

<p>IN THE MATTER OF</p> <p>STEPHEN R. FELDMAN, M.D.</p> <p style="text-align: center;">Respondent</p> <p>License Number: D28122</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE</p> <p>MARYLAND STATE</p> <p>BOARD OF PHYSICIANS</p> <p>Case Number: 2218-0281A</p>
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CONSENT ORDER

On December 17, 2019, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged **STEPHEN R. FELDMAN, M.D.** (the “Respondent”), License Number D28122, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp.). Panel A charged the Respondent with violating the following provisions of the Act under

Health Occ. § 14-404:

- (a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - ...
 - (3) Is guilty of:
 - ...
 - (ii) Unprofessional conduct in the practice of medicine[.]

In addition, Panel A charged the Respondent with violation of the Board’s regulations that were enacted pursuant to **Health Occ. § 1-212**, which provides as follows:

- (a) *Adoption of regulations.* – Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:

- (1) Prohibit sexual misconduct; and
- (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.

The pertinent regulations which the Board adopted at **COMAR 10.32.17**¹ provide:

.01 This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

.02 A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

...

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

...

- (b) Sexual violation[.]

- (4) Sexual Violation.

...

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

...

- (v) Touching the patient's breasts, genitals, or any sexualized body part[.]

.03 A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct.

B. Health Occupations Article, §§ 14-404(a)(3) and 15-314(3), Annotated Code of Maryland, includes, but is not limited to sexual misconduct.

On February 12, 2020, Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of the

¹ These regulations were amended effective May 20, 2019; however, the quoted regulations are pre-May 2019 since the Respondent's conduct occurred prior to the amendments.

DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel A finds the following:

I. Background Information

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on July 20, 1982, under License Number D28122. The Respondent's license is currently active and will expire on September 30, 2020.

2. In September 1984, the Respondent achieved lifetime board-certification in pediatrics.

3. The Respondent has been in the private practice of pediatrics in Baltimore County since approximately 1984.

4. The Respondent holds associate privileges at two hospitals in Baltimore County.

II. Complaints

A. Complaint One

5. On or about June 21, 2018, the Board received a complaint from the father of a 13-year-old female patient of the Respondent ("Patient 1")². The Complainant

² Patient names are confidential and are not disclosed in this document. The Respondent is aware of the identity of the patients.

described two incidents of concern:

- a. On May 21, 2018, Patient 1 presented to the Respondent with her mother with complaints of “shortness of breath while swimming and exercising.” The Respondent asked Patient 1 to remove her shirt and did not offer her a gown. Patient 1 was wearing shorts and a sports bra. After the Respondent finished the examination he spoke with Patient 1 and her mother. The Respondent did not tell Patient 1 she could put her shirt back on. Patient 1 subsequently reported to her mother that she felt uncomfortable and requested to be switched to a female pediatrician; and
- b. On June 9, 2018, Patient 1 and her mother presented to the Respondent for a follow-up appointment regarding Patient 1’s asthma; and, for a physical examination. The Respondent asked Patient 1 to disrobe. Patient 1 requested a gown. The Respondent provided a paper gown which opened in the rear. The Respondent asked Patient 1 whether she wanted anyone else in the room during the examination. According to Patient 1’s father, Patient 1 did know that the Respondent was referring to having another staff member present. As part of the physical examination, the Respondent performed a scoliosis examination and asked Patient 1 to bend over. While Patient 1 was bent over, the Respondent slapped Patient 1’s buttocks. Patient 1 exclaimed “Hey!” The Respondent responded, “Well it was right there, I had to.” Reportedly, Patient 1 subsequently said she felt she needed to take multiple showers and feels violated.

6. On July 13, 2018, Board staff interviewed Patient 1 and her mother, in separate interviews, under oath. Patient 1 stated:

So, he asked me to bend over and then he smacked my butt. And then after I yelled, ‘hey’, he goes – that was just my first reaction. And then the first thing he said was ‘well, it was right there.’

Patient 1 added that she felt “very uncomfortable” and “very violated.” Patient 1’s mother confirmed the facts in the complaint and the statements of Patient 1.

7. On July 30, 2018, the Board provided the Respondent with a copy of Complaint One and requested his response.

8. On August 16, 2018, the Board received the Respondent's written response to Complaint One. The Respondent confirmed he treated Patient 1 in May and June 2018, and that Patient 1's mother was present for both appointments. The Respondent offered that his behaviors, which he uses to allay patient anxiety, "appear to have been misinterpreted." The Respondent further stated:

- a. During the May appointment, he was treating Patient 1 for asthma symptoms and that he needed to examine her lungs. He asked her to remove her shirt. The Respondent did not recall what Patient 1 was wearing nor did he recall whether the medical assistant or he offered a gown. He does recall that neither Patient 1 nor her mother objected or asked for a gown. The Respondent further stated that he was unaware that Patient 1 was in any way uncomfortable during the examination; and
- b. Regarding the June 2018 appointment, Patient 1 requested a gown, so he stepped out while she got in the gown. When he re-entered, he asked Patient 1 if she would like a chaperone or "anyone else in the room." As part of his routine examination, he performed a scoliosis examination on Patient 1. The Respondent said that after he performed the examination, Patient 1 was still bending forward and he did "tap" Patient 1 on the "bottom," as if to say, "you can stand up now." The Respondent explained that he has engaged in this conduct for over thirty years and he often responds with "Well it was right there." His motivation is levity to relax the patients; although he understands that this was not the case for Patient 1.

The Respondent apologized if he has "offended any of my patients or their families;" and that he will "refrain from any behavior in the future which could be misinterpreted or misconstrued in any way." The Respondent attached the American Academy of Pediatrics "Policy Statement - Use of Chaperones During the Physical Examination of the Pediatric Patient."

B. Complaint Two

9. On or about October 4, 2018, the Board received a complaint about the Respondent's examination of a four-year-old male patient ("Patient 2").³

C. Complaint Three

10. Previously, on or about July 9, 2015, the Board received a complaint from the mother of a 17-year-old female patient of the Respondent ("Patient 3"). Patient 3 also submitted a complaint which was attached. Patient 3 stated that she went to the Respondent to check for strep throat and a "UTI."⁴ The nurse had already obtained a urine sample and a throat swab. Patient 3 stated that she told the Respondent about her symptoms but was "confused" and "uncomfortable" because the Respondent continued to ask her more questions. The Respondent then told her to lay down. Patient 3 reported that she did not understand why this was necessary because she already had provided the urine sample and the throat swab. The Respondent felt her stomach then the Respondent told her he needed to "check down there real quick" and very quickly undid her pants. Patient 3 reported she did not get a chance to tell the Respondent that she "wanted a woman to do it because she was uncomfortable... he didn't tell me ahead of time he was gonna do it, he just did it. I was just confused and a bit shocked... I wasn't supposed to have a physical."

11. Patient 3's mother added in her complaint that when the Respondent examined Patient 3's abdomen, he expressed a negative personal opinion about her belly

³ The facts of the complaint and the Respondent's written response were reviewed by an independent reviewer who is board-certified in pediatrics. The reviewer opined that the Respondent's conduct toward Patient 2 was "not unprofessional;" therefore, there are no charges pertaining to Patient 2.

⁴ A UTI is a urinary tract infection.

button piercing. Patient 3 responded that she had just put the belly button ring back in and the Respondent replied, "Ah, just for me."

12. On October 27, 2015, the Respondent submitted his response to Complaint Three. The Respondent explained that Patient 3's mother was in the room during the examination. The Respondent explained that based on Patient 3's symptoms, he needed to do a physical examination to look for irritation and/or discharge. The Respondent further explained that in an attempt to be sensitive to Patient 3, he did not have her remove her pants and underwear but unbuttoned her pants and lifted up the waistband of her underpants. The Respondent stated that in retrospect it may be that Patient 3 and her mother only wanted testing and antibiotics and did not want a physical examination. In the Respondent's opinion, it would have been inappropriate for him not to do a physical examination.

13. On November 17, 2015, the Respondent was interviewed by Board staff, under oath. The Respondent stated that:

- a. Although Patient 3 had been a patient of his practice for about ten months, he had not treated her before her visit on July 8, 2015;
- b. Patient 3 presented with dysuria, without discharge, and also reported a sore throat;
- c. Patient 3 was fully clothed, and he assumed that she did not want to disrobe and have a gown;
- d. When he examined her abdomen, he observed that she had a ring in her "belly button" and made a joke about it, in an attempt to make her feel comfortable; and
- e. Patient 3 reported that she was not having her period but there was "something weird in her underwear." That's when he said he needed

to have a “look down there.” He undid her pants and noted that she had a menstrual pad on. He did not do a pelvic examination.

14. On February 11, 2016, the Board issued an Advisory Letter to the Respondent based the complaint that he “performed an inappropriate exam and made unprofessional comments to a minor patient.” The letter advised the Respondent to have an independent chaperone when examining girls over the age of ten and to allow them to disrobe and/or take off their own clothes. The Board further advised that if the Board received complaints of this nature in the future, it may reopen the case.⁵

III. Interview of the Respondent

15. On December 20, 2018, the Respondent was interviewed by Board staff, under oath. The Respondent stated:

- a. Patient 1 presented on May 2018, with shortness of breath and cough at swim practice and running. If he has to examine the lungs or abdomen, the medical assistant is supposed to ask the patient to disrobe and offer a gown;
- b. When he went in the room, Patient 1 was fully clothed. When young adolescents are not undressed, he assumes they’ve been offered a gown and chosen not to undress. Patient 1’s mother was in the room;
- c. He asked Patient 1 to take off her shirt. He did not offer a gown and she did not ask for a gown. She took off her shirt and she was wearing a sports bra. He listened to her lungs. He probably did not ask her to put her shirt back on. He was unaware Patient 1 was uncomfortable during the examination;
- d. Patient 1 presented in June 2018, for a routine physical and follow-up of the May visit. Patient 1’s mother was in the room. Patient 1 asked for a gown and she was given one. I asked Patient 1 if she wanted a chaperone. She did not want anyone else in the room. Part of the

⁵ The Board’s prior investigation of the complaint of Patient 3 has been made a part of the investigative file in this case.

scoliosis examination is to have the patient bend over. It has been his practice for 30 years “if the kids don’t pop back up, I do tap the on the bottom as to say you can stand up now.” He did this with Patient 1. He does this to be “playful.” It is not meant as disrespect or to gratify him or to sexualize the child. When kids respond, he says, “well, it was there, I just had to do it.” This is meant to make the kids feel comfortable. This was not the result with Patient 1. He did not understand how uncomfortable she was. He no longer continues this practice;

- e. In or about July 2018, he enrolled in the Maryland Physician Health Program (“MPHP”). In November-December 2018, he participated in a three-day program in ethics and boundary violations; and
- f. He continues to follow the recommendations of the MPHP.

IV. Expert Review

16. On February 11, 2019, the Board sent the relevant case materials to a Board-certified pediatrician for an expert review.

17. On March 15, 2019, the Board received the Expert’s report. The Expert observed the following considerations pertaining to professional conduct of physicians when examining children, especially teenagers:

Practicing medicine in a pediatric population presents unique challenges. Anxieties for children are particularly high when they are in the examination room. Most are fearful of what the physician may have to do during the visit. This presents a challenge for pediatricians to be particularly cognizant of how what they say and do can easily be misinterpreted by patients and their attendant family members. The examination of teenagers requires a special approach. Young teens are frequently very modest about the changes they are noticing in their bodies. They can feel embarrassed about being asked to get undressed and vulnerable sitting in the examination room with only a gown and underwear. This is clearly a time when pediatricians need to balance their needs for a comprehensive examination against the need of the patient, especially the need to preserve privacy.

18. The Expert concluded that the Respondent engaged in unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404(a)(3)(ii), and committed sexual misconduct in violation of Health Occ. § 1-212 and COMAR 10.32.17 in that the Respondent:

- a. Slapped the buttocks, a sexualized body part, of Patient 1, a 13-year-old female while she was in her underwear and bent over, without medical necessity, following a scoliosis examination;
- b. Made an inappropriate, unprofessional response to Patient 1, after he slapped her buttocks, rather than offering an apology;
- c. Conducted a physical examination of Patient 1 without the presence of an independent chaperone as required by the Advisory Letter of February 11, 2016;
- d. Failed to explain to Patient 3, a 17-year-old female patient, the reason that he needed to perform a visual inspection of her genital area and her underwear, prior to conducting the inspection; and
- e. Made inappropriate, unprofessional comments to Patient 3 about her body piercing.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent engaged in unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), and engaged in sexual misconduct by slapping a patient's buttocks, a sexualized body part, in violation of COMAR 10.32.17.

ORDER

It is, by Disciplinary Panel A, hereby:

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent is permanently prohibited from evaluating and treating all female patients without a chaperone; and it is further

ORDERED that the following additional conditions apply:

(a) the Respondent shall on every January 31st thereafter if the Respondent holds a Maryland medical license, provide the Board with:

- (1) an affidavit verifying that he or she has had a chaperone present for every examination or treatment of any patient or type of patient for whom the requirement of a chaperone was imposed;
- (2) the names of those persons who have functioned as chaperones in the past year; and
- (3) the signatures of those persons who have functioned as a chaperone in the past month attesting that they have done so, together with the schedule of the chaperones for the past month;

(b) if the Respondent fails to provide the required annual verification of compliance with this condition:

- (1) there is a presumption that the Respondent has violated the permanent condition of this Consent Order; and
- (2) the alleged violation will be adjudicated pursuant to the procedures of a show cause hearing; and it is further

ORDERED that, **within SIX (6) MONTHS**, the Respondent is required to take and successfully complete an ethics course in appropriate boundaries. The following terms apply:

- (a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
- (b) the disciplinary panel will not accept a course taken over the internet;
- (c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;
- (d) the course may not be used to fulfill the continuing medical education credits required for license renewal;
- (e) the Respondent is responsible for the cost of the course; and it is further

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

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

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

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

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

Signature on File

03/11/2020

Date

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

CONSENT

I, Stephen R. Feldman, M.D., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

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

3/10/20

Date

Signature on File

Stephen R. Feldman, M.D.

NOTARY

STATE OF Maryland

CITY / COUNTY OF Baltimore

I HEREBY CERTIFY that on this 10th day of March 2019, ²⁰ before me, a Notary Public of the foregoing State and City/County, personally appeared Stephen R. Feldman, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Twana M. Hughes
Notary Public

My Commission expires: 9/30/20

