, demonstrates the Respondent's lack of credibility. The Respondent's statements concerning Individual 4 in the two interviews severely damaged his credibility. The record does not support the Respondent's testimony that the Respondent had a sexual relationship with Individual 4 or that Individual 4 demanded money from the Respondent or that Individual 4 sent the topless selfie to the Respondent.¹¹

D. Conclusion – Panel's Credibility Determination of Respondent

¹¹ Based on the testimony of Individual 4 and the inconsistent testimony of the Respondent, the Panel finds that Individual 4 sent the topless selfie to another physician at the Hospital with whom she had a flirtatious relationship and that this physician provided the Respondent with the photo.

In sum, the Respondent's testimony concerning: (1) the slapping of the anesthetized patient's buttocks, (2) his statement to Complainant 2 that he wanted to spank her, and (3) his interactions with Individual 4 prove to Panel B that the Respondent was neither a credible nor a reliable witness.

III. PANEL B'S FINDINGS CONCERNING ALJ FINDINGS FOR WHICH THE RESPONDENT DID NOT TAKE EXCEPTION

The Respondent took exception to several of the ALJ's findings and conclusions concerning incidents in which the ALJ found that the Respondent's conduct was unprofessional and/or immoral. The Respondent, however, did not take exception to all of the ALJ's proposed findings and conclusions. Here, Panel B addresses findings and conclusions that the ALJ made against the Respondent for which the Respondent did not take exception.

A. Complaint No. 2 – Respondent's Slapping the Anesthetized Patient's Buttocks

The Respondent did not take exception to the ALJ's findings and conclusions regarding Complaint No. 2, where the ALJ found that the Respondent slapped the buttocks of an anesthetized patient in the OR and that it constituted immoral and unprofessional conduct in the practice of medicine. The evidence supports the ALJ's findings and conclusions. The Respondent forcefully slapped the patient's buttocks when the patient was anesthetized while he said "Baby's Got Back" and moved in a rhythmic manner. There was no medical purpose for slapping the patient, and, of course, the patient did not consent to it. The Panel concludes that the Respondent's slapping of the anesthetized patient's buttocks constitutes immoral conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i); and unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

B. Respondent's Behavior that Complainant 2 was Subjected to

The Respondent took exception to the ALJ's findings with respect to the Demand Letter, arguing, *inter alia*, that the Demand Letter demonstrated a lack of credibility on the part of Complainant 2. But, beyond this credibility argument, it does not seem that the Respondent took exception to the ALJ's findings that the Respondent engaged in unprofessional and/or immoral conduct concerning his behavior that he subjected Complainant 2 to.

1. Complaint No. 3 – Respondent's Evaluation of Complainant 2's Back

Concerning Complaint No. 3, the ALJ found that the Respondent engaged in unprofessional and immoral conduct in the practice of medicine by commenting, while purportedly conducting an examination concerning Complainant 2's back pain, on how cute her underwear was and how good she looked from his point of view. Panel B also concludes that the Respondent engaged in unprofessional conduct and immoral conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i) and (ii), by making these comments during the Respondent's purported examination of Complainant 2's back. *See Banks*, 354 Md. at 62-64.

2. Complaint No. 4 – Other Improper Conduct by the Respondent that he Subjected Complainant 2 to

The ALJ found that the Respondent subjected Complainant 2 to many improper acts and comments. The Respondent subjected Complainant 2 to a steady and long-term course of sexual harassment. *See Banks*, 354 Md. at 62-64, 72, 76-77. The Panel finds that the Respondent's sexual harassment of Complainant 2, specifically his incessant and unwanted touching of Complainant 2, his grabbing of Complainant 2's hair bun and using it to jerk her head around, telling Complainant 2 that he'd like to spank her, and his asking about Complainant 2's sex life, constitutes unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

C. Individual 4

The ALJ found that the Respondent's unprofessional conduct included the Respondent calling Individual 4, an OR secretary, on her phone while she was at her desk from 15 feet away while they were at the Hospital and asking her to sit on his lap and, on another occasion, for telling Individual 4 that she had a "nice butt." The Respondent did not take exception to this. Panel B finds that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), for telling Individual 4 at the Hospital that she had a "nice butt" and for calling Individual 4 at her desk in the Hospital from 15 feet away and asking her to sit on his lap. *See Banks*, 354 Md. at 62-64.

IV. SPECIFIC CONDUCT TO WHICH THE RESPONDENT TOOK EXCEPTION

A. Complaint No. 1 (Medtronic balls / hand on Complainant 1's chest, etc.)

The Respondent challenged the ALJ's findings concerning Complainant 1. The ALJ found that the Respondent acted unprofessionally by telling Complainant 1 in the OR that she should put the Medtronic balls that fell on the floor in her mouth, that the Respondent placed his hand inside her scrub shirt on her upper chest, that the Respondent commented on her underwear multiple times, and that he lightly touched her back several times. Despite finding a few inconsistencies in her testimony, the ALJ found Complainant 1 credible and accepted her testimony concerning these incidents.

The ALJ also addressed the Respondent's contention that Complainant 1 was not credible because she was friends with Complainant 2 and that the two conspired against the Respondent. The ALJ found that Complainant 1 filed her complaint years later after discussing with Complainant 2 Complainant 2's intentions for seeking redress against the Respondent. The ALJ found that the coordination between the two explained the timing of Complainant 1's complaint to the Board but did not indicate that the complaint by Complainant 1 was fabricated.

The Respondent argues on exceptions that the ALJ erred, arguing that Complainant 1 was biased based upon her friendship with Complainant 2, that Complainants 1 and 2 conspired together, and that Complainant 1 was not credible for changing the date on the occurrence of the Medtronic/scrub shirt incidents from 2008 to 2013. The Respondent further contends that the ALJ erroneously credited Complainant 1's testimony "despite the legion of inconsistencies, untruths, and admitted half-truths."

There are a few parts of Complainant 1's testimony that the Panel had to wrestle with. But mostly, like the ALJ, the Panel credits Complainant 1's testimony. The Panel is impressed that Complainant 1 testified that she was at fault in an incident that occurred in the OR in which Complainant 1 had an outburst and left the OR. The ALJ wrote, "[Complainant 1] admitted having an unprofessional outburst in the OR, for which she apologized to the Respondent." The Respondent chastised Complainant 1 for leaving the OR. The details of the incident were highly personal to Complainant 1, nonetheless, Complainant 1 forthrightly explained the incident at the ALJ hearing, including that she apologized to the Respondent. The Panel finds that Complainant 1's testimony on this incident buttressed her credibility. That being said, the reliability of her testimony needed to be carefully evaluated, including *when* the Medtronic balls/scrub shirt incidents occurred.

Complainant 1's complaint to the Board is dated August 25, 2020, and was received by the Board on August 30, 2020. Complainant 1 wrote in the complaint that the Medtronic balls/scrub shirt incidents took place in 2008. The ALJ found, however, that the incidents took place in 2013. Complainant 1 met with the director of perioperative services to discuss these incidents. The director of perioperative services started working at the Hospital in 2012 and testified that Complainant 1 met with her shortly after Complainant 1 said the incidents occurred, which was in

the beginning of January 2013 or late December 2012. The Respondent argues that the five-year difference is significant because, according to Complainant 1, the incident affected their interactions, and thus, according to the Respondent, a five-year discrepancy is difficult to harmonize with such a significant effect.

The Panel agrees with the ALJ that the five-year discrepancy did not significantly impair Complainant 1's credibility, essentially because the evidence of the incident was sufficiently established and did occur a long time ago (making it more difficult to pinpoint when it took place). Complainant 1 met with the director of perioperative services close to the time that the incident occurred to complain about the incidents.

In her complaint to the Board, Complainant 1 alleged that Respondent touched her skin at the V-neck of her scrub shirt. Complainant 1 initially said when interviewed that when he put a hand on her chest one of his fingers definitely touched one of her breasts. Later in the interview, she said that his touch included the cleavage area but not on a breast. At the hearing, she said that he may have touched one of her breasts. Additionally, the Respondent testified that he did touch her chest, although denying that he touched her breast. The Respondent testified that Complainant 1 asked him to massage her chest. The Respondent also testified that his touching of Complainant 1's upper chest was discussed with the director of perioperative services at their meeting. Like the ALJ, the Panel does not accept that Complainant 1 asked the Respondent to massage her chest. The evidence indicates that Complainant 1 was not comfortable with the Respondent touching her, not even for light touches on the back. The Panel does not find, though, that the Respondent touched her breast.

Complainant 1 testified that the Respondent commented on her underwear "seven" times. Complainant 1 said that the Respondent's comments included that he liked the color of her

underwear. Complainant 1 acknowledged that she pulled the number of times (“seven”) out of the air. In her complaint to the Board, Complainant 1 wrote that he “often” commented on the color of her undergarments. The Respondent testified that he did not recall commenting on the color of her underwear. The ALJ stated that Complainant 1’s choosing the specific number “seven” out of the air “hardly enhanced her credibility,” but the ALJ found that her testimony on the number of times it occurred did not negate her testimony indicating that he commented on her underwear more than once. The Panel agrees with the ALJ’s analysis.

The Panel denies the Respondent’s exception. The Panel finds that the Respondent’s demeaning conduct toward Complainant 1, specifically telling her to put the Medtronic balls in her mouth, placing his hand on her chest partially inside her scrub shirt without her consent, touching Complainant 1’s back without her consent, and commenting on the color of her underwear constitutes unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). *See Banks*, 354 Md. at 62-64.

B. Individual 7

The Respondent takes exception to the ALJ’s finding that the Respondent engaged in sexual misconduct for saying to Individual 7, after following her into the OR, that “[i]t’s a good thing you have a cute little butt so you can squeeze through.” Individual 7 was an OR housekeeper who sterilized the OR rooms. The Respondent testified before the ALJ, “I had no idea who [Individual 7] was. I wouldn’t have been able to pick her out of a lineup. I have never spoken to [Individual 7]. I didn’t know who she was until she showed up here.” The Respondent argues that Individual 7’s testimony was influenced by statements made by others at the Hospital about the Respondent.

The Panel does not have any doubt from Individual 7's testimony that she worked at the Hospital during a time that the Respondent worked there. And the Panel finds plausible that the Respondent would not be able to pick Individual 7 out of a line-up, as Individual 7 made clear, she tried to avoid interactions with him, and Individual 7's employment position at the Hospital was one in which she could mostly avoid interacting with the Respondent. But the Panel finds false the Respondent's testimony that he had "never spoken with [Individual 7]." Stating that he had never spoken with Individual 7 means that the Respondent testified that he never even said something as innocuous as "hi," "hey," "good morning," or something along those lines to Individual 7. Considering the many occasions throughout the evidentiary hearing that the Respondent testified that he did not recall specific comments or incidents, it is unclear to the Panel how the Respondent could be certain that he never spoken with Individual 7. The Respondent may not recall making the statement at issue to Individual 7, but that is different from having "never spoken to" her. The Panel gives minimal weight to his statement that he never spoke with Individual 7. The Respondent's exception is denied. The Panel finds Individual 7's testimony entirely plausible, reasonable, and credible and thus finds that the Respondent said to Individual 7 that it was a good thing she had a cute, little butt. This comment about Individual 7's buttocks is exceedingly inappropriate in a medical setting and thus the Respondent, for this comment in the Hospital and constitutes unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).¹²

¹² Because the sexual misconduct regulations the ALJ cited were not in effect at the time that the Respondent made this comment to Individual 7, the Panel does not address whether the sexual misconduct regulations were violated. But the Panel does find that the Respondent's statement to Individual 7 at issue is unprofessional conduct in the practice of medicine, in violation of § 14-404(a)(3)(ii) of the Health Occupations Article. *See also Banks*, 354 Md. at 62-63. The Respondent also challenged that ALJ's findings that the Respondent's conduct violated the sexual misconduct regulations for Individuals 6 and 11. Thus, the Panel likewise also does not address the sexual

C. Individual 10

The ALJ found that when Individual 10 was a patient of the Respondent, the Respondent grabbed her breasts at his private practice office and touched her vagina during pre-op at the Hospital. The Respondent mentions the informed consent procedures and administrative duties at the Respondent's office in what appears to be an attempt to show that Individual 10 was not left alone with the Respondent. The Respondent states, "[Individual 10]'s account had Respondent involved in these activities which conflicted with the medical records and Respondent's role in patient encounters." The Respondent does not identify the "medical records" he mentions, nor does the Respondent identify what account by Individual 10 relates to this issue. The ALJ decision discussed the medical records in extensive detail, but the Respondent does not address the specific records the ALJ analyzed nor the ALJ's discussion of those records.

In any case, the office visit medical record for Individual 10's March 16, 2017, visit was generated by the Respondent and identifies the Respondent as the provider. This document describes the assessment/plan, stating that the Respondent recommends a "synovial cyst resection and hemilaminectomy," and it also mentions the Respondent's discussion of pars fractures that could some day require "fusion." This medical record, which was generated by the Respondent, then states, "*I discussed the risks benefits and alternatives with the patient including lumbar fusion however despite the risks, the patient would like to proceed.*" (Italics added.) The Respondent makes a further claim concerning "[Individual 10]'s report" and "informed consent and pre-operative interviews." This claim also does not cite to the evidentiary record.

misconduct regulations with respect to the Respondent's behavior at issue involving Individuals 6 and 11.

Moreover, the Respondent's physician assistant, Individual 9 testified that it was not a rarity for the Respondent to be involved with consents:

Q. . . . And typically that work in preparing the patients would have been strictly your province during the time that you were working there. Is that right?

A [Individual 9]. Not necessarily, no. Dr. Benalcazar consented some patients.

Q. Some patients?

A. Yeah, he did.

Q. That was a rarity?

A. No, not a rarity I would say.

In any case, the medical records and testimony concerning "informed consent and pre-operative interviews" are consistent with the ALJ's findings.

The Respondent also argues that "[p]rior to [Individual 10]'s second surgery" a nurse interviewed Individual 10 to assess Individual 10's mental status. The Respondent asserts that during this interview "[Individual 10] did not disclose any distress or other psychological injury suffered at the hands of Respondent or any other person. The contemporaneous report belies the later report of alleged misconduct." Bout, the ALJ wrote:

The Respondent argued that [Individual 10] should not be believed because when she went to the hospital's emergency room on March 30, 2017, the day before her second surgery, staff asked her psychological questions, and she did not disclose any psychological distress. Nevertheless, her priority was to get treatment to resolve her inability to stand, which the Respondent was able to do the next day in her second operation.

The Panel adopts the ALJ's finding that Individual 10 prioritized her medical treatment at that time.

The Respondent also relies upon Individual 10 reporting after the first surgery that her patient experience was "excellent." The ALJ found, "[i]n a post operative follow-up telephone call from a person at [the Hospital] on March 30, 2017, [Individual 10] rated her 'overall

experience' at the hospital as 'Excellent.'" The Panel does not give any significant weight to the "Excellent" rating. There is no indication from this standard follow-up telephone call that the caller from the Hospital would appear to Individual 10 to be an optimal candidate for addressing the Respondent touching her vagina, if she were to disclose his behavior to the Hospital, which she did not. In any case, the Hospital caller was focused on the customary potential surgical complications that could be evident the day after an operation, as opposed to focusing on sexual assault by a surgeon. The caller specifically asked about nausea, a sore throat, hoarseness, pain, bleeding, drainage, the IV site, medication effectiveness, surgery preparation, and post-op instructions. It is likely that, while Individual 10 was in the middle of her spinal surgeries, she wanted the medical providers focused strictly on the medical issues, and not distracted by serious and sensitive allegations against one of their colleagues. The "Excellent" rating adds insignificant value with respect to weighing Individual 10's allegations and testimony.

The ALJ found Individual 10 credible, stating, "I found [Individual 10]'s testimonial demeanor very credible. Her answers were clear and forthright. She did not exaggerate or embellish. She showed what I perceived as genuine emotion as she described a painful memory." The Panel accepts the ALJ's credibility determination on Individual 10.

The ALJ found that the Respondent's misconduct concerning Individual 10 constitutes immoral and unprofessional conduct in the practice of medicine. The Panel agrees with these conclusions. The Respondent's exceptions with respect to Individual 10 are denied. The Respondent is guilty of immoral conduct in the practice of medicine and unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i) and (ii), for saying to Individual 10 how "nice" her "ass" was and for grabbing Individual 10's breasts and touching her

vagina, which were without medical purpose and without consent. *See also Shirazi*, 199 Md. App. at 472-76.

D. Individual 6

The ALJ found that, on three occasions and without Individual 6's consent, the Respondent touched Individual 6's shoulders as if to give her a massage while Individual 6 was sitting at her desk. On exceptions, the Respondent argues that the evidence does not support the ALJ's conclusion that this constitutes sexual misconduct. According to the Respondent, the "testimony from others was that Respondent was an equal opportunity 'hugger' and exhibited collegial forms of interpersonal touching with both men and women. The type of interaction was described by [Individual 8] and others." The Respondent then questions how conduct in one instance is "unquestionably benign" and in another instance "deemed sexually charged" when there is no "appreciable difference."

The Respondent's conduct that Individual 8 testified to was clearly not always "collegial" or "benign." For instance, Individual 8 testified that Complainant 2 was uncomfortable with the Respondent touching her. Despite clear indications that certain touching was unwanted and not consented to, the Respondent continued to touch Individual 6. Moreover, the Panel is not convinced that the Respondent was an "equal opportunity" hugger and toucher of both men and women. Individual 9, a male physician assistant, testified:

- Q. And who would he hug that you saw?
- A. The -- the nurse, the tech, I mean --
- Q. Did he ever hug you, [Individual 9]?
- A. No, I don't think so.
- Q. Did you observe him hug other men?
- A. No.
- Q. Did you ever observe the respondent touch other men's necks or shoulders?
- A. No.

A male Medtronic sales representative testified that he hugged the Respondent, but he explained that he, not the Respondent, initiated their hugs.

The Respondent also argues that “nothing in the ALJ’s opinion addressed the obvious bias of the witness toward the Respondent.” However, the ALJ found, “[Individual 6]’s testimony and demeanor revealed she feels a rather strong antipathy toward the Respondent.” The ALJ, nonetheless, found her testimony credible. The Panel, also, finds her testimony credible. The Respondent’s touching of Individual 6 is consistent with the Respondent’s behavior at the Hospital. Individual 9 was asked to describe what some of the Respondent’s touching might look like and testified, “Just like massage type thing on the shoulders.”

It does appear that Individual 6 does harbor antipathy toward the Respondent, but that by itself does not significantly impair her credibility. It should come as no surprise that victims might harbor negative feeling toward those who mistreated them. Nor does her antipathy suggest that the Respondent’s touching was benign. The exception is denied. The Respondent’s touching of Individual 6’s shoulders as if to give her a massage on three occasions, with no consent and with clear indications that it was unwanted, constitutes unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). *See also Banks*, 354 Md. at 62.

E. Individual 11

Individual 11 worked for 10 months at the Hospital, from November 2017 through August 2018, where she worked as a circulating nurse in the OR. One day, while in the OR at the Hospital, toward the end of the case, while the patient was still also in the OR, Individual 11 was filling out paperwork concerning a neck/spine operation. Individual 11 testified that she was at a counter in the OR completing paperwork and the Respondent approached her from behind and “tickled” her sides, which scared her. The Respondent said, “I guess you didn’t like that?” Individual 11 made

it clear to the Respondent that she did not want him to touch her. Individual 11 said that when the Respondent tickled her, she “stopped filling out my paperwork to confront Dr. Benalcazar.” Individual 11 testified that, at the time she was tickled, she was filling out a form concerning biological agents used for surgery. Individual 11 also said that the Respondent tickling her made her “uncomfortable” and “upset and a little angry.” When asked whether the tickling was distracting, Individual 11 answered, “Yes.”

The Respondent took exception to the ALJ’s finding that he tickled Individual 11. The Respondent testified that he grabbed Individual 11’s shoulders to get her attention to tell her something that she needed to do. He did not acknowledge tickling Individual 11. In any case, the Panel does not find the Respondent credible, while Individual 11’s testimony was straightforward, detailed, and reasonable. The Panel finds Individual 11 credible and accepts her testimony. The Respondent’s exception is denied.

The Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), for tickling Individual 11.

V. EXCEPTIONS - DUE PROCESS

A. Demand Letter

Before the ALJ, the Respondent argued that his due process rights had been violated, because the Board investigator omitted the Demand Letter from the index of documents provided to the panel that voted for the charges. The ALJ did not find a due process violation. The ALJ found that Panel A, the Board disciplinary panel that voted for the charges, had actual knowledge of the Demand Letter when it voted to issue charges. The Respondent discussed the Demand Letter in his interviews with the Board investigators, which were recorded in transcripts. Second, the ALJ relied on the fact that the Demand Letter was admitted into evidence at the hearing before

the ALJ. The ALJ noted that the Respondent used the Demand Letter to “strongly” cross-examine Complainant 2. The ALJ concluded, “[w]hile not endorsing the letter’s omission from the investigator’s index, I conclude that the Board’s handling of the letter (of which the Board had actual knowledge) in its investigative phase did not violate the Respondent’s right to due process or otherwise taint the proceeding.”

On exceptions, the Respondent argues that the ALJ erred in finding no due process violation. According to the Respondent, the Demand Letter was essential to judge Complainant 2’s credibility and thus essential to judging her allegations against the Respondent. Even more, the Respondent argues that Complainant 2 “solicited and marshalled a legion of her friends and associates to come forward in an effort to further malign the Respondent.” Taking all this together, the Respondent argues that the entire process was affected to such an extent that the Respondent was denied a “fair and just hearing.”

Panel B, however, is not persuaded that any deficiency in the charging process with respect to the Demand Letter caused a defect in the evidentiary hearing, and the Panel certainly does not find that any deficiency in the charging process with respect to the Demand Letter affected the evidentiary hearing to such an extent that the Respondent was denied a “fair and just” evidentiary hearing. The Respondent offered the Demand Letter into evidence at the hearing before the ALJ, and it was admitted into evidence. And, as the ALJ noted, the Demand Letter was “strongly” used to cross-examine Complainant 2.

The Respondent also asserts in his exceptions that

[i]f a prosecutor denied a defendant evidence of an extortion demand made by a witness, let alone a complainant, it is clear that a court of competent jurisdiction would not summarily dismiss claims about due process violation, as the ALJ in the instant case has done. To the contrary, the court would almost certainly agree with the

Respondent that the actions ran afoul of the due process protections afforded him under the Constitution.

There is, however, no allegation that Board staff failed to disclose the Demand Letter to the Respondent, as the Respondent was in possession of the Demand Letter before the Board staff had it.

In response to the Respondent's argument that the Board staff purposefully withheld the Demand Letter from the disciplinary panel that voted for charges, the ALJ relied, by analogy, upon *United States v. Williams*, 504 U.S. 36 (1992), and summarized the ruling, stating that a "federal court may not dismiss an otherwise valid indictment because the Government failed to disclose to the grand jury substantial exculpatory evidence in its possession; the exculpatory evidence can be presented at trial." The Supreme Court ruled that the grand jury had no obligation to consider all "substantial exculpatory" evidence and that the prosecutor had no obligation to present it. *Williams*, 504 U.S. at 53. Likewise, in *Clark v. State*, 140 Md. App. 540 (2001), the prosecutor allowed an expert witness to testify to the grand jury that blood recovered in the victim's bedroom could have come from the defendant, when the prosecutor knew of another DNA test that excluded the defendant. The prosecutor did not present the negative test result to the grand jury. Relying upon *Williams*, the Court of Special Appeals did not dismiss the indictment. *Clark*, 140 Md. App. at 557-63. With all that said, it is not apparent that a court would find a due process violation if the circumstances alleged by the Respondent here occurred in a criminal proceeding. The Respondent was interviewed twice by Board investigators, and, each time, the Respondent discussed the Demand Letter. A Board investigator testified that she inadvertently omitted the Demand Letter from the investigative index and thus it was not produced for the panel when voting for charges. The Panel accepts that the omission was inadvertent.

In support of his argument that the Demand Letter demonstrates Complainant 2's lack of credibility, the Respondent offers Maryland Rule 5-608(b), which allows for "any witness to be examined regarding the witness's own prior conduct that did not result in a conviction but that the court finds probative of a character trait of untruthfulness."¹³ The Panel does not find this argument compelling. Rule 5-608(b) relates to the scope of an examination of a witness, finding certain acts sufficiently probative of credibility to allow a witness to be questioned about those acts.¹⁴ The Respondent does not allege that the ALJ prevented or curtailed his cross examination of Complainant 2 with respect to the Demand Letter. The Panel agrees that the Demand Letter is relevant to the questioning of Complainant 2 with respect to her credibility, because the Demand Letter certainly could reflect on Complainant 2's credibility. But Rule 5-608(b) does not provide for the weight that should be given to the witness's testimony after the witness has been examined.

The ALJ did not find that the Demand Letter undermined Complainant 2's testimony to any significant degree. The ALJ thoroughly considered the Demand Letter with respect to Complainant 2's credibility, but the ALJ mostly credited, accepted, and relied upon Complainant 2's testimony concerning the slapping of the patient's buttocks, the inappropriate behavior of the Respondent when he examined her back, and the Respondent's incessant sexual harassment of Complainant 2. For instance, the ALJ wrote, "[h]aving weighed all the evidence, I credit Complainant 2's testimony that the Respondent regularly sexually harassed her." The ALJ's

¹³ To be clear, Rule 5-608 is a rule of evidence for courts, while in administrative hearings the admission of evidence is governed by Md. Code Ann., State Gov't § 10-213.

¹⁴ The Respondent also asserts that Complainant 2 "essentially admitted each and every of the elements constituting the felonious offense of Extortion under the Criminal Law Article of the Annotated Code of Maryland, § 3-701(b)(2)." The Respondent does not mention the elements or facts that meet those elements. The Panel does not make a finding on whether Complainant 2 committed the criminal offense of extortion. The Demand Letter was admitted into evidence, and the Respondent cross examined Complainant 2 about the Demand Letter.

reasoning for mostly accepting and crediting Complainant 2's testimony included the testimony of other witnesses who corroborated her testimony.

Certain details of Complainant 2's testimony were not accepted by the ALJ, but overall Complainant 2's testimony was largely accepted. In terms of the details that the ALJ found implausible, Complainant 2, according to the ALJ, testified that she did not understand that the Demand Letter was for the purpose of extracting money from the Respondent. The ALJ explained, after finding this implausible, that he was not applying the maxim "Falsus in uno, falsus in omnibus" ("False in one thing, false in everything"). The Panel assumes the ALJ was referring to Complainant 2's testimony in which she stated, "I did not realize that the letter was implying that I was trying to get money from Dr. Benalcazar in any way." At first glance, without context, this statement by Complainant 2 certainly does seem to indicate that she did not know that, through the Demand Letter, she was asking for money in exchange for not reporting him to various authorities. But, when asked to confirm that she did not realize that the Demand Letter was seeking five million dollars from the Respondent, Complainant 2 responded, "I did not expect that." In context, Complainant 2's testimony on this issue appears to the Panel to mean that Complainant 2 did not expect that her obtaining legal representation would result in her asking for money. Complainant 2 explained that she wanted to report the Respondent's conduct to the Board but "I had a problem because I did not want to lose my job." Thus, before reporting to the Board, she hired an attorney. Complainant 2 further explained that the strategy for dealing with the Respondent was developed by her attorney. It also appears to the Panel that, at this stage in her testimony, Complainant 2 was being a bit evasive in her responses. In any case, it is obvious that Complainant 2 did know, from at least having read the Demand Letter prior to it being sent to the Respondent, that she was asking for money. Complainant 2 could have been more responsive, or

at least more clear, in her answers concerning the Demand Letter, but Panel B finds Complainant 2 credible and finds that the Demand Letter and testimony with respect to the Demand Letter does not diminish her credibility to any significant degree.

The Demand Letter does not reflect positively on Complainant 2 in that it indicates her willingness to place her own financial interest before protecting the patients and employees of the Hospital from the Respondent's misconduct. The Demand Letter could also indicate a bias on Complainant 2's part based upon the financial interest she has in her lawsuit against the Respondent. But, after considering these factors, in general, the Panel finds her testimony credible and reliable. The Demand Letter is based upon her allegations that she suffered from the Respondent's sexual harassment toward her. The Demand Letter appears consistent with her testimony concerning the substance of the Respondent's unprofessional behavior.

In any event, in terms of her truthfulness, the Panel finds that the corroboration of Complainant 2's testimony by other witnesses far outweighs any character flaws and bias of Complainant 2 that the Panel infers from the Demand Letter. For instance, Complainant 2's testimony concerning the Respondent's statement to her that he wanted to spank her was corroborated by Individual 3. Complainant 2's testimony that the Respondent grabbed her hair bun and used it to jerk her head around was corroborated by Individual 8. Complainant 2's testimony concerning the Respondent's routine, unwanted touching of her was corroborated by Individual 9. And Complainant 2's testimony that the Respondent slapped the buttocks of the anesthetized patient was corroborated by Individuals 5 and 9.

The Panel finds that the ALJ correctly found no due process violation concerning the Demand Letter, and there is no conduct of the Board staff related to the Demand Letter that entitles the Respondent to any relief. The exception is denied.

B. Investigation – Witness Statements

The Respondent argues that “the investigative process was further irreparably corrupted in the manner through which the Board obtained witness statements.” The basis for the Respondent’s exception is his allegation that the interviews conducted by the Board’s investigators were “rife with leading and suggestive questions.” The Respondent does not provide any legal authority to support this exception. The Panel does not find that leading and suggestive questions by the Board investigators is a due process violation. The exception is denied.

The Respondent further asserts in his exceptions that the ALJ erred by not finding a due process violation for the Board staff declining “Respondent’s request that it interview [the Hospital’s charge nurse] . . . and that repeated attempts to request a full investigation, only after charges were filed did the Board seek to interview [the Hospital’s director of perioperative services], another critical witness.” The Respondent does not provide any relevant legal authority indicating that the Board staff’s actions constitute a due process violation, nor does the Respondent explain how these investigative decisions amount to a due process violation. It should also be noted that both [the charge nurse and perioperative director] were called as witnesses by the Respondent and testified before the ALJ. The ALJ found “[t]here was nothing so substantially exculpatory about the testimony of either [the charge nurse or the perioperative director] that would have made it fundamentally unfair, rising to the level of a due process violation, for the Board not to have interviewed them before it approved the charges.” The ALJ relied upon language in *Rosov v. Maryland Board of Dental Examiners*, 163 Md. App. 98, 115 (2005), stating that the court knows of “no requirement, either in law or investigative technique, that compels an investigative agency, prior to charging, to include the investigation target or counsel in the interview process.” The ALJ then explained, “[i]t follows that the Board was not required to interview each person suggested

by the Respondent, particularly where the two witnesses in question were available and testified for the Respondent at the adjudicatory hearing.” The ALJ ruled there was no due process violation. The ALJ did not err. The exception is denied.

CONCLUSIONS OF LAW

The Respondent’s actions and comments, which resulted in Panel B’s findings and conclusions, set forth above, that he is guilty of unprofessional and/or immoral conduct in the practice of medicine, were unbecoming of a physician in good standing in the profession, *see Finucan*, 380 Md. at 593, and breached the ethical code of his profession. *See id.* His unprofessional conduct was disruptive in the Hospital and potentially negatively affected patient care, in violation of AMA Opinions 9.4.4 and 9.045. The ALJ found that the Respondent’s unprofessional conduct was a distraction in the OR. The Panel accepts this ALJ finding. Individual 5, an OR nurse, when she was interviewed, testified about how the Respondent’s behavior affected work:

... I don’t want to say it impairs you 100 percent, but you definitely are – are impaired, because you’re also worried about how you have to avoid either conversation with a surgeon -- which is impossible to avoid when you’re working in a surgical area like that, because you need to talk to him, you need to have open communication, and you kind of have to forget those things that happened, and treat every day like a new day, and that’s really difficult when you do experience things and know things that have happened.

When Individual 11 asked whether the Respondent tickling her in the OR was distracting, Individual 11 answered, “Yes.” When Individual 9 was asked whether the Respondent’s touching of female staff interfered with work in the OR, Individual 9 answered, “Yes.” Individual 9 explained, “The nurse and the tech were pre-occupied and they would always be thinking about what was going to happen.” The Respondent’s behavior distracted the Hospital’s medical staff

and degraded the teamwork approach that is necessary for proper medical care. Complainant 2 testified about her concerns after witnessing the Respondent slapping the Patient's buttocks:

And when he did these things towards one of his patients I felt there was no line that he would not cross. That I had to somehow remove myself from his OR and change my schedule to do something about this.

The Respondent's sexual harassment of Complainant 2, by itself, was more threatening to patient safety than the conduct of Dr. Banks for which Dr. Banks was sanctioned under § 14-404(a)(3). Dr. Banks' victims were hospital staff, such as unit secretaries, who did not directly provide care, while Complainant 2 worked in the OR as a surgical technologist. *See Banks*, 354 Md. at 62-63.

The Panel also finds the Respondent's slapping of the anesthetized patient's buttocks and his unwanted and unauthorized grabbing of Individual 10's breasts and touching of Individual 10's vagina shows that the Respondent was clearly not dedicated to preserving those patients' human dignity, in violation of Principle I of the AMA's Principles. Further, as in *Shirazi*, the Respondent "used his position as a physician to take advantage of . . . women who relied on him for their medical treatment." *Shirazi*, 199 Md. App. at 478.

Based upon the findings of fact, discussion, and reasons set forth in this decision, Panel B concludes that the Respondent is guilty of: immoral conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i); and unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

THE SANCTION

The ALJ recommended the revocation of the Respondent's license and that the Respondent could apply for reinstatement after one year. The Respondent took exception. The Respondent argues for an 18-month suspension that would begin retroactively from the date his license was

summarily suspended. The Respondent asserts that his conduct did not have “the potential to or actually cause harm to any patient.” The record does not support the Respondent’s assertion. There were two patients who suffered actual harm by having sexualized body parts intentionally touched by the Respondent without their consent. These patients were highly vulnerable. In fact, one of the patients was anesthetized at the time. The other patient testified that she did not address the Respondent’s conduct with him because:

I didn’t want to have to talk to him. My pain went away. He fixed my back but personally I did not want to have any contact with him or talk to him after that and I didn’t want anyone to know what happened because I felt ashamed that it happened.

Moreover, the Respondent’s disruptive conduct distracted staff from focusing on patient care and degraded the teamwork approach that is necessary for the effective delivery of health care as he antagonized, demeaned, shocked, and frightened employees of the Hospital.

The Respondent’s exceptions also argue that the “testimony made clear that after Respondent was admonished in the [Hospital’s] Medical Staff process, no further incidents of any kind were reported.”¹⁵ Considering the context, the Panel is not convinced that this shows that the Respondent is not a real threat to patients and to patient care. The evidence indicates that Hospital employees were fearful of making reports against the Respondent and that they had little faith that any report by them would result in the Respondent being held accountable. Complainant 2 was reluctant to make a report because she did not feel she had the support of her supervisors. In fact,

¹⁵ The Panel believes that the Respondent’s argument was intended to mean that there were no reports or complaints after the Hospital reprimanded the Respondent for misconduct occurring *after* the reprimand. The record shows reports or complaints of the Respondent’s misconduct submitted after the Hospital’s reprimand for misconduct which occurred *before* the Hospital reprimanded the Respondent.

she was fearful of losing her job if she made a report against the Respondent. Complainant 2 testified,

On multiple occasions Dr. Hugo Benalcazar would make comments to me in regards to other staff members. Specifically [Individual 5] coming in to the room to give [Individual 8] a lunch break. He would make comments that he could get her fired. That he knew management very well. That he knew my supervisors very well. He would say these things to me at the surgical field and make threats that she wouldn't be there the next day. That he had that power to do so. So, when all of this was occurring I was fearful and scared to lose my job. That's why I didn't report it at the time.

When Complainant 1 complained to the Hospital's director of perioperative services, Complainant 1 did not feel "she took it very seriously." When the Respondent was admonished by the Hospital, Complainant 1, who was still working at the Hospital, did not know anything about it. After the Respondent slapped the buttocks of the patient in the OR, Individual 5 told the charge nurse, then heard nothing further about the matter. Individual 5 testified that the charge nurse told Individual 5 that there would probably be nothing done about it. Individual 9 testified that he did not report the Respondent's slapping of the anesthetized patient, because "I don't know how that would have affected my job."

Despite complaints, the Respondent's misconduct persisted for years, and Hospital employees were not able to discern any consequences for the Respondent. Under these conditions, the Panel is not persuaded by the lack of reports for misconduct occurring after the Respondent was reprimanded by the Hospital that the Respondent poses no real threat.

The Respondent engaged in egregious conduct over the course of years and had numerous victims. The victims were both medical professionals and patients, and the patients were especially vulnerable. The Panel has also considered that the Respondent does not have a prior disciplinary record and that Respondent's license has been summarily suspended since July 2, 2021. The Panel

has decided that the appropriate sanction in this matter is a one-year suspension under § 14-404, which shall begin when the summary suspension pursuant to State Gov't § 10-226(c)(2) is terminated. The summary suspension under § 10-226(c)(2) will be terminated when the Respondent's expired license is administratively reinstated. *See* Health Occ. § 14-317; COMAR 10.32.01.11. Once the license is administratively reinstated, the summary suspension is terminated, and the suspension under § 14-404 goes into effect, the Respondent will be required to enroll in the Maryland Professional Rehabilitation Program ("MPRP") and successfully complete courses in boundaries and professionalism. *See* § 14-404(e) After one year from when the § 14-404 suspension goes into effect, if the Respondent has complied with the terms and conditions of the suspension and the Panel determines, after reviewing MPRP's recommendation, that the Respondent is safe to return to the practice of medicine, then the Respondent will be placed on probation for a minimum period of two years under terms and conditions that the Panel finds appropriate.

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel B, hereby

ORDERED that the order for summary suspension on Dr. Benalcazar's license, issued on July 2, 2021, and affirmed in a final decision and order on August 1, 2022, will be terminated as moot upon the reinstatement of the Respondent's expired license under Health Occ. § 14-317¹⁶; and it is further

¹⁶ The Respondent's license expired on September 30, 2022. In order for the summary suspension to be terminated, the Respondent must apply for the reinstatement of his lapsed license and the license must be administratively reinstated. *See* Health Occ. § 14-317; COMAR 10.32.01.11. Also, for sanctioning purposes, the expiration of the Respondent's license does not prevent the Panel from sanctioning him – a license does not lapse by operation of law while the individual is under investigation or while charges are pending. Health Occ. § 14-403(a).

ORDERED that Dr. Benalcazar is **REPRIMANDED**; and it is further

ORDERED that Dr. Benalcazar's license to practice medicine in Maryland is **SUSPENDED**, pursuant to Health Occ. § 14-404(a)(3)(i) and (ii), for a minimum period of **ONE YEAR**,¹⁷ commencing when the Respondent's Maryland medical license is reinstated under Health Occ. § 14-317. During the suspension, Dr. Benalcazar shall comply with the following conditions of suspension:

1. During the suspension period, the Respondent shall not:

- (a) practice medicine;
- (b) take any actions to hold himself out to the public as a current provider of medical services;
- (c) authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider;
- (d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the State;
- (e) prescribe or dispense medicine;
- (f) perform any other act that requires an active medical license; and

2. The Respondent shall enroll in the Maryland Professional Rehabilitation Program as follows:

- (a) Within **5 business days** from the commencement of the minimum one-year suspension, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
- (b) Within **15 business days** from the commencement of the minimum one-year suspension, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
- (c) the Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;

¹⁷ If the Respondent's license expires while he is under suspension under this Final Decision and Order on Amended Charges, the suspension and suspension terms and conditions will be tolled. COMAR 10.32.02.05C(3).

(d) the Respondent shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information to MPRP. The Respondent shall not withdraw his release/consent;

(e) the Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the health care records of the Respondent. The Respondent shall not withdraw his release/consent;

(f) if, upon the authorization of MPRP, the Respondent transfers to a rehabilitation program in another state, the Respondent's failure to comply with any term or condition of that state's rehabilitation program, constitutes a violation of this Final Decision and Order on Amended Charges ("Final Decision and Order"). The Respondent shall also sign any out-of-state written release/consent forms to authorize the Board to exchange with (i.e., disclose to and receive from) the out-of-state program verbal and written information concerning the Respondent, and to ensure that the Board is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug and alcohol evaluation and treatment records. The Respondent shall not withdraw the release/consent; and

(g) the Respondent's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Final Decision and Order; and

3. Within **six months**, the Respondent is required to take and successfully complete courses in (1) boundaries, and (2) professionalism. The following terms apply:

(a) it is the Respondent's responsibility to locate, enroll in and obtain the Panel's approval of the courses before the courses begin;

(b) the Respondent must provide documentation to the Panel that the Respondent has successfully completed the courses;

(c) the courses may not be used to fulfill the continuing medical education credits required for license renewal; and

(d) the Respondent is responsible for the cost of the courses; and it is further

ORDERED that a violation of suspension constitutes a violation of this Final Decision and Order; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions of the suspension and the minimum period of suspension imposed by this Final Decision and Order has passed, the Respondent may petition the Board for the termination of the suspension. A Board disciplinary panel will consider a recommendation from MPRP on whether it is safe for the Respondent to return to the practice of medicine. A disciplinary panel will then determine whether the suspension is terminated. The Respondent may be required to appear before the disciplinary panel to discuss his petition. If a disciplinary panel determines that it is safe for the Respondent to return to the practice of medicine, the suspension imposed under this Final Decision and Order will be terminated and the Respondent will be placed on probation for a minimum of **TWO YEARS** under terms and conditions the disciplinary panel determines are appropriate. The probation will also be under the customary terms and conditions applied to probation. If, after considering MPRP's recommendation, the disciplinary panel determines that it is not safe for the Respondent to return to the practice of medicine, the suspension shall remain in effect under the terms and conditions the disciplinary panel finds reasonable and appropriate under the circumstances; and it is further

ORDERED that this Final Decision and Order goes into effect when it is signed by the Executive Director of the Board, but the minimum one-year suspension commences and the summary suspension is terminated when the Respondent's license is reinstated through the administrative reinstatement application process. The Executive Director signs this Final Decision and Order on behalf of Panel B; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Final Decision and Order; and it is further

ORDERED that, if the Respondent allegedly fails to comply with any term or condition imposed by this Final Decision and Order, the Respondent shall be given notice and an opportunity for a hearing. If a disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if a disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that, after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Final Decision and Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

ORDERED that this Final Decision and Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

05/18/2023
Date

Signature On File

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, the Respondent has the right to seek judicial review of this final decision and order. Any petition for judicial review must be filed

in court within 30 days from the date this final decision and order was sent to the Respondent. The final decision and order was sent on the date that it was issued. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If the Respondent petitions for judicial review of this final decision and order, the Board is a party and should be served with the court's process. Also, a copy of the petition for judicial review should be sent to the Maryland Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215. In addition, the Respondent should send a copy of the petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201 and by email at david.wagner@maryland.gov. The administrative prosecutors are not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.