

IN THE MATTER OF	*	BEFORE THE
DAVID A. GEIER	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
Unlicensed	*	Case Nos.: 2008-0022 & 2009-0318
* * * * *	*	* * * * *

FINAL DECISION AND ORDER

On May 16, 2011, the Maryland State Board of Physicians (the “Board”) charged David A. Geier with practicing medicine without a license. *See* Md. Code Ann., Health Occ. § 14-601. On December 15, 2011, an evidentiary hearing was held before an administrative law judge (“ALJ”) of the Office of Administrative Hearings (“OAH”). The same ALJ who presided over David Geier’s case also presided over two recent Board cases against David Geier’s father, Mark Geier, M.D. (“Dr. Mark Geier”). One of those proceedings concerned the summary suspension of Dr. Mark Geier’s medical license (“Dr. Mark Geier’s Summary Suspension Hearing”). In the other proceeding, the Board charged Dr. Mark Geier with violating the Maryland Medical Practice Act (“Dr. Mark Geier’s Charges Hearing”).

At David Geier’s OAH hearing, Linda Grossman, M.D., an expert witness for the State, testified. David Geier, on his own behalf, also testified at the hearing. In addition, transcripts of testimony from the following witnesses at Dr. Mark Geier’s Charges Hearing were admitted into evidence: Dr. Mark Geier; David Geier; Dr. Grossman; and Joshua Schafer, a Board investigator. Also, transcripts of testimony from the following witnesses from Dr. Mark Geier’s Summary Suspension Hearing were admitted into evidence: Parent A (the mother of Patient A) and the mothers of Patients B, and C (as those letters were used during David Geier’s hearing), and the mothers of Patients A, B, and F (as those letters were used during Dr. Mark Geier’s Summary

Suspension Hearing).¹ The documents that were admitted into evidence are listed in the ALJ's File Exhibit List.

On March 7, 2012, the Administrative Law Judge issued a proposed decision recommending that the Board dismiss the charges. The administrative prosecutor filed exceptions. On May 25, 2012, the Board held a hearing on the exceptions.

FINDINGS OF FACT

The following findings of fact were proven by a preponderance of the evidence²:

David Geier has never obtained a license to practice medicine nor has he held a license to practice any health occupation. In 2002, he obtained a Bachelor of Arts degree from the University of Maryland, Baltimore County. He has not attended any medical school.

David Geier has founded and is an executive of the following organizations: MedCon, Inc., which, according to David Geier's curriculum vitae, involves "Medical-Legal Consulting & Biochemical-Epidemiological Research"; the Institute of Chronic Illnesses, Inc., which is "dedicated to studying chronic diseases"; CoMeD, Inc., which advocates for those "adversely impacted by environmental and medicinal toxins"; and ASD Centers, LLC, which is involved in "the evaluation and treatment of more than 600 patients diagnosed with autism spectrum and other neurodevelopmental disorders."

In addition to his work on the organizations he founded, David Geier was "on staff" at his father's, Dr. Mark Geier's,³ clinical practice, named the Genetic Centers of America ("Genetic Centers"). Genetic Centers operates two medical clinics in Maryland. One clinic is located at 11125 Rockville Pike, Rockville, Maryland 20852, and is called Genetic Consultants of

¹ Different letters were used to identify the patients at the various hearings.

² Additional factual findings discussed in this decision were also proven by the preponderance of the evidence.

³ During the events at issue, Dr. Mark Geier was licensed to practice medicine in Maryland.

Maryland (“Genetic Consultants”).⁴ The other clinic is located at 20 Crossroads Drive, Owings Mills, Maryland 21117, and is called Genetic Center of Baltimore. In addition to Dr. Mark Geier, one other licensed physician worked at Genetic Centers. According to David Geier’s curriculum vitae: “Centers involved (*sic*) in evaluating and treat (*sic*) several hundred patients with autism, neurodevelopmental disorders, and other chronic diseases. In addition, these centers help to provide prenatal genetic care and adult predictive genetic care.” David Geier’s curriculum vitae does not describe his responsibilities at Genetic Centers.

PATIENT A

July 1, 2005

On July 1, 2005, Patient A, a male, was 10 years old and, with his mother, Parent A, met with Dr. Geier and David Geier at Genetic Consultants for a medical appointment. Patient A has autism, and the appointment was for the treatment of his autism. An Autism Treatment Evaluation Form (“ATEC”)⁵ was completed and scored. Parent A was not made aware of David Geier’s credentials. Dr. Mark Geier and David Geier took extensive notes of their interview with Parent A and Patient A. Genetic Consultants also ordered laboratory testing at Quest Diagnostics and LabCorp for Patient A. A two-page Patient Interview Form was typed. The Impression section of the form lists Unspecified Developmental Delay, Possible Childhood Heavy Metal Exposure (Mercury), and Possible Precocious Puberty. Dr. Mark Geier’s name is

⁴ According to Dr. Mark Geier, Genetic Consultants and Genetic Center are part of Genetic Centers of America.

⁵ The ATEC is intended to measure the severity of a patient’s autism, and, if taken on multiple occasions, it is intended to measure whether the treatment the patient is receiving is effective. The ATEC is divided into four sections: (1) Speech/Language/Communication, (2) Sociability, (3) Sensory/Cognitive Awareness, and (4) Health/Physical/Behavior. Each section has multiple statements and asks how accurate each statement is. For example, under Speech/Language/Communication, “Can use sentences with 4 or more words,” one circles whether that statement is: Not true, Somewhat True, or Very true. Each section is scored and given a percentage range. The section scores are then combined for a final percentage range.

typed at the end of the second page. Dr. Mark Geier did not sign or initial the Patient Interview Form. Parent A did not take her son to get the ordered laboratory testing and did not return to Genetic Consultants until approximately three years later.

May 19, 2008

Parent A scheduled another medical appointment for May 19, 2008, in order for her son and herself to meet with Dr. Mark Geier concerning her son's autism. On May 19, 2008, as scheduled, Parent A and Patient A arrived at Genetic Consultants in Rockville, Maryland. Patient A was 13 years old.

While in the waiting room, Parent A was given an ATEC. She filled out the form, answering all the questions. Parent A gave the completed ATEC form to a receptionist.

A receptionist took Parent A and Patient A to an office in the clinic. When Parent A and Patient A entered the office, David Geier was in the office seated behind a desk. Dr. Mark Geier was not in the room; he was busy with another patient. David Geier was the only person in the office when Parent A and Patient A entered. There were two chairs for the "doctor's side" of the desk. (Testimony of Dr. Mark Geier, December 9, 2011, Tr. 941.) Dr. Mark Geier generally sat in the front chair and David Geier sat in the side chair to take notes. *Id.* In this case, David Geier sat in the front chair, not in the side chair. Parent A and Patient A sat on the other side of the desk from David Geier. Parent A, Patient A, and David Geier met for approximately a half-hour in this office and had a discussion. Nobody at Genetic Consultants explained to Parent A what David Geier's professional credentials were. Parent A assumed that David Geier was licensed to practice medicine. David Geier then had a discussion with Parent A and Patient A.

Dr. Mark Geier was not involved in the discussion between David Geier and Parent A and Patient A. And Dr. Mark Geier did not enter the office while the discussion took place.⁶ The Board finds that Dr. Mark Geier did not speak to Parent A or Patient A on May 19, 2008.⁷ The ALJ also found that Dr. Mark Geier did not speak with Parent A or Patient A on May 19, 2008. (ALJ's Proposed Decision, Finding of Fact 44, at 11; ALJ's Proposed Decision, at 23-24.)

In the discussion in the office with Parent A and Patient A on May 19, 2008, David Geier first said: "Looking at [Patient A], he doesn't look like he's thirteen, he looks like he's sixteen." Then, noting that the patient was beginning to grow a mustache, David Geier said that the patient "looks like a typical high-testosterone kid."

David Geier then had an extensive discussion with Parent A about laboratory testing for Patient A.⁸ Their discussion centered on genetic testing. David Geier spoke to Parent A about laboratory testing for microdeletion, to determine whether the patient had a rare genetic disorder. David Geier also told Parent A about testing for the porphyrin autism marker. Parent A agreed that her son would be tested for an array of genetic testing, including agreeing to microdeletion and porphyrin tests, and testing for Fragile X, Angelman, and Rett syndromes, among others. The testing required blood samples from the patient, which would be taken by the laboratories

⁶ The Board is not adopting the ALJ's finding on whether Dr. Mark Geier entered the office during the discussion between Parent A and David Geier. The ALJ found that Dr. Mark Geier "periodically popped" into the room without being seen and without talking to the parent. (ALJ's Proposed Decision, Finding of Fact 44, at 11; ALJ's Proposed Decision, at 23-24). The Board does not accept that finding. It is highly doubtful that in a case where a parent and patient had an appointment with a physician, the physician would enter the room where the discussion of the patient's treatment was taking place without saying a word (including not even greeting the parent and patient) and without even being noticed by the parent.

⁷ Parent A testified that she did not speak to Dr. Mark Geier on May 19, 2008. Parent A said that she only "might have seen [Dr. Mark Geier] with the other couple and child walking by, but that was very fleeting."

⁸ Dr. Mark Geier claimed to determine the course of medical treatment for autism based upon the results of the laboratory testing. (Testimony of Dr. Mark Geier, Interview, November 6, 2007, at 32-33.)

performing the tests. David Geier told Parent A that he would have the orders for the laboratory testing mailed to her.

After the discussion in the office, David Geier, Parent A, and Patient A went into another room for abdominal and thyroid ultrasounds of the patient. The sonographer then entered the ultrasound room. The patient was not cooperative with the ultrasound. According to Parent A, “he was running around the room, he was even behind the equipment.” Before the ALJ, David Geier testified: “Specifically, in the sonogram room, that he was engaged in kicking behavior and so I tried to help hold his feet.”⁹ The ultrasounds were attempted, although no ultrasound photographs were taken due to Patient A’s behavior. Dr. Mark Geier was not in the ultrasound room. David Geier wrote the patient’s name in the abdominal ultrasound report and, in the date section, wrote the patient’s identification number. The section titled “Patient History/Reason for Ultrasound” was left blank. The sonographer checked boxes on the report indicating that Patient A’s kidneys, spleen, and gallbladder were normal. Dr. Mark Geier wrote on the abdominal ultrasound report: “Slightly limited exam due to non-cooperation from pt. MG [Dr. Mark Geier’s initials].” The sonographer did not sign, initial, or date the report. Concerning the thyroid ultrasound, the sonographer wrote: “Please note that this ultrasound was performed with a C5-2M transducer. This can only rule out gross abnormalities.” The sonographer also wrote measurements for the right and left lobes. Dr. Mark Geier initialed the thyroid ultrasound note. The sonographer did not sign or initial the report. The report is dated May 19, 2008. The sonographer’s name is not mentioned on either report. After the ultrasound, Parent A and Patient A did not return to the office where the earlier discussion took place that day.

⁹ Dr. Mark Geier testified that David Geier “occasionally” goes into the sonogram room to help control children, by holding the children’s legs, when they kick.

On or about May 19, 2008, David Geier scored the ATEC and wrote the scores on the ATEC form. David Geier did not date, sign, or initial the ATEC.

David Geier also wrote a Patient Interview Form report concerning the May 19, 2008, visit. The Board finds that the Patient Interview Form was written by David Geier on or about May 19, 2008.¹⁰ The Patient Interview Form is typed, three pages, and single-spaced and includes the following sections: Diagnosis, History, Present Consultation, Ultrasound Examination, Medications, Sexual Development, Psychological Examination, Impression, Plan, and a list of labs that should be ordered from LabCorp and Quest Diagnostics. The section titled Psychological Examination states:

A follow-up evaluation of [Patient A] was undertaken using the Autism Treatment Evaluation Checklist (ATEC) completed by [Patient A's] mother and evaluated by me.¹¹ The results indicate that [Patient A] continues to show significant (*sic*) overall development delays (overall score at present = 60-6[9]% vs overall score previously = 70-79%). He continues to have significant problems with his sociability and sensory/cognitive awareness skills. [Patient A] has serious problems with hyperactivity and stemming behaviors. In addition, [Patient A] suffers from significant sleep cycle problems and can be destructive, his or injuries (*sic*) self and others, and is anxious/fearful. It is apparent based upon examination of the DSM-IV criteria that [Patient A's] present symptoms are compatible with a diagnosis of pervasive developmental delay (*sic*) – not otherwise specific (*sic*) (PDD-NOS).

Under the Impression section, David Geier wrote: PDD-NOS, Sleep Problems (Insomnia), and Unspecified Metabolic Disorder.

¹⁰ The only date on the form (other than the patient's date of birth) is May 19, 2008, which refers to the date of the interview. It is possible that the form was written at a later date, but the form was not written after May 22, 2008. After May 22, 2008, the information in the form would have been outdated. The form refers to LabCorp tests that *should* be ordered. Those tests *were* ordered on May 22, 2008. Dr. Mark Geier testified that he did not know when it was typed.

¹¹ David Geier testified that he scored the ATEC. (State's Ex. 20, Tr., 12/15/2011, at 130.) Dr. Mark Geier testified that he suspected that David Geier scored the ATEC. (State's Ex. 19, Tr., 12/9/2011, at 943.)

The Patient Interview Form also lists four tests (with code numbers) that should be ordered from LabCorp: Androstane Diol Glucuronide, Androstenedione, Dehydroepiandrosterone (DHEA), and Testicular Function Profile II. The form also lists 22 tests that should be ordered from Quest:

1. Gene Alter, Postnatal, CGH
2. Fragile X DNA w/Chromosome, BLD
3. Rett Syndrome Mutation
4. Prader-Willi/Angelman Syndrome
5. Heavy Metals Group II, Blood
6. Heavy Metals, Complete, Urine
7. Zinc, RBC;
8. Copper, RBC
9. RBC Folate, B12 Folate
10. Porphyrins, Fractionated, Plasma
11. Porphyrins, Fract, Random Urine
12. Carnitine & AcylCarnanitine
13. Ammonia, Plasma
14. Lactic Acid, Plasma
15. Vitamin B6
16. Vitamin A (Retinol)
17. Vitamin D, 1,25-Di & 25-Hydroxy
18. Myelin IGG AB, IFA+
19. 22Chem W-eGFR, AMY, LIP, UA
20. Organic Acids, QT, UR, full
21. Amino Acid Analysis, LC-MS (P)
22. Estrogens, Fract, Serum.

Each test had a code number next to it. The Patient Interview Form also has Dr. Mark Geier's name – "Mark R. Geier, M.D., Ph.D., FABMG, FACE" – typed at the end of the report on page three. Dr. Mark Geier testified that he usually initials or signs the Patient Interview Form if someone shows it to him. Dr. Mark Geier did not sign, date, initial, or otherwise mark the May 19, 2008, Patient Interview Form.¹² David Geier is not mentioned by name on the

¹² In contrast, there are Patient Interview Forms signed by Dr. Mark Geier, such as Patient B's. (State's Ex. 8, at MG11077.)

form. David Geier, however, wrote and typed the Patient Interview Form without Dr. Geier's input or review.

Genetic Consultants billed the insurance company covering Patient A \$150 for a "psychiatric diag interview exam" for May 19, 2008. In addition, for May 19, 2008, Genetic Consultants billed the insurance company \$150 for an office consultation, \$225 for a neck ultrasound, and \$225 for an abdominal ultrasound. David Geier determined the billing for Genetic Consultants.

May 22, 2008

On May 22, 2008, David Geier completed an order form for laboratory testing for Patient A at LabCorp. (State's Ex. 7, at MG10865.) David Geier wrote at the top of the form: "Completed 5/22/2008 Dg [David Geier's initials]." The order was written on a LabCorp form. The number 53958831788 is printed several times on the order form. David Geier entered the code for insomnia under the diagnosis section. In the Physician's Signature space on this LabCorp form is a signature that reads "Dr Mark Geier."¹³ The Board agrees with the ALJ that the "D" in the "Dr" immediately preceding "Mark Geier" "is remarkably like the formation of the first letter in Respondent's [David Geier's] first name." (ALJ's Proposed Decision, at 17.) In other words, the handwriting of the "D" in "Dr" preceding "Mark Geier" has an uncanny resemblance to the distinctive "D" in David Geier's initials when David Geier initials a document. David Geier signed "Dr. Mark Geier" in the Physician's Signature section of the May 22, 2008, LabCorp order form.

¹³ It is possible to view the signature as "D Mark Geier," but upon very close inspection there appears to be a slight squiggle at the end of the D which the Board finds was intended to be an "r." Thus, the Board finds that the signature says "Dr Mark Geier" instead of "D Mark Geier."

The LabCorp order form requests four tests, which are the same four lab tests listed on the May 19, 2008, Patient Interview Form as tests that should be ordered from LabCorp. On May 22, 2008, Genetic Centers mailed the LabCorp order to Parent A. Genetic Centers' contact sheet states: "5-22-08 Mailed Lab Specimen 53958831788." No signature or initials are next to this entry. This entry indicates that Genetic Centers mailed the LabCorp order form to Parent A on May 22, 2008. Genetic Consultants billed the insurance company \$150 for a prolonged 1st hour evaluation and management for May 22, 2008. David Geier determined the billing. Shortly thereafter, Parent A received the LabCorp testing order in the mail.

David Geier, however, forgot to order the 22 lab tests from Quest.

June 17, 2008

On June 17, 2008, Parent A had a telephone conversation with David Geier. Parent A called Genetic Consultants because she only received the LabCorp order, which did not include the genetic testing that Parent A had discussed with David Geier during the visit on May 19, 2008 (the testing that David Geier forgot to order, i.e., the Quest testing). David Geier agreed to send the order for the missing testing. Parent A did not speak with Dr. Mark Geier. An entry on Genetic Centers' contact sheet, written and initialed by David Geier, states: "Dg [David Geier's initials] 2PM 6-17-08 Consultation with [Patient A's] mother re: lab testing for her son. Reviewed Lab scripts & testing procedures @ LabCorp vs Quest."

Genetic Consultants billed Patient A's insurance company \$150 for a prolonged 1st hour evaluation and management. David Geier determined the billing.

June 18, 2008

On June 18, 2008, as he had agreed to do the day before on the telephone with Parent A, David Geier typed in the order for the 22 tests for Quest which he had forgotten to order after the

May 19, 2008, visit. David Geier also registered the patient with Quest. Genetic Centers' contact sheet states: "Dg 9PM Registered & completed lab script for [Patient A] with Quest using Online 360 software." The Quest order form is dated "6/18/2008" and lists the same 22 tests and test codes listed on the May 19, 2008, Patient Interview Form for testing that should have been ordered from Quest. There is no signature line on the order form. The diagnoses David Geier listed on the order form are Insomnia, NOS and Metabolism Disorder NOS. The Quest testing order was mailed to Parent A. Parent A received the Quest order form shortly thereafter. Parent A and Genetic Centers had no further contact. Genetic Consultants maintained a copy of the Quest order form. Genetic Consultants billed Patient A's insurance company \$150 for a prolonged 1st hour evaluation and management. David Geier determined the billing.

July 11, 2008

On July 11, 2008, Parent A took Patient A to Quest for the 22 blood tests. Quest asked Parent A if she realized how many tubes of blood would be needed for all the blood. According to Parent A, she understood, after a discussion with Quest, that the 22 tests would involve an "insane amount of blood," and that one couldn't draw that much blood in one sitting. Parent A opted only for the testing that she considered appropriate. By July 23, 2008, Quest had completed the reports for the testing and sent the results to Genetic Consultants. Genetic Consultants maintained the Quest reports in its file for Patient A. Genetic Consultants did not attempt to schedule another appointment and did not take any further action in regard to Patient A. Parent A did not take her son to LabCorp for testing.

October 2, 2008

After taking her son to Quest for the laboratory testing, Parent A began to research David Geier and Dr. Mark Geier through the internet and learned that David Geier was not a physician. Parent A was also upset after receiving billing statements from Genetic Consultants, which contained billing inconsistent with the services provided. Parent A was also disappointed that there was no follow through by Genetic Consultants after the Quest laboratory testing results had been sent to Genetic Consultants. On October 2, 2008, Parent A filed a complaint with the Board concerning her interactions with David Geier and Genetic Consultants in 2008.

CREDIBILITY DETERMINATIONS

The ALJ determined that David Geier was more credible than Parent A. The Board rejects this credibility determination. After carefully reviewing the transcripts and the documents admitted into evidence, it is clear that David Geier's testimony was not reliable and that he was not a credible witness. Dr. Mark Geier's testimony from his Charges Hearing was also admitted into evidence. Dr. Mark Geier's testimony also was not reliable or credible. In addition to being misleading, evasive and implausible, the testimony of David Geier and Dr. Mark Geier contradicted each other and the documentary evidence. Often times, their testimony was self-contradictory. While at times noting obvious discrepancies in their testimony, the ALJ failed to adequately address those discrepancies. The ALJ also failed to adequately address the contradictions between David Geier's and Dr. Mark Geier's testimony, the contradictions between their testimony and the medical records, and their self-contradictory statements. Parent A's testimony, on the other hand, was much more consistent and aligned with the records in evidence.

In addition, the ALJ's negative credibility determination regarding Parent A in this case was based upon grounds that were different from the basis of her credibility determination that she previously made regarding Parent A concerning the same testimony, which was transcribed from Dr. Mark Geier's Summary Suspension Hearing. The same ALJ presided over the evidentiary hearing regarding Dr. Geier's Summary Suspension. In the ALJ's view, Parent A lacked credibility in that case because Parent A did not even notice a fourth person (the sonographer) in the ultrasound room. This observation by the ALJ was incorrect. Parent A had consistently maintained that there was a fourth person in the room. The administrative prosecutor pointed out that the basis of the ALJ's negative credibility determination was incorrect. After the administrative prosecutor demonstrated to the ALJ that the basis of the ALJ's previous credibility determination was incorrect, the ALJ then, in the instant case, found Parent A not credible again but for different reasons. However, the ALJ's new credibility finding is again belied by the record in this case. In sum, there are extremely strong reasons for rejecting the ALJ's credibility determinations.

David Geier

The reliability of David Geier's testimony before the ALJ was diminished immediately. He began his testimony discussing his curriculum vitae. On direct examination, he was asked whether his curriculum vitae was up-to-date. David Geier responded: "Pretty much, yes." He then explained that after looking at it, that there were "probably some additional publications, peer review publications." On cross examination, however, he was asked about the following statement on his curriculum vitae: "2009-Present Appointed by Maryland Governor Martin O'Malley to serve on the Maryland Commission on Autism (3 year-term)." The question was whether he was presently on the Maryland Commission on Autism. He responded: "No, I am

not.” David Geier said that he was “asked to stop serving.” On redirect he was asked whether he agreed to stop serving, but he evaded the question: “Well, that was the end of my services.”

On direct examination, David Geier was asked whether he assisted his father at his father’s clinical practice. David Geier said that he did and then described what that entailed:

It can take a variety of different ways of assistance; it can be things like calling in prescriptions for hi[m]; it can be acting as a note-taker for him for patients.

It can also be administrative in nature, meaning billing, helping to put charts together, that kind of thing.

He did not mention that he assisted his father by meeting with the patients and parents alone and discussing the course of treatment with the parents when Dr. Mark Geier was busy. He also failed to mention that he scored ATECs, resolved blood testing order problems, and typed medical documents. He clearly minimized his role at the clinic.

On January 19, 2010, David Geier was interviewed under oath by Joshua Schafer, a Board investigator. It is evident from the interview that David Geier was not a credible witness:

Q. [Mr. Schafer] As part of your duties and responsibilities at the Genetic Centers of America, do you meet with patients there?

A. [David Geier] No.

Q. You don’t meet with patients at the Rockville Pike location?

A. What do you mean by “meet with patients?” I’m not trying to be evasive, but what do you mean by “meet with patients?”

Q. Have face-to-face interaction with patients.

A. Can I answer in my own words, or you want a “yes” or “no” answer to that question?

Q. Well, I will ask it in a yes or no way. Do you have face-to-face interaction with minor patients and their parents at the Rockville Pike location?

A. I would like to answer in my own words, if I could.

Q. That’s the only words that I’m interested in.

A. I am sometimes an administrative assistant in Rockville. So in the sense of patients coming through the door, there are patients that come through the door. I wouldn’t -- you know, that’s how I see them in the sense of they come through and they’re seen in the office. That doesn’t mean that I conducted a face-to-face meeting. I wouldn’t describe it in the words that you are saying. [State’s Exhibit 6, Tr. 7-8.]

This is certainly contradicted by his own testimony that he “tried to help hold [Patient A’s] feet” and Dr. Mark Geier’s testimony that David Geier occasionally controls the legs of patients during ultrasounds. And it is, of course, contradicted by his own testimony and Dr. Mark Geier’s testimony that he met with Parent A and Patient A.

During the hearing before the ALJ, David Geier was asked about Parent A’s and Patient A’s visit to the clinic on May 19, 2008, and he testified:

Yes. I remember that [Parent A] came to our office. This was a day that I went with my father to the practice. They came in. They were in the office. They were eventually seen in an office room there. And in the office room I was *present*, as well as my father, who came in and out.

The patient also had a series of procedures performed while in the office, referring to the sonograms.

It is clear that David Geier reduced his role in the visit. Remarkably, at no point in his testimony does David Geier acknowledge speaking to Parent A on May 19, 2008. He only goes so far as to say he was “present.” The Patient Interview Form, however, does address the discussion that David Geier had with Parent A on May 19, 2008, regarding laboratory testing:

Reviewed with mother laboratory testing presently being employed by our office to help evaluate children diagnosed with autism spectrum disorders. It was decided following an informed consent decision that new laboratory testing would be ordered for [Patient A] through LabCorp for hormone testing (androgens) and the other tests to be ordered would be conducted through Quest Diagnostics.

The review of the laboratory testing, the informed consent, and the testing that would be conducted by LabCorp and Quest had to have taken place in a conversation between David Geier and Parent A, because Parent A did not talk with Dr. Mark Geier that day. As the ALJ found, Dr. Mark Geier did not speak to Parent A: “. . . [Dr. Mark Geier] did not address [David Geier], Parent A, or Patient A” (ALJ’s Proposed Decision, Finding of Fact 44, at 11.) The Patient Interview Form, which describes a significant discussion, is consistent with the testimony of Parent A. David Geier purposely obscured his role during the appointment. There is no doubt

that David Geier had a discussion with Parent A on May 19, 2008. David Geier's failure to acknowledge that he spoke with Parent A was meant to mislead.

David Geier's testimony before the ALJ became even more unreliable. He did not deny, but claimed no memory of significant factual issues related to whether he was practicing medicine or not. On direct examination, David Geier was asked by his attorney whether he "prepared" the three-page, single-spaced Patient Interview Form (State's Ex. 7, at MG10891-93) pertaining to Patient A's visit to the clinic on May 19, 2008. Although he was the one who interviewed Parent A, David Geier testified that he could not recall. The Board finds this implausible. When David Geier was asked whether he recalled making the comment that "[Patient A] looked like a typical high-testosterone kid," David Geier testified that he did not know.¹⁴

The ALJ wrote that she doubted David Geier's testimony that Dr. Geier spent a significant amount of time with Parent A and Patient A on May 19, 2008. The ALJ appears to have nevertheless made a positive credibility finding concerning David Geier based almost entirely on his demeanor. The ALJ, thus, failed to consider whether his testimony was consistent with the rest of the evidence. A witness's demeanor while testifying is significant, and the Board grants the ALJ's demeanor-based credibility determinations substantial deference, but the Board cannot rely upon the ALJ's positive demeanor-based credibility determination when the medical records and the transcripts show decisively that the testimony was not credible.

On June 17, 2008, Parent A called Genetic Centers because David Geier had failed to send her the order for the testing at Quest. The next day, June 18, 2008, David Geier wrote the

¹⁴ The ALJ was "impressed" with David Geier's "candid admission" that he did not know whether he said that Parent A's son "looked like a high-testosterone kid." It is certainly possible that David Geier did not remember making that statement to Parent A. But, if that were the case, this would have been a rare example of David Geier's candor.

order for the Quest testing. The testing that was ordered on June 18, 2008, was the exact same testing that he had determined, on May 19, 2008, was going to be ordered. Those tests are listed, with their codes, on the May 19, 2008, Patient Interview Form. On June 18, 2008, David Geier simply copied the tests and codes listed on the Patient Interview Form onto the Quest order form. The tests are even listed in the same order. But Genetic Consultants billed \$150 for one hour of a prolonged 1st Hour Evaluation and Management on both June 17, 2008, and June 18, 2008. David Geier testified that a physician must perform the prolonged first-hour evaluation and management in order to bill for that service.

On cross examination, David Geier was asked to testify as to what occurred on June 17 and 18, 2008, and to explain the billing for those days. David Geier's testimony is directly contradicted by the following medical records: the May 19, 2008, Patient Interview Form; the May 22, 2008, LabCorp order; and the June 18, 2008, Quest order.

David Geier testified on what the billing for July 17, 2008, was for:

A. The billing is indicative of the fact that Dr. Geier spent a significant amount of time reviewing the laboratory tests that were ordered for this patient and discussing with me and others about what this patient should have in evaluating LabCorp versus Quest.

* * *

A. This was a discussion with Dr. Geier and myself. The billing would reflect that we were consulting about the issue of laboratory testing for this patient. I guess it's Patient A.

David Geier was then asked whether the discussion concerned at which facilities (LabCorp or Quest) the tests should be conducted. David Geier said "Yes." But it is clear from the medical records that the decisions as to where the testing would take place and what tests were to be performed were made a month earlier and documented as such in the Patient Interview Form. Again, the order for the testing at LabCorp had already been written, sent, and

received weeks earlier. Dr. Mark Geier's involvement on June 17, 2008, would thus have been entirely unnecessary. David Geier was then asked about the contradiction – that the May 19, 2008, Patient Interview Form already contained the testing information that he testified was extensively labored over on June 17, 2008. He could not reconcile the contradiction nor did he even attempt to do so. (David Geier's Testimony, 12/15/2011, Tr. 126-27.)

David Geier then testified about the bill submitted for Dr. Geier's time on June 18, 2008. David Geier testified that Dr. Mark Geier's time was billed for his (David Geier's) typing the Quest registration and orders on the computer. According to David Geier, Dr. Mark Geier "would have been overseeing and ensuring what I was doing was accurate and appropriate." This testimony, however, was contradicted by Dr. Mark Geier, who said: "I don't have anything to do with the registration." And Dr. Mark Geier did not testify that he oversaw David Geier typing the Quest laboratory order. This testimony by David Geier concerning what occurred on June 17 and 18, 2008, was false.

Dr. Mark Geier's testimony concerning the events of June 17 and 18, 2008, was equally false. Dr. Mark Geier testified that on June 17, 2008, he (Dr. Mark Geier) did a lot of work figuring out the Quest *lab codes*. But this is inconsistent with David Geier's testimony and does not make any sense, because the Quest lab codes were already figured out and written on the May 19, 2008, Patient Interview Form. Dr. Mark Geier then tried to explain the \$150 bill Genetic Consultants submitted for June 18, 2008. Dr. Mark Geier testified that Parent A called back on June 18, 2008, and he had to handle an unspecified further request from her. There is nothing to corroborate this testimony. Parent A did not call back on July 18, 2008. Dr. Mark Geier also testified that he "helped with both of those [the Quest and LabCorp orders] to get them straight." But the LabCorp order was already completed and sent on May 22, 2008.

What did occur was that, on May 22, 2008, David Geier ordered the LabCorp testing but forgot to write the Quest testing order. The LabCorp order was then sent to Parent A. Parent A called Genetic Centers on June 17, 2008, and asked David Geier to send her the order for the missing tests (the Quest order). David Geier then billed for this telephone conversation and perhaps for reviewing the medical file to verify that the Quest tests had not been ordered. On June 18, 2008, David Geier ordered the Quest testing by copying the tests and codes listed on the May 19, 2008, Patient Interview Form. David Geier also registered the patient with Quest. The actual work for which the bill was submitted to the insurance company for June 18, 2008, was simply the typing of the Quest order and registering the patient. Dr. Mark Geier was not involved. Parent A's testimony and the medical records that Genetic Consultants maintained and which were admitted into evidence support a finding that these events occurred. David Geier's and Dr. Mark Geier's versions of events conflict with each other and with the documents in evidence. The reasons for rejecting the ALJ's demeanor-based credibility determination concerning David Geier are both strong and manifold.

Parent A

The ALJ found that Parent A was not credible in the Dr. Mark Geier Summary Suspension Hearing. Parent A did not present live testimony in David Geier's case. The transcript of Parent A's testimony from Dr. Mark Geier's Summary Suspension Hearing was admitted into evidence instead.

In her proposed decision in David Geier's case, the ALJ quoted her credibility finding regarding Parent A from Dr. Mark Geier's Summary Suspension Hearing, which, in relevant part, reads:

The single parent witness I did not find to be credible was Parent A The reliability of Parent A's recollections disintegrated on cross-examination when

she admitted that there might have been someone else in the treating room, and when the “diagnosis” was revealed to be little more than an observation.

At the David Geier case, however, the administrative prosecutor pointed out to the ALJ that the ALJ’s finding concerning Parent A’s “admission” that “someone else” (a fourth person, the sonographer) had been in the “treating room” (ultrasound room) was incorrect. Parent A, in fact, did not “admit” on cross examination that there might have been someone else in the room, because Parent A had said all along that there were four people in the room. Parent A’s testimony had been consistent in her Complaint, in the Board interview, and in her testimony before the ALJ. The basis for the ALJ’s credibility finding in the ALJ’s Proposed Decision in Dr. Mark Geier’s Summary Suspension Hearing was, therefore, unfounded.

But, in David Geier’s case, the ALJ again found that Parent A’s recollection disintegrated on cross examination. But the ALJ changed the point at which she remembered Parent A’s recollection disintegrating. This time the ALJ found that Parent A’s recollection did not disintegrate when Parent A “admitted” that there might have been “someone else” in the treating room. Instead, Parent A’s recollection disintegrated this time, according to the ALJ, when Parent A realized that the LabCorp order stated “Dr Mark Geier” under Physician’s Signature. Parent A had previously thought that the handwriting in the Physician’s Signature section on the LabCorp order said “David Geier.” However, Parent A’s recollection could not have disintegrated at this point either because the question did not call for a recollection, it called for her opinion of what the handwriting said, and the very next area that Parent A testified about was the number of people in the ultrasound room, which the ALJ now acknowledges was accurate and consistent with the parent’s previous statements. The Board finds that Parent A’s testimony was credible. The Board rejects the ALJ’s finding that parent A’s recollection disintegrated on cross examination. The signature on the LabCorp form is significant, though.

The Board finds that the “Dr Mark Geier” written as the physician’s signature on the May 22, 2008, LabCorp order was written by David Geier, not by Dr. Mark Geier. The ALJ found that the handwritten “D” in the “Dr Mark Geier” is “remarkably like” the “D” that David Geier writes when he initials a document.¹⁵ The Board agrees. The “D” in “Dr Mark Geier” is extraordinarily similar to David Geier’s distinctive “D” when he initials a document. The “D” is also very different from the “D” in “Dr.” that Dr. Mark Geier uses when Dr. Mark Geier signs documents. In addition, it does not appear from Dr. Mark Geier’s testimony that he was aware of *when* the LabCorp order was issued, nor does it appear that he was even aware that the May 22, 2008, LabCorp order existed.

Dr. Mark Geier’s testimony on the laboratory testing orders was so vague, confusing, and inaccurate that there is no indication that he had any knowledge of or involvement in ordering the laboratory tests. For example, when he was asked about the billing for May 22, 2008, exemplified by the contact note for May 22, 2008, (State’s Ex. 7, at MG10859) and the billing entry for May 22, 2008 (State’s Ex. 7, at MG10858), Dr. Geier had no idea what this contact note was for, nor what the billing entry was for. (State’s Ex. 19, Tr., 12/9/2011, at 950-51). Both documents referred to the May 22, 2008, LabCorp order. (State’s Ex. 7, MG10865).¹⁶ The billing document, the contact note, and the LabCorp order are the only medical records for Patient A with respect to May 22, 2008. These documents indicate that the only things that occurred on May 22, 2008, were the completion, the signing, and the sending of the LabCorp order. Dr. Mark Geier, however, did not know what occurred on May 22, 2008, other than what was written on the contact note. Dr. Mark Geier’s lack of knowledge of the May 22, 2008,

¹⁵ The ALJ, however, does not appear to have considered the obvious issue of whether David Geier wrote the “Dr Mark Geier.”

¹⁶ The May 22, 2008, LabCorp order and the May 22, 2008, contact note both have the same transaction number: 53958831788.

LabCorp order is another indicator that he did not sign the document. And in Dr. Mark Geier's testimony, he (Dr. Mark Geier) did not claim that he (Dr. Mark Geier) signed or authorized or even knew about the LabCorp order. Dr. Mark Geier was not involved in the LabCorp order. Instead, David Geier chose the LabCorp tests, David Geier obtained informed consent from Parent A for those tests, David Geier completed the LabCorp order form, David Geier signed Dr. Mark Geier's name to the LabCorp order, and then David Geier determined what should be billed for May 22, 2008. There is no reliable evidence to indicate otherwise.

The State argued in its Exceptions that the Board should not adopt the ALJ's credibility determinations. David Geier responded to the State's Exceptions. David Geier argued that the ALJ made demeanor-based credibility determinations and that the Board must adopt the ALJ's demeanor-based credibility findings or the "Board's decision would be reversed." (David Geier's Response to State Exceptions, at 5.) For three reasons, the Board does not accept David Geier's analysis. First, David Geier does not accurately describe the relevant case law. The relevant case law does not require that agencies accept administrative law judges' demeanor-based credibility determinations. The relevant case law instead allows an agency to reject an ALJ's demeanor-based credibility determination if the agency "gives strong reasons for doing so." *Anderson v. Department of Public Safety and Correctional Services*, 330 Md. 187, 217 (1993), quoting 1 Charles H. Koch, Jr., *Administrative Law and Practice* (1995), § 6.73, p. 520; *Maryland Board of Physicians v. Elliott*, 170 Md. App. 369, 385 (2006); *Gabaldoni v. Board of Physician Quality Assurance*, 141 Md. App. 259, 261, 263 (2001); *Shrieves v. Department of Health and Mental Hygiene*, 100 Md. App. 283, 302 (1994). Second, David Geier asserts that the ALJ made several crucial demeanor-based credibility determinations in regard to Parent A. It is, however, not clear that the ALJ's credibility determinations regarding Parent A were

“demeanor-based credibility determinations” as those determinations are construed under the relevant case law. Third, if the ALJ did make demeanor-based credibility determinations regarding Parent A, those should be rejected because only the written transcript of Parent A’s testimony was admitted into evidence. Parent A did not testify in person or on video during David Geier’s hearing, and the ALJ did not admit into evidence a copy of the video recording of Parent A’s testimony. The demeanor of Parent A while testifying should not have been considered at all, since it was not part of this proceeding.¹⁷

It is not clear that the ALJ made any “demeanor-based credibility determinations” regarding Parent A as those determinations are recognized under the relevant case law. David Geier listed nine examples of what he asserts are demeanor-based credibility determinations made by the ALJ concerning Parent A. The examples he listed are that Parent A: (1) was “outraged,” (2) was “angry,” (3) disintegrated on cross examination, (4) had an “unconscious leaning” against David Geier, (5) added testimony in a “self-designed fabrication,” (6) was “clearly distracted,” (7) was frustrated and embarrassed by her son’s behavior, (8) had an “unusual crusader-like tone,” and (9) testified in a voice that demonstrated puzzled frustration that her insurance company failed to take these claims seriously. These examples, however, are not “demeanor-based credibility determinations.”

“Demeanor-based credibility determinations” pertain to the demeanor of the witness *while* the witness testifies. *Elliott*, 170 Md. App. at 388. Most of the examples offered by David Geier pertain instead to Parent A’s demeanor at times other than while she was testifying. For example, according to the ALJ, Parent A was “clearly distracted.” But, according to the ALJ,

¹⁷ The State offered to present the recording of the videoconference testimony of Parent A from Dr. Mark Geier’s Summary Suspension Hearing, but the ALJ rejected the recording. The ALJ instead only admitted the written transcript of Parent A’s testimony. (Tr., 12/7/2011, at 6.)

Parent A was “clearly distracted” “*during this visit.*” “This visit” was the visit on May 19, 2008, to Genetic Consultants, thus, Parent A was not “clearly distracted” while testifying. Likewise, the ALJ found that Parent A’s emotions of “frustration and embarrassment” diminished Parent A’s ability to be a keen observer. But, again, Parent A’s emotions of “frustration and embarrassment” occurred at Genetic Consultants, not while testifying. The ALJ found that Parent A was “outraged” and “angry.” Parent A was no doubt outraged and angry upon seeing a copy of the bill Genetic Centers submitted to the insurance company. But the ALJ did not find that Parent A was “outraged” and “angry” while testifying. In fact, the ALJ found that “Parent A’s Complaint to the Board was initiated, in large part, because of her outrage over the bills sent to her insurance company.” The outrage, thus, was present, according to the ALJ, when the Complaint was *initiated*. If the ALJ meant that Parent A was “outraged” and “angry” while testifying, the ALJ could have at least set forth her observations on how Parent A manifested her outrage and anger, such as whether Parent A raised her voice, had a red face, or was shaking with anger. But it does not appear that this is what the ALJ meant. Similarly, the ALJ found an “unusual ‘crusader-like’ tone” to Parent A’s written complaint. Parent A’s written complaint is dated October 2, 2008. The ALJ did not find that Parent A had an “unusual crusader-like tone” while she testified on June 17, 2011. The ALJ’s findings, described above, are not entitled to the deference *Anderson, Elliott, Gabaldoni, and Shrieves* reserve for “demeanor-based credibility determinations.”

The ALJ’s “unconscious leaning” finding is not a valid “demeanor-based credibility finding” in any respect. The ALJ found that Parent A’s “unconscious leaning” against David Geier caused her to “translate” the signature of “Dr Mark Geier” written under Physician’s Signature on the May 22, 2008, LabCorp form to “David Geier.” But when Parent A was asked

to examine the signature during the evidentiary hearing before the ALJ, Parent A said that it said Mark Geier. Thus, Parent A's "unconscious leaning" did not diminish the accuracy of her testimony before the ALJ, because the handwriting at issue does say Mark Geier.

Next, the ALJ's finding that Parent A included in her testimony a "self-designed fabrication" does not even involve demeanor. But, more significantly, the testimony that the ALJ inferred was a "self-designed fabrication" should not have been interpreted as such. The ALJ found that Parent A testified falsely that she (Parent A) had asked David Geier whether he was issuing a "diagnosis" during their discussion in the office on May 19, 2008. But Parent A did *not* testify that she asked David Geier whether he was issuing a "diagnosis." After Parent A testified that David Geier said that her son looked "like a high-testosterone kid," she was then asked by the administrative prosecutor whether David Geier mentioned any diagnosis. Parent A responded that she thought that he had stated a diagnosis, namely "high- testosterone." The transcript reads:

- A. Okay. We went into the office, and one of the first things I recall was David Geier saying that my son was like a high testosterone kid right off the bat. Just looking at him, he felt that my son looked a lot older than he was. And I – thought it was curious that he thought that, that he looked like he was about age 16.
- Q At that time did he mention any diagnosis?
- A I'm sorry, what?
- Q. Did Mr. David Geier mention any medical condition or diagnosis related to your son?
- A. Well, he though[t] he was a typical high-testosterone kid –
- Q. Um-hum.
- A. – so I did say, "A – diagnosis, high-testosterone levels?" Other than that, not really.

Parent A's testimony was not meant to convey that she *asked* David Geier whether *he* was "issuing" a "diagnosis." For that to be unambiguously the case, the word "say" would have been "asked." Parent A did not even say that she said this *to David Geier*. Thus, the ALJ

wrongly interpreted Parent A's testimony. Parent A's testimony was "so I did say a diagnosis" (punctuation of transcript omitted); it was not "[I] asked [David Geier] if he was issuing a 'diagnosis.'" (See ALJ's Proposed Decision, at 18). And if Parent A were fabricating her testimony, it seems more likely that she would have testified that David Geier, and not herself, used the word "diagnosis." Parent A was simply confused by the administrative prosecutor's question and tried to convey that she considered "high testosterone levels" to be a diagnosis and thus had already answered the administrative prosecutor's question. The Board does not agree with and does not adopt the ALJ's inference that this testimony was a "designed fabrication."

The final two examples are closer to "demeanor-based credibility determinations," because they at least seem to be related to demeanor-type findings of Parent A while she was testifying. The first of these, the purported disintegration of Parent A's recollection, was discussed above, where the Board has found that the ALJ's second version of Parent A's "disintegration" was, as was the ALJ's first version, not supported by the transcript. But, more to the point at hand, if this did constitute a "demeanor-based credibility determination," it was improper because Parent A's demeanor while testifying should not have been considered: only the written transcript of Parent A's testimony from Dr. Mark Geier's summary suspension hearing was entered into evidence. Since the videoconference recording was not admitted into evidence in David Geier's hearing, and only the transcript of Parent A's testimony was, no demeanor-based credibility determination of Parent A should have been made by the ALJ in David Geier's case.

David Geier lastly points to the ALJ's comment that "Parent A's voice in the Summary Suspension Hearing demonstrated puzzled frustration that her insurance company failed to take these claims seriously." The ALJ's reference to the parent's voice does seem to pertain to Parent

A's demeanor while she testified at the hearing. Parent A was probably frustrated and puzzled by the insurance company's lack of interest in her complaint. But this does not suggest that her testimony concerning the insurance company's lack of interest or any other part of the parent's testimony was false. There was no evidence to suggest that the insurance company was interested in her complaint.

The Board accepts the State's exception concerning Parent A's credibility, thus, the Board rejects the ALJ's credibility determination that Parent A was less credible than David Geier. The Board finds that Parent A was a credible witness.

PRACTICING MEDICINE WITHOUT A LICENSE

Relevant Legal Authority

Section 14-601 of the Health Occupations Article states:

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice medicine in this State unless licensed by the Board.

Section 14-101(*l*) of the Health Occupations Article (2007 Supp.)¹⁸ reads, in relevant part:

(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 or supposed ailment of an individual:

- 1. By physical, mental, emotional, or other process that has been exercised or invoked by the practitioner, the patient, or both; or
- 2. By appliance, test, drug, operation, or treatment;

¹⁸ Effective October 1, 2010, the definition of "Practice medicine" was moved without a change to the substance of the definition from § 14-101(*l*) to § 14-101(n) of the Health Occupations Article.

COMAR 10.32.12.04 provides, in relevant part:

A. A physician may not delegate to an assistant technical acts which are exclusively limited to any individual required to be licensed, certified, registered, or otherwise recognized pursuant to any provision of the Health Occupations Article and the Education Article, Annotated Code of Maryland.

B. A physician may delegate technical acts consistent with national standards in the medical community and the approved policies and procedures of the sites for the delivery of health services in the following categories:

* * *

(2) Nonsurgical technical acts while the assistant is under the physician's direct supervision or on-site supervision if the assistant performs the act in accordance with procedures of the site.

* * *

D. At sites not included in Health-General Article, §§19-114 and 19-3B-01(b), Annotated Code of Maryland, when providing the following specified levels of supervision, a physician may delegate to an assistant technical acts which include but are not limited to:

(1) Without on-site supervision:

- (a) Patient preparation for physician examination;
- (b) Patient history interview;
- (c) Collecting and processing specimens, such as performing phlebotomy and inoculating culture media;
- (d) Preparation of specimens for selected tests including:
 - (i) Pregnancy tests,
 - (ii) Dipstick and microscopic urinalysis, and
 - (iii) Microbiology (rapid streptococcal testing and throat cultures);
- (e) Laboratory tests that the physician is satisfied the assistant is qualified to perform under State and CLIA regulations;
- (f) Clinical tests such as:
 - (i) Application of tuberculin skin tests,
 - (ii) Electrocardiography,
 - (iii) Administering basic pulmonary function tests; and
 - (iv) Visual field tests;
- (g) Transmitting prescriptions to a pharmacy;
- (h) Providing sample packets of medication, selected by a physician who is physically present at the time of selection, to patients as directed by the delegating physician and in conformance with Health Occupations Article, §12-102(a), (d), and (f), Annotated Code of Maryland; and
- (i) Preparing and administering oral drugs;

(2) With on-site supervision:

- (a) Preparing and administering injections limited to intradermal, subcutaneous, and intramuscular (deltoid, gluteal, vastus lateralis) to include small amounts of local anesthetics;
- (b) Establishing a peripheral intravenous line; and

(c) Injecting fluorescein-like dyes for retinal angiography; and
(3) With direct supervision, injecting intravenous drugs or contrast material.

E. A physician may not delegate to an assistant acts which include but are not limited to:

- (1) Conducting physical examinations;
- (2) Administering any form of anesthetic agent or agent of conscious sedation other than topical anesthetics or small amounts of local anesthetics;
- (3) Initiating independently any form of treatment, exclusive of cardiopulmonary resuscitation;
- (4) Dispensing medications;
- (5) Giving medical advice without the consult of a physician; and
- (6) Providing physical therapy.

Diagnosis

The May 19, 2008, Patient Interview Form contains the following impression of Patient A: “pervasive development delay (*sic*), not otherwise specific (*sic*)”; “Sleep Problems (Insomnia)”; and “Unspecific Metabolic Disorder.” The impressions were different from the those from July 1, 2005, which listed Unspecified Developmental Delay, Possible Childhood Heavy Metal Exposure (Mercury), and Possible Precocious Puberty.

The diagnosis of “pervasive developmental delay, not otherwise specific” or “PDD-NOS” is written in the Psychological Examination and Impression sections of the May 19, 2008, Patient Interview Form. The Board finds that David Geier made this diagnosis, not Dr. Mark Geier.

In 2008, Patient A was almost exclusively handled by David Geier. It is undisputed that David Geier was present for the entire discussion with Parent A and Patient A in the clinic’s office; scored the ATEC; was present during the attempted ultrasounds; wrote the patient’s name and identification number on the abdominal ultrasound report; completed the LabCorp order form on May 22, 2008; spoke to Parent A on the telephone on June 17, 2008; ordered the Quest testing; and registered Patient A at Quest. In contrast, the only undisputed acts that Dr. Mark

Geier performed in 2008 with regard to Patient A were to write on the abdominal ultrasound report that the results were slightly limited, initial this note, and initial the thyroid ultrasound report.

David Geier also did not deny that he prepared the Patient Interview Form. The Board finds that David Geier wrote the Patient Interview Form. Dr. Mark Geier's name is typed at the end of the form, but Dr. Mark Geier did not sign or initial the form. And Dr. Mark Geier testified that he usually initials or signs the Patient Interview Form if someone shows it to him. Thus, Dr. Mark Geier neither prepared nor reviewed the Patient Interview Form.

The Psychological Examination section in the Patient Interview Form states that the ATEC was completed by Patient A's mother and "evaluated by me." David Geier testified that he (David Geier), not Dr. Mark Geier, scored the ATEC. The Board is aware that scoring may be different from evaluating, but even if the writer of this form meant scoring and evaluating to be different, the scoring was certainly part of an evaluation of the ATEC. Thus, the fact that David Geier, who scored the ATEC, is not referenced at all, indicates that, even if one accepted the Geier's version of events, the Psychological Examination section is misleading. And the fact that Dr. Mark Geier testified that he did not even know who scored the ATEC suggests that he (Dr. Mark Geier) was not involved in the evaluation.

The Psychological Examination section ultimately states: "It is apparent based upon examination of the DSM-IV criteria that [Patient A's] present symptoms are compatible with a diagnosis of pervasive developmental delay (sic) – not otherwise specific (sic) (PDD-NOS)." This diagnosis was made by David Geier and was not reviewed by Dr. Mark Geier. The DSM-IV criteria for Pervasive Developmental Disorders were filed in Patient A's medical record at

Genetic Consultants. The DSM-IV criteria for 299.80 Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS) states:

This category should be used when there is a *severe and pervasive impairment* in the development of reciprocal social interaction or verbal and nonverbal communication skills, or when stereotyped behavior, interests, and activities are present, *but the criteria are not met for a specific pervasive developmental disorder*, schizophrenia, schizotypal personality disorder, or avoidant personality disorder. For example, this category includes “atypical autism” – presentations that do not meet the criteria for autistic disorder because of late age of onset, atypical symptomatology, or subthreshold symptomatology, or all of these.

(State’s Exhibit 7, at MG10898) (emphasis added).

At his summary suspension hearing, Dr. Mark Geier was asked about the diagnoses listed on the 2008 Patient Interview Form. He then read the diagnoses listed on the form, which are “PDD-NOS, sleep problems, and unspecified metabolic disorder.” Dr. Geier was then asked why the diagnoses were different from 2005. Dr. Geier testified:

-- the child was older, and second of all, *it became obvious that the child had autism*. And PDD-NOS is, as a tentative diagnosis, just means sort of *medium*. It’s a -- it means that the child is -- it has language and is not banging his head against the wall, not full-blown autism, but not mild. It’s a --

* * *

-- working diagnosis. And sleep problem, I think she told us about at the time.

Dr. Mark Geier’s testimony gives the Board no confidence that he diagnosed Patient A in 2008. His testimony amounts to medical imprudence in the Board’s opinion. His testimony contradicts itself and the DSM-IV criteria, which the diagnosis PPD-NOS was purportedly based upon.

Dr. Mark Geier testified at first that it was “obvious that the child had autism.” If a patient has autism, however, it is inappropriate under the DSM-IV criteria to diagnose PPD-NOS. *See* States’ Exhibit 7, at MG10898. The diagnosis PPD-NOS is reserved for those conditions which do not meet the criteria for a specific pervasive developmental disorder. *Id.* Autism is a specific pervasive developmental disorder. *See* Autistic Disorder - 299.00, State’s

Exhibit 7, at MG10897. A patient who meets the criteria for autism is thus not properly diagnosed with PPD-NOS. And, in contrast to Dr. Mark Geier's testimony, the DSM criteria does not consider PPD-NOS "sort of medium"; the DSM-IV criteria instead states that PPD-NOS is a "severe and pervasive impairment." Dr. Mr. Geier's explanations for why this patient with autism was diagnosed with PPD-NOS were inconsistent and medically unintelligible to the Board.

Additionally, the correct name of the disorder is not "pervasive developmental delay – not otherwise specific." It is pervasive developmental *disorder*, not otherwise *specified*. It is highly unlikely that a licensed physician specializing in the field of pervasive developmental disorders would not know the correct name for the disorder.

And Dr. Mark Geier's attempts at explaining the sleep problems (insomnia) and unspecified metabolic disorder were just as unconvincing. The diagnoses on the 2008 Patient Interview Form were made by David Geier. By diagnosing Patient A, David Geier practiced medicine without a license. *See* Health Occ. § 14-404(l)(1)(i) (2007. Supp.); Health Occ. § 14-601.

On May 22, 2008, David Geier entered the diagnostic code for insomnia in the diagnosis section of the LabCorp testing order. On June 18, 2008, David Geier completed the Quest testing order and provided as the diagnosis codes his diagnoses of Insomnia, NOS and Metabolism Disorder NOS. He was practicing medicine without a license in ordering the lab testing, as well.

Ordering Laboratory Testing

On May 19, 2008, David Geier discussed with Parent A the laboratory testing that would be ordered for Patient A. Parent A agreed that the laboratory testing, as discussed, should be

ordered. David Geier then determined specifically which tests should be ordered. He listed the tests to be ordered on the May 19, 2008, Patient Interview Form. Each test to be ordered, along with the test's code, is listed under the laboratory that should be used to conduct those tests. On May 22, 2008, David Geier completed the order form for LabCorp, as he had determined the testing should be and as he documented on the Patient Interview Form, and then he signed on the LabCorp order "Dr Mark Geier" for the physician's signature. Dr. Mark Geier had no involvement in ordering these tests. David Geier's actions in determining the tests to be ordered and in ordering those tests, without any involvement or real oversight from a physician, constitutes practicing medicine without a license. Health Occ. § 14-101(*I*) (2007 Supp.); Health Occ. § 14-601.

Because the physician's signature on the May 22, 2008, LabCorp order states "Dr Mark Geier," the ALJ found that David Geier did not order the LabCorp testing. The Board, however, finds that David Geier signed "Dr Mark Geier" and, thus, rejects the ALJ's finding that Dr. Mark Geier ordered the LabCorp testing.

On June 18, 2008, David Geier ordered laboratory testing for Patient A at Quest. The testing that he ordered was as he determined on May 19, 2008, and as he documented on the Patient Interview Form. Dr. Mark Geier was not involved in this Quest order. David Geier's actions in ordering the 22 Quest tests also constitutes practicing medicine without a license.

The ALJ also found that David Geier was authorized to order the laboratory testing because the laboratory testing was "the delegation of a routine technical task by Dr. Geier to [David Geier]." (ALJ's Proposed Decision, at 30 n. 17.) Based upon Dr. Grossman's testimony, the ALJ also found that an unlicensed individual "may properly order laboratory tests if the physician has written specific guidelines about what tests need to be done." (ALJ's Proposed

Decision, Finding of Fact 51, at 12.) The Board's regulations state: "A physician may delegate technical acts consistent with national standards in the medical community and the approved policies and procedures of the sites for the delivery of health services. . . ." COMAR 10.32.12.04B. And an unlicensed individual may perform nonsurgical technical acts while "the assistant is under the physician's direct supervision or on-site supervision if the assistant performs the act in accordance with the procedures of the site." A technical act is defined as "a routine medical or surgical act which does not require medical judgment. . . ." COMAR 10.32.12.02B(8). The ALJ erred.

The laboratory testing orders were not routine. Dr. Mark Geier testified that "[t]here is individuality, but there is a central group." Further, Genetic Consultants had no approved policies and procedures (and certainly none that were written) for the ordering of laboratory testing by unlicensed individuals. No such policies and procedures are in the record. And the lack of policies and procedures at Genetic Consultants was further established by David Geier's testimony in the instant case in his response to a question about the seemingly random nature of the initialing and signing of documents at the clinic:

It's a reflection of the way that it just happened. I mean, the answer is that thousands of patients, thousands of charts we're talking about, there are just times when things happen.

I mean, we don't have a formal protocol in place in the office that says you will do it this way or that way. It's simply what happened in the course of patient care.

The ALJ simply disregarded the requirements that technical acts must: (1) not involve medical judgment, (2) be consistent with national standards, and (3) be performed consistent with written policies and procedures. The laboratory testing that David Geier ordered required medical judgment, was not routine, and was not in compliance with the written policies and procedures of the site (since the site did not have any policies and procedures on the ordering of laboratory

testing by unlicensed individuals). And there was no evidence that the laboratory testing was consistent with national standards.

RECUSAL

David Geier filed a motion with the Board on exceptions requesting that all members of the Board recuse themselves from the case. At the exceptions hearing, on May 23, 2012, the Board notified the parties that David Geier's motion to recuse was denied.

Under COMAR 10.32.02.07:

A. A Board member may not participate in an investigation or a proceeding in which the impartiality of the Board member might reasonably be questioned, including but not limited to proceedings and investigations in which the Board member has or appears to have:

- (1) A personal bias or prejudice concerning a party; or
- (2) Personal knowledge of disputed evidentiary facts concerning a proceeding.

B. A Board member shall determine whether the Board member falls within §A of this regulation and shall state the recusal on the record.

C. In a hearing before the Board, the parties may waive the recusal.

D. Participation by a Board member in an investigation, CRC, WRP, or other administrative proceeding involving a respondent does not constitute a basis for recusal in a contested case proceeding unless the Board member has:

- (1) Personal bias or prejudice against the respondent; or
- (2) Knowledge of disputed evidentiary facts outside of the administrative process.

David Geier argued that the Board's Cease and Desist Order concerning Dr. Mark Geier's alleged violation of the order summarily suspending his medical license shows an appearance of personal bias by Board members. According to David Geier, the Cease and Desist Order contained detailed personal medical information concerning Dr. Mark Geier and his family members and the inclusion of this detailed personal medical information was "clearly intentional and designed to inflict humiliation rather than fulfill a legitimate and legal goal of this Board." David Geier also states that the Board issued the order publically and argues that the public issuance was illegal.

Assuming David Geier's description of the Cease and Desist Order is true, this would not lead to the conclusion that the Board included detailed medical information for the purpose of inflicting humiliation. Detailed facts and medical information are generally included in charging documents in order to provide adequate notice to the Respondent. The detailed medical information pertains to the factual grounds for the order. David Geier does not argue that the information was irrelevant. He argues instead that the information could have been described in more general terms. Other than the assertion that medical information in the Cease and Desist Order was detailed, no evidence was presented to support a finding that the Board intended to humiliate anyone or has a personal bias against David Geier or anyone else. David Geier's speculation as to why certain information was included is not a valid basis to disqualify each and every Board member. And David Geier's assertion that the Board acted illegally by issuing the order publically is contravened by section 14-411(g) of the Health Occupations Article and section 10-617(h)(2)(vi) of the State Government Article, which make Board orders and charges public documents.

David Geier then argued that all Board members should have recused themselves because Dr. Geier, his wife, and son filed a Maryland Tort Claim with the State Treasurer concerning the information contained in the Cease and Desist Order. According to David Geier, with the prospect of litigation, the Board members will not be able to impartially decide David Geier's case. The Board disagrees. If recusal were required when a lawsuit is filed or threatened, the Board, like every regulatory body, would be paralyzed and there would be a perverse incentive to sue government agencies. There is no law or reasonable policy supporting David Geier's argument that a tort claim filed with the State Treasurer or a threatened lawsuit against individual Board members necessitates recusal. See *Regan v. State Board of Chiropractic Examiners*, 355

Md. 397, 414 (1999), quoting *United States v. Studley*, 783 F.2d 934, 940 (9th Cir. 1986) (a “judge is not disqualified by a litigant’s suit or threatened suit against him”).

David Geier also argued that all Board members should have recused themselves because Paul T. Elder, M.D., Board Chairman during the events at issue,¹⁹ while speaking before the Maryland Senate’s Education, Health and Environmental Affairs Committee, referenced Dr. Mark Geier. David Geier did not provide a transcript of Dr. Elder’s comments. David Geier instead relies upon an article from the Baltimore Sun. The article, however, does not quote Dr. Elder’s comment referencing Dr. Mark Geier. And David Geier does not quote the article’s reference to Dr. Mark Geier. The reference in the article to Dr. Mark Geier is in a paragraph that states that Dr. Elder disputed certain criticism of the Board and “noted several actions it had taken in recent years.” The suspension of Dr. Mark Geier’s license was one of the several actions the article states that Dr. Elder noted as being taken by the Board. Thus, if the Baltimore Sun article is accurate, Dr. Elder noted that Dr. Mark Geier was suspended. Dr. Mark Geier was summarily suspended. This is undisputed. It is also possible from the article to infer that Dr. Elder did not think the Board’s decision to summarily suspend Dr. Mark Geier was wrong. It is self evident from the fact that the Board summarily suspended Dr. Mark Geier that the Board did not think that that decision was wrong. That does not mean that when cases involving the Geiers return to or show up anew before the Board that Dr. Elder or the Board cannot impartially decide those cases. See *Doering v. Fader*, 316 Md. 351 (1989). And there is no indication that Dr. Elder’s alleged comment was based upon anything other than information he properly received through the administrative adjudicatory process. *Id.* David Geier’s motion for recusal was properly denied.

¹⁹ Dr. Elder’s last day as a Board member was June 27, 2012, after his completion of two complete terms.

CHAT ROOM DOCUMENTS

During the evidentiary hearing before the ALJ, the State attempted to admit into evidence chat room documents. (Offered State's Exhibit 11 – not admitted.) The ALJ rejected the admission of these documents. The State filed exceptions. The Board agrees with the ALJ that the chat room documents should not have been admitted into evidence in this case, and, thus, the Board has not considered the chat room documents in reaching its decision in this case. The State's exception on this issue is, thus, denied.

CONCLUSIONS OF LAW

As explained above, the Board concludes that David Geier practiced medicine in Maryland without being licensed by the Board to practice medicine in violation of section 14-601 of the Health Occupations Article.

SANCTION

The Board has carefully considered the extent to which David Geier derived financial benefit from the improper conduct, the willfulness of the improper conduct, and the extent of potential harm caused by his misrepresentations. After weighing these factors, the Board imposes a \$10,000 civil fine upon David Geier for his violation of section 14-601 of the Health Occupations Article. *See* Health Occ. § 14-606(a)(4)(ii).

ORDER

Based upon David Geier's violation of § 14-601 of the Health Occupations Article and an affirmative vote of a majority of a quorum of the Board, it is hereby

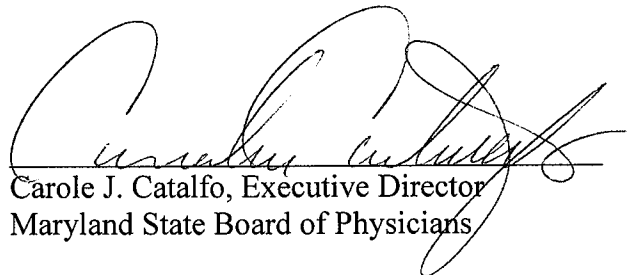
ORDERED that David Geier is fined \$10,000; and it is further

ORDERED that David Geier, within three months of the date of this Final Decision and Order, shall pay the \$10,000 civil fine by money order or bank guaranteed check made payable

to the Maryland Board of Physicians, which shall be mailed to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that this is a public document.

7-30-12
Date



Carole J. Catalfo, Executive Director
Maryland State Board of Physicians

NOTICE OF APPEAL RIGHTS

Pursuant to section 14-408(a) of the Health Occupations Article, David Geier has the right to appeal this decision to the Board of Review of the Maryland Department of Health and Mental Hygiene. Any appeal to the Board of Review shall be filed within 30 days from the date this order is mailed. If David Geier decides to appeal this decision, a notice of appeal shall be filed with Carlean Rhames-Jowers, Board of Review, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 511B, Baltimore, Maryland 21201. A copy of the notice of appeal must also be sent to David Wagner, Assistant Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved with appeals and should not be sent of copy of any notice of appeal.