

IN THE MATTER OF	*	BEFORE THE
JOSHUA R. MITCHELL, III, M.D.	*	MARYLAND STATE BOARD
RESPONDENT	*	OF PHYSICIANS
LICENSE NO.: D08782	*	CASE NOs: 2010-0517
		2010-0704

\* \* \* \* \*

**CONSENT ORDER**

On July 19, 2010, the Maryland Board of Physicians (the "Board") charged Joshua R. Mitchell, III, M.D. (the "Respondent") (D.O.B. 03/02/30) license number D08782 with violating the Maryland Medical Practice Act (the "Act") codified at Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol.).

The pertinent provision of the Act under § 14-404 provides the following:

(a) *In general.* --Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, 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[;].

In addition, the Board voted to charge under the Board's Sexual Misconduct Regulations, Code. Md. Regs. tit. 10 § 32.17.02 B (2)(a)(b); (3)(a)(b); (4)(a)(b), which state in pertinent part as follows:

**.02 Definitions.**

**B. Terms Defined.**

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(2) Sexual Impropriety.

(a) "Sexual impropriety" means behavior, gestures, or expressions that are

seductive, sexually aggressive, or sexually demeaning to a patient or a key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.

(b) "Sexual impropriety" includes, but is not limited to:

.....

(iii) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic or sexual relationship; and

.....

(3) "Sexual misconduct" means a health care practitioner's behavior toward a patient, former patient, or key third party which includes:

(a) Sexual impropriety;

(b) Sexual violation; or

.....

(4) Sexual Violation

(a) "Sexual violation" means health care practitioner-patient or key third party sex, whether or not initiated by the patient or key third party, and engaging in any conduct with a patient or key third party that is sexual or may be reasonably be interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.

(b) "Sexual violation" includes, but is not limited to:

.....

(i) Sexual intercourse, genital to genital contact[.]

Previously, on May 18, 2010, the Board also issued an Order of Summary Suspension of Respondent's license.

On September 1, 2010, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, and Order.

## FINDINGS OF FACT

The Board makes the following findings of fact:

### **I. Background of Licensee**

1. At all times relevant hereto, Respondent was and is licensed to practice medicine in Maryland. Respondent was originally licensed to practice medicine in Maryland on October 31, 1958 under license number D08782.

2. In or about August 2009, Respondent last renewed his license. Respondent's current license will expire on September 30, 2011.

3. Respondent also holds inactive licenses to practice medicine in Louisiana and Georgia.

4. At all times relevant to these charges, Respondent maintained an office for the solo practice of family medicine at 2200 Garrison Blvd, Suite 200, Baltimore, Maryland.

5. Respondent's self-designated practice areas are Family Practice, General and Family Practice, Geriatric.

6. Approximately five years ago, Respondent voluntarily resigned his hospital privileges at Provident Hospital (prior to its becoming Liberty Medical Center) and Bon Secours Hospital.

### **II. Complaint in Case No. 2010-0517- Patient A**

7. On January 4, 2010, the Board received a hand-written complaint from a

51 year-old female patient of Respondent's, Patient A.<sup>1</sup> Patient A attached to the complaint her typewritten statement, which she had given to the Baltimore City Police on December 28, 2009. In her signed, typed statement, Patient A states, in pertinent part,

"I ...was raped by Dr. Joshua R. Mitchell, III ... on Thursday 12/24/2009, Christmas Eve, at about 2:20 p.m. while conducting a physical examination...

I have been knowing Dr. Mitchell since at least March 1994...Dr. Mitchell was a professional colleague of (a relative)...Dr. Mitchell and his wife were invited and attended my first wedding...Dr. Mitchell is also related to (relatives) of my best friend...I also personally know his relatives...I attended social/professional events ... and Dr. Mitchell would be in attendance. We all were on friendly terms...when I had a severe case of poison ivy in the mid to late 1990's, I just called Dr. Mitchell and he said come in and Dr. Mitchell gave me an injection...I also had contact dermatitis several times and Dr. Mitchell gave me medicine to heal that. I went to Dr. Mitchell as a stand by/fill in doctor, meaning I went to him because I did not have to wait weeks and sometime months for an appointment...A few years ago, I had reoccurring urinary tract and yeast infections...I called my GYN... but to no avail. Dr. Mitchell was able to see me the same day...Dr. Mitchell has given me pelvic exams before... I was comfortable with him... However, there was one time that Dr. Mitchell said something to me in the early 2000's that was sexual in nature. I was extremely upset!!!...It was suggested I leave it alone...I kept my boundaries between him and me...

On the last week (sic) Sunday, 12/20/09, after the blizzard of 2009, I woke up extremely tired, sleepy and achy. I called... Dr. Mitchell, to see if he could see me and write me a note for Monday, 12/20/09 absence (from work)...I was too weak and sick to come on Monday...He told me I could come in on Tuesday, 12/22/09...I was too weak to get up... Dr. Mitchell said that I could come on Wednesday, 12/23/09. I was still too weak and tired....

I was finally able to see Dr. Mitchell on Thursday, 12/24/09, Christmas Eve. Dr. Mitchell told me that he would be there wrapping Christmas gifts. At 2:00 p.m. I... entered the suite...I was familiar with Dr. Mitchell so I felt

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<sup>1</sup> Patient names are confidential. Respondent may obtain a confidential Patient Identification List from the Administrative Prosecutor which lists both patients' name and identifier.

no fear... I went into the exam room and Dr. Mitchell put a two piece paper examining top and bottom out. I asked him why do you have the bottom out. He just said in essence that he'll check everything. I was still so weak, ill, fever, and tired that I said okay...Dr. Mitchell had taken a pap smear before. So I complied and put on the paper top and bottom for the exam...Dr. Mitchell took my blood pressure...checked my breathing... checked my ears, my glands and...my throat. Dr. Mitchell asked when was the last time I had my mammogram. I said I need that too. Dr. Mitchell examined my breast for lumps...I heard Dr. Mitchell putting on the ky jelly to do my pelvic exam...Dr. Mitchell told me to scoop (sic) further down the exam table... Dr. Mitchell put two (2) cloth exam gowns across my legs; therefore, I could not see his face. I closed my eyes...Dr. Mitchell's (sic) inquired if I am still having urinary tract infections. Dr. Mitchell also asked when was my last period...normal routine questions. Dr. Mitchell asked me if something hurt and I said that I am sensitive in my pelvic area. I then felt something slightly different...it felt like fingers moving fast. I said to myself that that old man cannot see how to put the instrument in. He's trying to jam all his fingers in. I wanted him to hurry up with the pelvic exam. At the time I thought Dr. Mitchell was still being ethical. I heard Dr. Mitchell get more ky jelly...Dr. Mitchell very slightly lost his balance and very slightly swayed on my left leg. I still thought nothing of if (sic) since I had been to him times before and he never appeared unethical...I was waiting for Dr. Mitchell to put the spectrum (sic) in me. The next thing I felt was not the spectrum (sic); it must have been his penis!!! I immediately rose up!!!!...Dr. Mitchell (sic) pants were unzipped!!! I yelled at Dr. Mitchell, "What is wrong with you??? What are you doing??? JESUS!!! You raped me!!! ... I was screaming at Dr. Mitchell!!!!...I ran out of Dr. Mitchell's office...I called at 2:25 PM my boyfriend at home and told him I was raped...I then called 911...I told the operator that I was raped by Joshua R. Mitchell, III, MD...

8. Patient A also attached to her complaint "Patient Discharge Instructions" from Mercy Hospital stating she was seen on 12/24/09 for sexual assault (rape), a copy of information provided by the Baltimore City Police in regard to a complaint which she had filed, the business card of a Baltimore City Police Detective, and her Patient "ID" bracelet from Mercy Hospital.

9. On January 13, 2010, the Board informed Patient A that it had accepted her complaint for full investigation.

10. On March 29, 2010, the Board informed Dr. Mitchell, through counsel, that the Board was in receipt of a complaint from a patient alleging that he sexually assaulted her during the course of a physical examination. The Board provided Respondent with a copy of Patient A's complaint.

**III. Interview of Patient A on January 26, 2010 and April 22, 2010**

11. Patient A is a college graduate and has been employed in her present professional position for seven and a half years. Previously, Patient A had been in an administrative position for seven years.

12. In addition to her episodic visits to Respondent, Patient A has an internist and a GYN, whom she sees periodically, and a cardiologist whom she sees regularly. In October 2006, Patient A had uterine fibroid embolization. In January 2010, Patient A began seeing a counselor due to the emotional issues following the rape.

13. Patient A's initial contact with Respondent was through business and social contacts. Patient A then began seeing Respondent as a patient for issues regarding contact dermatitis, poison ivy, bladder infections, and urinary tract infections. Patient A also referred her sister to Respondent.

14. On Thursday, December 24, 2009, at 2:00 p.m., Patient A presented to Respondent's office for symptoms of the flu, which she had been experiencing since December 19, 2009. Patient A had spoken to Respondent earlier in the day, requesting to be seen, and Respondent told her he would be in his office between 11:00 am and 2:00 pm wrapping Christmas gifts and he would see her. Patient A initially spoke to Respondent in his private office and then he directed her to the examining room. There was no staff in Respondent's office and there was no one present in the building.

15. Patient A reported that Respondent examined her in relation to her flu symptoms. Patient A reported that Respondent wrote notes on a small pad. Respondent then conducted a breast examination. Respondent then began a pelvic examination. Patient A was lying on her back with her feet in stirrups and her legs were draped with a sheet such that she was unable to see Respondent. Patient A stated:

So then he started feeling, you know, he started, first, feeling outside my groin area, like right around here, you know; and right around here, felt. And he said, does that hurt? I said it is a little sensitive on my left side, right in the groin, right round there.

He said, how about over there? He said, you still have fibroids...

And anyway -- and then I felt his hand -- his fingers, rather, in me. He was just doing a normal exam in me. And I had just closed my eyes because I knew it was going to hurt, you know, when he starts pressing...He said, this hurt? I said, yes. I said, this is sensitive...

So then he went on the other side, and then I heard him get some more KY jelly. And it sounded louder when you squeeze it out; just sounded loud. I remember saying, he sure putting a whole lot on...

So he said, come down a little bit further. So I went down a little further. He said, a little bit further. I went a little bit further. So then I felt his fingers, and it was just like—just like jamming. I said, what in the world is he doing? Will he just hurry up? It is just like kind of jamb (sic) like this. Like when you trying to go in side ways, just jamming...

So then -- and I heard like noise. I say, this man is amazing. He must have a lot of KY jelly on his hands, because I could hear the noise of his hand, you know.

Then he said, come a little bit further down, you know. So I got a little bit further down... and I said he is going to put that darn speculum in me...

So I felt what should have been the speculum inside of me, and I popped up, because I knew that wasn't a speculum. I popped up, and I looked at him. I said Lord, Dr. Mitchell, I saw his pants were unzipped.

Prior to that, he said, now move you leg this way. I said oh, Lord, this man has raped me. I said, you raped me. Are you crazy? What did you do?

O, Lord Jesus. What is wrong with you?

I was just so upset. I did not know what to do. And I saw his eyes. He just looked at me. Then he walked into his office, and I looked at him. I just screamed. I said what is wrong with you? Are you crazy? You raped me. Oh, Lord Jesus. Thank you. I was so upset. I was so upset.

... So I went back to the examining room ... I said, just put my clothes on... I went out the door. I called my boyfriend. I said, Dr. Mitchell raped me.

I ran down the steps... I ran out the building...I called 911. I told them what happened. I said, I was raped by Dr. Joshua R. Mitchell, III.

16. When asked how she was able to determine that it was Respondent's penis in her, Patient A stated,

I know it wasn't a spectrum (sic). A spectrum is hard, it's metal, it's cold... I've had spectrums (sic) inserted inside of me plenty of times before when I get a pelvic exam. I know what that feels like. It's hard. It's cold. Even if it's not cold, it's hard. It's metal. It's metal inside of you...I believe it was his penis (and not his fingers) because it felt like a penis, because all of a sudden it felt like -- it just felt like -- it was like -- and I said, Lord, what is that? I said, that's not a spectrum (sic). And I said -- and your hand is not that thick and long to go inside of me like that -- that quickly inside. These are fingers, you know? You -- it just doesn't do it like that. And I just said, oh, that's -- oh, my God, I'm leaving...

17. Patient A further reported that she followed Respondent into his office, which is connected to the examination room:

Then I ran into his office... So I went up to him, I said, what is wrong with you? You're crazy. You raped me. Do you hear me? You raped me. .. And so, he just looked at me, oh, get out of here, gal, something of that sort... And so I just looked at him, I said, Lord...

18. Patient A reported that when the Baltimore City Police officer arrived he entered Respondent's office building. The police officer reported that Respondent was not in the building. Patient A then went to police headquarters where she started writing a report but was too distressed to continue and reported that her handwriting looked like

she had Parkinson's disease.

19. The police officer then transported Patient A to Mercy Hospital where she was seen by a forensic nurse at approximately 7:00 pm. on December 24, 2009. Patient A told Board staff that she told the forensic nurse that when she screamed at Respondent that he raped her, he responded by stating, something such as, "oh gal, hush up." The forensic nurse took her statement and examined Patient A.

20. On December 25, 2009, Patient A called a rape crisis hotline for emotional assistance.

21. On December 28, 2009, Patient A returned to police headquarters to finish her report. Patient A reported that she typed her report on a laptop and that it took her approximately five hours "because it was stressful and traumatic, and I just had to relive the whole thing."

22. Patient A did not work the week of January 4 through 8, 2010 because she was not emotionally ready to return to work.

23. In January 2010, Patient A began short-term crisis intervention counseling at TurnAround, Inc., a private nonprofit organization for victims of sexual assault.

#### **IV. Respondent's Medical Records of Patient A**

24. According to Respondent's treatment records of Patient A (d.o.b. 1958), Respondent initially saw Patient A on May 22, 1997 for "poison ivy," and again on July 14, 1998. Respondent examined Patient A and treated her with medication.

25. In February 1999, Respondent saw Patient A and assessed cystitis and contact dermatitis. Respondent examined Patient A and treated her with medication.

26. In May 2000, Respondent saw Patient A for "sore throat and a cough." In

August 2000, Respondent saw Patient A for a rash on her thigh. Respondent examined Patient A on both occasions and treated her with medications.

27. In May 2001, Respondent saw Patient A for recurring rash on her right thigh and in November 2001, after the rash returned. Respondent examined Patient A and treated her with medication.

28. In August 2003, Patient A presented with an insect bite on her hand and in October 2003, with having been stung by a bee. Respondent examined Patient A on both occasions and treated her with medication.

29. In December 2005, Patient A presented with a sore throat of several days duration. Respondent examined Patient A and treated her with medication.

30. On May 22, 2006, Patient A presented with tightness in her chest, anxiety, and sinusitis. Respondent examined Patient A and treated her with medication. On June 23, 2006, Patient A presented with dysuria. Respondent examined Patient A and treated her with medication and saw Patient A for follow-up a few days later.

31. On July 27, 2006, Respondent performed a pelvic examination of Patient A. On August 28, 2006, Respondent saw Patient A for heavy menses. Respondent prescribed medication. On October 4, 2006, Respondent assessed "Monilia<sup>2</sup>" and prescribed medication.

32. On January 26, 2007, Patient A presented with a rash. Respondent examined Patient A and treated her with medication. On April 10, 2007, Respondent noted that Patient A "had therapy to her Fibroids." Respondent also noted vaginal itching and prescribed medication.

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<sup>2</sup> Monilia is a yeast-like fungus now called Candida.

33. On December 8, 2008 Respondent saw Patient A for complaints of frequency and dysuria. Respondent examined Patient A and treated her with medication. Respondent ordered blood work.

34. Respondent's last documented visit with Patient A was on December 11, 2008, when Patient A presented with vaginal itching, which he treated with medication.

35. Respondent did not document Patient A's office visit on December 24, 2009.

**V. Interview of Respondent on March 29, 2010**

36. Respondent has practiced medicine at his current location for approximately 40 years.

37. Respondent acknowledged a longstanding social relationship with Patient A at group social functions and a business relationship. Respondent stated he treated Patient A for acute conditions approximately once or twice a year.

38. Respondent stated that his medical office was not open on December 24, 2009, although he was there, wrapping Christmas presents.

39. In regard to Patient A's office visit on December 24, 2009, Respondent stated:

And, after giving her a complete examination, I took off my examining glove, washed my hands, and turned toward her. At the time she looked at me and said, "I can't believe you did that to me." And she began screaming like a banshee. She scared the daylights out of me. I walked out of the room, went to my pharmacy room to get a couple of Tylenol, thinking that I could set her down and find out exactly what was the hell she was talking about. In the interim, she put on her clothes and ran out of the office. And that's it.

40. When asked to state the details of his examination, after describing his examination of head, chest and abdomen, Respondent stated that since Patient A had

been treated previously for certain gynecological conditions, "I went on and examined her there, too." Respondent further reported that as he examined her, she said it was a little uncomfortable so he did not proceed to use the speculum. Respondent stated that he penetrated Patient A's vagina with his fingers.

41. Respondent stated that when Patient A started screaming, "I got out of there because she was very distraught, overwrought..."

42. Respondent denied raping Patient A and denied penetrating Patient A.

43. Respondent expressed his belief that Patient A was sent to him by a former employee whom he had recently discharged to make this claim as a means of revenge.

#### **VI. Baltimore City Police Records**

44. On December 24, 2009, at 1432 hours (2:32 p.m.), a Baltimore City Police Officer responded to 2200 Garrison Boulevard for a report of a rape. The officer interviewed Patient A, who provided details of her visit to Respondent as described above. The officer reported that he searched the building for Respondent with negative results, and that all of the doors were locked. The officer reported that he transported Patient A to the Sexual Offense Unit for further questioning and that another officer assumed control of the investigation.

45. On March 4, 2010, Board staff obtained an audio reproduction of the original 911 audio recording pertaining to the case.

46. On March 30, 2010, Board staff obtained a transcription of the 911 call which Patient A made, which states, in pertinent part:

Dr. Joshua Mitchell just raped me. Lord Jesus help me now... I'm in my

car outside the building...oh my goodness. Oh my goodness... (this happened) a few minutes ago...Oh, Lord Jesus I can't believe he did this to me. Oh, my goodness. .. He gave me a pelvic exam and I always close my eyes. I never look. Oh my goodness. Jesus...Oh please hurry...I can't believe he did this to me...

47. The operator told Patient A on two occasions to calm herself down.

**VII. Complaint in Case No. 2010-0517 – Patient B**

48. On March 31, 2010, the Board informed Respondent that based on information subsequently received; the Board had reopened a case against him which had been previously closed, Case No. 2005-0201. Respondent was informed that it was reopening a case filed by Patient B against him, alleging unprofessional conduct in the practice of medicine.

49. The case which was previously closed originated with a written complaint filed with the Board on September 17, 2004, by Patient B, then a 21 year-old female patient of Respondent, regarding an office visit on September 7, 2004. In her complaint, Patient B stated that she had been seeing Respondent once or twice a month for about six to eight months. Patient B stated that in approximately June or July 2004, she asked Respondent if he knew a therapist that she could talk with in regard to past issues. In response to Respondent's inquiry about the nature of her concerns, Patient B told Respondent. (Patient B did not disclose in her complaint what the issues were.) Patient B had about five or six more visits with Respondent. Patient B stated she presented on September 7, 2004, with complaints about her "abdominal area."

Patient B reported:

While he examined me I thought he was getting I'll say to (sic) comfortable but I thought this is my family doctor not only that (sic) the same doctor who delivered me. I thought I was just being paranoid.

50. Patient B continued in her complaint to state that she dressed after the examination and went into Respondent's office. Patient B reported that Respondent asked her if she would like to come back and talk further about what she had told him in the previous months. Patient B stated that she agreed because she thought that Respondent was really concerned about her. Respondent told Patient B that after his assistants leave; she should come back up to his office.

51. Patient B reported in her complaint that she then went to the front to pay and was informed that there was no charge for her visit. Patient B did not know why she was not charged, other than she thought perhaps Respondent knew how difficult it was for her to pay for her visits. Patient B scheduled her next appointment and left the office.

52. Patient B reported that while waiting for the elevator, Respondent came out to the hallway from a "side door" of his office and directed her to go around the corner to another door. Patient B waited until Respondent came out of another door and invited her into a room and told her to have a seat on the couch. Respondent sat next to her on the couch, put his hand on Patient B's leg and stated that his assistants had finally left and now "I can give you your full examination." Patient B asked Respondent what he meant and Respondent stated, "Oh I figured since you get excited when I examine you, you..." Patient B reported that she cut Respondent off and said, "No thank you, it's time for me to leave." As she was leaving, Respondent got in front of Patient B, and reportedly said, "I hope I didn't come on too strong." Patient B stated that she responded "that was very unprofessional" and she left the building.

### **VIII. Interview of Patient B June 17, 2005**

53. Board staff subsequently interviewed Patient B (d.o.b. 1983) who reported that Respondent had provided care to her since childhood and to most of her family, including her mother's delivery of her. She reported that she saw Respondent in the company of her mother until she was about 16. Thereafter, she saw Respondent once or twice a year for routine physicals, gynecological ("GYN") exams and pap smears. In summer 2004, Patient B began to see Respondent more frequently for GYN problems, including irregular menstrual cycle. Respondent saw her twice a month and gave her vaginal examinations on each of these visits. During summer 2004, Respondent referred Patient B to an OB/GYN physician at Mercy Medical Center for evaluation.

54. During summer 2004, Patient B asked Respondent for a referral to a therapist for past issues pertaining to childhood sexual abuse. Reportedly, Respondent told Patient B, "That's what I'm here for." Patient B reported that Respondent performed approximately seven vaginal examinations during a four to six month period. Respondent did not use a chaperone. Patient B paid \$80.00 per visit because she did not have health insurance.

55. On September 7, 2004, Patient B presented for her appointment at approximately 7:00 – 7:30 pm. Respondent conducted a vaginal exam using only his fingers and not a speculum. Patient B reported that Respondent pressed harder and further into her vagina for a longer period of time than usual. Patient B told Respondent he was being too rough and that she was uncomfortable. Patient B described the examination felt more like he was "feeling her" and less like a procedure. Patient B reported that Respondent pinched her nipple while he was conducting an examination

for chest pain.

56. Patient B stated that she got dressed and met Respondent in his office. Respondent asked Patient B if she wanted to come back to talk further about her problems, and Respondent recommended she return after his office staff left. Patient B reported that she felt upset but thought she was being "paranoid." Respondent gave her a bill which she took to the front desk and was told there was no fee for the visit. Patient B thought this was because Respondent was really concerned.

57. Patient B went into the hallway by the elevator, and Respondent came out of a doorway and told her to go around to a different door. Respondent opened another door and asked her to come in. Patient B described the room as, "private living quarters," with a couch, a television, and "a large metal sword on top of some stuff." Respondent ask her to have a seat on the couch and asked if she wanted anything to drink. Respondent reportedly sat on a stool in a doorway in between an examination room and the private quarters until his staff left the building. Patient B informed Board staff that she was very frightened. Respondent sat next to her on the couch, put his hand on her leg and asked if she "was ready for a full examination." Patient B asked what Respondent meant and he stated "I figured since you got excited when I examined you..." Patient B states that she said "Are you f----- crazy?" Reportedly, Respondent apologized and stated that he "took it too far." As she left, Respondent grasped her arm. Patient B pulled away and "swore at him."

58. While in her car, Patient B called her sister-in-law and told her what had just occurred. Patient B also told her employer because she was experiencing emotional problems. Her employer advised her to contact Employee Assistance, which

she did. Patient B also filed a police report and sought counseling.

**IX. Unannounced Site Visit on June 27, 2005**

59. On June 27, 2005, Board staff conducted an unannounced site visit at Respondent's medical office. Board staff noted a "consultation room" which contained a desk and chairs, and other office equipment. Board staff noted that there were three doors: one exited in the hallway; one exited into an examination room; and the third door was closed and locked.

60. Board staff entered through the third door into a room which Respondent identified as his "personal quarters." Board staff observed a very large cluttered room that was partitioned into smaller spaces. There was a sofa and a television. There were several small bottles of liquor next to the television. Two large swords were hanging on the wall above the sofa. There was a round table and chairs. The table was covered with items and stacks of papers. There were photographs and "medieval period" knickknacks. The rear of the large room was sectioned off into two smaller areas. There was a rack with hanging clothes, a single/twin size bed and kitchenette. African art hung on the walls.

**X. Respondent's Medical Records of Patient B<sup>3</sup>**

61. Respondent initially saw Patient B on May 6, 1983, at age six weeks for a "well baby" visit. Respondent had provided care for Patient B's mother and had delivered Patient B. Patient B was seen by a pediatrician as well. Over the years,

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<sup>3</sup> During the investigation of the complaint of Patient B, the Board obtained copies of Respondent's medical records of Patient B. The Board did not retain the records after the Board closed the case in 2005. During the current investigation, the Board has been unable to obtain Respondent's copy of Patient B's medical records. When Respondent was interviewed in July 2005, Board staff and Respondent had the records available and made references to the entries. The information above is obtained from a transcription of the interview of Respondent and on Board staff review of the records.

Respondent saw Patient B intermittently. Respondent treated Patient B for tonsillitis, upper respiratory infections, and multiple urinary tract infections.

62. In 2001 and 2002, Respondent documented that Patient B presented on five occasions with complaints of vaginal discharge and pelvic tenderness. Respondent did not treat Patient B in 2003.

63. On April 5, 2004, and May 10, 2004, Patient B presented with irregular bleeding. On July 6, 2004, Patient B presented with vaginal discharge, pelvic tenderness, and irregular bleeding. On July 21, 2004, Respondent documented pelvic tenderness. On August 31, 2004, Respondent documented vaginal discharge and pelvic tenderness. Respondent evaluated and treated Patient B for these problems. Respondent also ordered blood work on April 5, July 6, and September 7, 2004, all of which was negative and pregnancy testing was negative. At some point during summer 2004, Respondent also referred Patient B to a GYN for the problem of intermittent menstrual bleeding. Respondent did not have the results of the referral in his file.

64. Respondent ordered blood testing on April 30, 2001, September 5, 2001, January 2, 2002, April 5, 2004, July 6, 2004, and September 7, 2004. All of the blood testing was negative and pregnancy testing was negative.

65. On September 7, 2004, Patient B presented with pelvic tenderness. Previously, Respondent had treated Patient B with antibiotics for a urinary tract infection. Patient B reported that she felt much better. Respondent noted pelvic tenderness during the pelvic examination. Respondent noted the thyroid was symmetrical but dysfunctional. Blood sugar was 120. Respondent diagnosed thyroid dysfunction and referred Patient B back to the GYN.

## **XI. Interview of Respondent on July 7 and 8, 2005**

66. According to Respondent, he likely conducted pelvic examinations on Patient B on the dates she complained of pelvic tenderness. Respondent saw Patient B on September 7, 2004, between 6:00 and 9:00 pm. as a follow-up visit. Respondent renewed birth control pills, an antibiotic and Synthroid for "break-through bleeding." Blood sugar was 120. Weight was 186. Blood pressure was 130/80. On examination, there was pelvic tenderness but less than on the last visit of August 31, 2004. After the examination, in the consultation room, Patient B informed Respondent that she had problems with insomnia. When questioned, Patient B informed Respondent that some time previously she had "intimate relationships with two close relatives," about five years previously when she was approximately 15 or 16 years old.<sup>4</sup> Respondent stated he wanted to delve into this to find out if this was possibly one of the causes of her insomnia. Respondent was getting close to the end of his office hours. Respondent left the consultation room and went into his personal quarters to use the bathroom. Respondent returned to the consultation room. Respondent stated he was unable to follow up because Patient B said "this is inappropriate" and left at approximately 9:05 p.m. Patient B did not see the receptionist to make another appointment because the receptionist had left. Patient B did not pay for the September 7, 2004 visit and did not return to Respondent's practice after this visit.

## **XII. Board Closure of 2005 Complaint**

67. On August 9, 2006, the Board closed the case regarding Patient B's

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<sup>4</sup> Patient B states that the sexual contact was nonconsensual and that she was younger than fifteen or sixteen years old at the time of the events.

complaint with an advisory letter dated September 27, 2006. Respondent was advised to communicate to patients the type and extent of examinations and to “offer to use a chaperone when conducting examinations of female patients, particularly breast and pelvic examinations, document in the patient’s medical record whether a chaperone was offered, if the patient agreed to use a chaperone and whether a chaperone was used.”

**XIII. Complaint in Case No. 2010 - Patient C**

68. In the interview with Board staff on July 7, 2005, Respondent stated that another female patient, hereinafter referred to as Patient C, accused him of sexual contact. He stated that he had been interviewed by Baltimore City Police, Sexual Abuse Unit, but that he was never informed of the outcome of their findings.

69. Investigation by Board staff in July 2005, confirmed that Patient C filed a complaint which was investigated by the Sex Crimes Unit of the Baltimore City Police but that it was closed because the Unit had lost contact with Patient C.

70. After additional investigation, Board staff located Patient C, and on June 8, 2010, and on June 18, 2010, Patient C was interviewed by Board staff.

71. Patient C (d.o.b. 1975) reported that she had been a patient of Respondent for three or four years prior to her last visit in or about fall 2004/winter 2005.<sup>5</sup> Patient C had transferred to Respondent when her prior primary care physician no longer took her health insurance. Patient C usually saw Respondent in the evening so she would not have to miss time from work. Patient C initially saw Respondent in regard to some chronic medical conditions. She subsequently began seeing him for

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<sup>5</sup> An incident report, subsequently received from the Baltimore City Police Department, demonstrates that the date of the incident was January 14, 2005.

periodic PAP smears, prescription of birth control pills to regulate her menstrual cycle, and other GYN issues. Respondent performed pelvic examinations on Patient C. Patient C stated that on some occasions, such as a brief office visit, Respondent did not charge her the co-pay for the visit. Respondent gave Patient C samples of medications he prescribed. Patient C regarded this as Respondent trying to help her out with her financial issues.

72. Patient C stated that she felt very comfortable with Respondent and that he was easy to talk with. Patient C disclosed to Respondent personal issues which were causing her feelings of depression. Respondent told Patient C that any time she needed to talk to him she could call and talk to him. Patient C reported to Board staff that upon reflection, she now feels that Respondent "used" her because she had trusted Respondent and talked with him about her problems and her depression.

73. According to Patient C, in or about fall 2004/winter 2005, at approximately 6:30 or 7:00 pm., Patient C presented to Respondent with concerns about a recurring condition which Respondent had previously told her was "bacterial vaginitis." Respondent told Patient C that he needed to examine her. Patient C disrobed from the waist down and was covered with a sheet. While Patient C was in the lithotomy position, Respondent inserted his fingers inside Patient C's vagina. Patient C reported to Board staff that she had an uncomfortable feeling because the "it wasn't the same way he normally did it." Patient C had previous pelvic examinations by Respondent and her former primary care physician, which did not cause her to feel uncomfortable. Respondent spoke to Patient C and inquired how she was feeling. Patient C reported that Respondent had a glove on and that Respondent put "K-Y jelly" on his fingers. In

retrospect, Patient C questioned with Board staff why it was necessary for Respondent to insert fingers in her vagina when her presenting problem was a discharge; however, she said that at the time, she trusted Respondent. Patient C further recalled Respondent telling her to relax and that she was tense. Respondent rubbed Patient C's leg. Patient C reported that Respondent maneuvered his fingers in and out and back and forth in her vagina "as to kind of like stimulate me or something." Patient C stated that Respondent did not use his opposite hand to press on her abdomen while having his fingers inserted in her vagina. Respondent then used his fingers or thumb and rubbed up and down on Patient C's clitoris. Patient C reported that Respondent asked her "if it was okay if he stuck something in me a little harder." Patient C reported that she "froze" and believed that Respondent was aware of her discomfort. Respondent stopped and told Patient C to get dressed. There was no chaperone present during the "examination." Respondent left the room.

74. Patient C reported that she wiped herself off and got dressed. Patient C went into Respondent's office. Respondent spoke to her and wrote a prescription. Patient C recalled that "I was there but I wasn't there. Like I could hear him but I didn't know what to say. I was pretty much in my mind like, did he just do what I think he just did?"

75. Patient C went to the front desk in the office to pay her bill. She informed a member of Respondent's office staff that Respondent had been inappropriate with her. The office staff person gave Patient C the telephone number for the Board.

76. Patient C left Respondent's office and was picked up by a friend who had dropped her off. Patient C reported to Board staff that she was crying when her friend

arrived and she told her friend about the incident. Patient C's friend drove her to a district police station, where she filed a criminal complaint.

77. On January 14, 2005, a Friday, at 9:30 p.m., Baltimore City Police responded to a call from Patient C who informed the police officer about the above incident. In the narrative of the incident, it is reported that Respondent inappropriately touched Patient C on the clitoris. The police officer then transported Patient C to the Sex Offense Unit for further investigation. Patient C provided a written statement of the incident. In her statement, Patient C stated that Respondent put two or three fingers inside her vagina and began to move them in and out of her. Respondent then quickened the pace of the movement, while "spreading" Patient C's clitoris while moving his fingers back and forth into her vagina. Patient C told Respondent that she was very uncomfortable with the examination. Respondent stated, "My fingers aren't big enough. Can I put something bigger inside of you?" Patient C quickly stated "No!" and sat up on the examination table. When Patient C informed office staff about what Respondent had said to her, a staff person gave her the telephone number of the Board of Physicians and told her to call on Monday.

78. The Detective for the Sexual Offense Unit of the Baltimore City Police Department reported that as of May 11, 2005, he had been unsuccessful in obtaining information regarding employees that work for Respondent. Therefore, without corroboration, the criminal case was "suspended;" and subsequently was closed.

79. In addition to the report to the Police, Patient C informed her girlfriend and her mother about the incident.

#### **XIV. Summary of Findings**

80. Respondent's conduct, in regard to Patients A, B, and C, including but not limited to:

- a. Failing to document an examination of Patient A on December 24, 2009;
- b. Examining Patient A without offering to use a chaperone, in violation of the recommendation of the Board's September 2006 advisory letter;
- c. Failing to document in Patient A's medical record whether a chaperone was offered, if the patient agreed to use a chaperone and whether a chaperone was used, in violation of the recommendation of the Board's September 2006 advisory letter;
- d. Inserting his fingers in Patient A's vagina in a manner that could reasonably be interpreted as sexually improper;
- e. Sexually violating Patient A by having genital contact with Patient A's vagina with his penis;
- f. Making sexually seductive, aggressive and demeaning expressions to Patient B;
- g. Inserting his fingers in Patient B's vagina in a manner that could reasonably be interpreted as sexually improper;
- h. Inserting his fingers in Patient C's vagina and touching Patient C's clitoris in a matter that could reasonably be interpreted as sexually improper; and
- i. Making sexually seductive, aggressive and demeaning expressions to Patient C;

is evidence of immoral and unprofessional conduct in the practice of medicine in violation of H.O. § 14-404(a)(3)(i) and (ii).

81. Respondent's conduct, as summarized in paragraph 80 constitutes

violations of Code. Md. Regs. tit. 10 § 32.17.02 B (2)(a)(b);<sup>6</sup> (3)(a)(b);<sup>7</sup> (4)(a)(b).<sup>8</sup>

**CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent's actions constitute immoral and unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(i)and(ii); and constitute sexual misconduct in violation of the Code Md. Regs. tit. 10 § 32.17.02B(2)(a) (b), (3)(a)(b), and (4)(a)(b).

**ORDER**

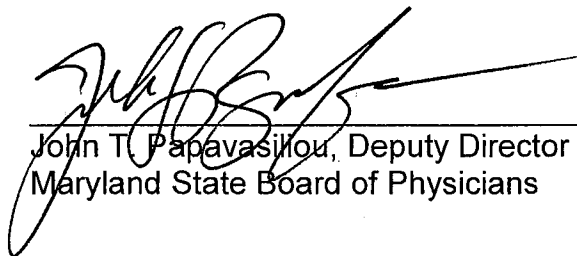
Based on the foregoing Findings of Fact and Conclusions of Law, it is this 5<sup>th</sup> day of November, 2010, by a majority of the quorum of the Board considering this case hereby:

**ORDERED** that the May 18, 2010 **Order of Summary Suspension** of Respondent's license is **terminated**, and it is further

**ORDERED** that Respondent's license to practice medicine in Maryland is permanently **REVOKED**, and it is further

**ORDERED** that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2009 Repl. Vol.)

11/5/10  
Date

  
John T. Papavasiliou, Deputy Director  
Maryland State Board of Physicians

<sup>6</sup> Sexual Impropriety of a health care practitioner with a patient or key third party.  
<sup>7</sup> Sexual Misconduct of a health care practitioner with a patient or key third party.  
<sup>8</sup> Sexual Violation of a health care practitioner with a patient or key third party.

## CONSENT

I, Joshua R. Mitchell, III, M.D., License No. D08782, by affixing my signature hereto, acknowledge that:

1. I have consulted with counsel, Thomas S. McElroy, Esquire, Law Offices of Seymour R. Goldstein, and knowingly and voluntarily elected to enter into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree to be bound by the foregoing Consent Order.
2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Health Occ. Code Ann. § 14-405 (2009 Repl. Vol.) and Md. State Gov't Code Ann §§ 10-201 *et seq.* (2009 Repl. Vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I am waiving those procedural and substantive protections.
4. I voluntarily enter into, and because of my advanced age and health, agree to abide by the terms set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a full evidentiary hearing, as set forth above, and any right

to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

10/27/10  
Date

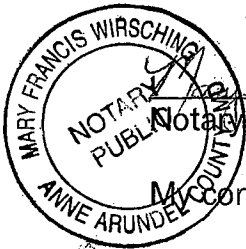
Joshua R. Mitchell, III  
Joshua R. Mitchell, III, M.D.  
Respondent

**NOTARY**

STATE OF MARYLAND  
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 27<sup>th</sup> day of October, 2010 before me, a Notary Public of the State and County aforesaid, personally appeared Joshua R. Mitchell, III, M.D, License number D09782, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



Francis Wirsching  
Notary Public

My commission expires: 7/25/11