

**IN THE MATTER OF**  
**KRISHAN SINGAL, M.D.**  
**Respondent.**

**License No. D36900**

**\* BEFORE THE**  
**\* MARYLAND STATE**  
**\* BOARD OF PHYSICIANS**  
**\* Case Number: 2219-0115A**

\* \* \* \* \*

**FINAL DECISION AND ORDER**

Krishan Singal, M.D. is a physician who has been licensed by the Maryland State Board of Physicians (“Board”) since 1988, and who is board-certified in internal medicine and cardiology.

On August 31, 2020, Disciplinary Panel A of the Board charged Dr. Singal with immoral and unprofessional conduct in the practice of medicine, in violation of Md. Code Ann., Health Occ. § 14-404(a)(3)(i) and (ii). The charges followed a Board investigation based on a complaint received from an investigator at a community college. The complaint stated that a female physician assistant student reported to the college that Dr. Singal made sexually inappropriate statements to her while she was participating in a clinical rotation at Dr. Singal’s office as part of her studies.

An evidentiary hearing was held at the Office of Administrative Hearings on April 12-13, 2021 and May 10, 2021. The evidence included witness testimony from four witnesses on behalf of the State and three witnesses for Dr. Singal. In addition, Dr. Singal testified on his own behalf. The Administrative Law Judge (“ALJ”) also admitted into evidence 21 documentary exhibits offered by the State and 6 documentary exhibits for Dr. Singal.

In a Proposed Decision issued on August 3, 2021, the ALJ recommended that the charges issued by Panel A be upheld. As a sanction, the ALJ recommended that Dr. Singal’s medical

license be suspended for ninety days and that he be placed in the Board's rehabilitation program. The ALJ also proposed a \$10,000 fine.

Dr. Singal and the State filed written exceptions to the ALJ's Proposed Decision. Both parties appeared before Disciplinary Panel B of the Board for an oral exceptions hearing on October 20, 2021. After considering the entire record, including the evidentiary record made before the ALJ, and the written exceptions and oral arguments by both parties, Panel B now issues this Final Decision and Order.

### **FINDINGS OF FACT**

Panel B adopts the ALJ's proposed findings of fact numbered 1-27. The panel also adopts the ALJ's discussion on pages 8-14 of the Proposed Decision, except as discussed, below. The ALJ's Proposed Decision of August 3, 2021, is incorporated by reference into this Final Decision and Order and is appended to this Order as Attachment A. The facts were proven by a preponderance of the evidence. Dr. Singal's exceptions to the ALJ's proposed findings of fact and discussion will be addressed in further detail, below.

Dr. Singal is a licensed physician, board-certified in cardiology and internal medicine. In 2009, he entered into an agreement with a local college to become a preceptor with the Physician Assistant Program. Between August 2018 and September 2018, the Student was assigned to a rotation with Dr. Singal in cardiology.

On September 12, 2018, after Dr. Singal and the Student had finished seeing patients for the day, they met alone in his cubicle office with the door open. The conversation occurred sometime between 2 and 4 p.m. The Student asked Dr. Singal if he had any vacations planned. He replied that he did not have any vacations planned, but that he typically vacations at adult

resorts in Jamaica. The Student testified that Dr. Singal described witnessing a couple having sex on the beach in “doggy style” position, sex in swimming pools, and watching a woman’s breasts thrash around. He asked her about her sexual fantasies and whether she had ever seen a couple have sex in public and recommended that she should try having sex publicly in Jamaica. Dr. Singal then asked her what she was wearing, inquired about her bra strap, and asked if there was a chance he could see her nipples. The Student replied “no” that she was trying to be a professional, and then Dr. Singal replied that he would have to take her on vacation to Jamaica one day, so he could see her on the beach performing sex in the “doggy style” position. The Student then said her goodbyes and left for the day.

On the way home, she called her sister and told her what had happened. When she got home, the Student called her friend who was also in the Physician Assistant Program, and her friend encouraged her to report the incident to the College. At 4:39 p.m., the Student sent an email to her professor entitled: “Re: SEXUAL HARASSMENT, Cardiology rotation.” She reported the incident and stated, “I do not feel comfortable going to his office tomorrow, 9/13/18, and would like to sit down and meet with you and [Program Director] to discuss the future of my rotation.”

On September 13, 2018, at approximately 8:00 a.m., the Student met with the Program Director of the College, who instructed her to speak with other staff at the college and draft a written statement. On September 16, 2018, the Student drafted a two-page written statement describing the incident and, on September 24, 2018, the Student met with the Dean of the College. The College reported the incident to the Board and the Board conducted an investigation, which resulted in the charges issued in this case.

## CONSIDERATION OF EXCEPTIONS

Dr. Singal takes exception to many of the ALJ's factual findings and the legal conclusions that he engaged in immoral and unprofessional conduct and that he engaged in sexual harassment, as defined in COMAR 10.32.17.02B(4), and engaged in acts impermissible under COMAR 10.32.17.03(a).<sup>1</sup> Dr. Singal also takes exception to the ALJ's finding that the Student was more credible, the ALJ's decision to preclude him from inquiring about the Student's past mental health history or current financial stressors, and the ALJ's decision to admit interview transcripts of witnesses who did not testify at the hearing. Each of Dr. Singal's exceptions will be addressed, in detail, below.

### **Findings of Fact**

Dr Singal takes exception to the ALJ's findings of fact 8, 9, 11-14, 16-18, and 22. Dr. Singal contends, in finding of fact 8, that he has a cubicle with a door that was left open, not a "private office" as described by the ALJ. The ALJ, however, was aware of the layout of the office because she referenced Respondent's Exhibit 10 and stated that the exhibit "reflects that the Respondent's office was next to another doctor's cubicle and diagonally across from the staff lounge, creating a lack of audio privacy." The Board accepts Dr. Singal's modification to finding of fact 8 and will modify the finding to reflect that Dr. Singal's office was a cubicle with a door that was left open and not a private office with the door left open. The type of office does not change the undisputed fact that the door was left open nor does it have any impact on the Panel's

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<sup>1</sup> Dr. Singhal was not charged with sexual harassment or a violation of the sexual misconduct regulations and, therefore, the Board will not find a violation of COMAR 10.32.17.03(a) or COMAR 10.32.17.02B(4). At the time when the incident in this case occurred, the Board's sexual misconduct regulations did not include sexual harassment towards students.

ultimate conclusion. As the ALJ discussed, just because the door was open does not mean that the conversation did not occur.

In finding of fact 9, Dr. Singal argues that he testified that he recalled saying to some student – not that it was this student, as indicated by the ALJ – that he would introduce her to his son. Dr. Singal also states that the testimony was that his son works in IT for the Pentagon, not that he is a dentist as indicated by the ALJ. The ALJ, however, never stated that Dr. Singal's son was a dentist. Rather, the proposed finding was that Dr. Singal stated to the Student that she should become a dentist instead of a Physician Assistant and marry his son. The ALJ's proposed findings did not include any mention of Dr. Singal's son's profession.

Findings of fact 11-14 and 16-18 contain the specific allegations of the Student, which are denied by Dr. Singal. Finding of fact 22 relates to the timing of the incident and the email the Student sent to her professor reporting the incident. Dr. Singal argues that there was no objective evidence that the Student was in his office on the date of the alleged incident. He points out that the Student could not recall the time she was there, how many, (if any) patients were seen that day, what time the alleged interaction took place, the layout of the office, when she left, or who was in the office when she left. She also acknowledged that she had been required to keep a log of her attendance at Dr. Singal's office but the State did not produce any log. He contends that it was reasonable for him to have no recollection of an interaction he denies ever took place and states that he did not recall her even after seeing her at the hearing. He also argues that none of his staff had any recollection of her being present in the office on the day in question. Finally, Dr. Singal argues that the facts of the interaction and timeline testified to by the Student are inconsistent with the objective evidence. He states that the testimony reflects that the

conversation occurred around 4:00 p.m. after the Student and Dr. Singal finished seeing patients and then the Student said goodbye, went to her car to call her sister, drove home, and, after several hours, called her friend who helped her to write an email to school officials. The email, however, was sent at 4:39 p.m., which, Dr. Singal argues, is inconsistent with the Student's timeline of events.

The Student's testimony reflects that she worked exclusively with Dr. Singal in her rotation, so it is reasonable that the office staff might not remember her. Further, she estimated that the conversation occurred somewhere between 2 and 4 pm. After the conversation concluded, she left the office, called her sister, drove home to her apartment, called her friend who was also in the program, and then sent an email to the program director at 4:39 pm. During the hearing, the Student testified that it was hard for her to remember certain details given that the conversation occurred over two and a half years before the hearing.

As the ALJ recognized, this case is largely dependent on the credibility of the witnesses because the Student and Dr. Singal were alone in his cubicle office during the incident. The ALJ heard the testimony from all parties, reviewed all of the exhibits entered into evidence, and concluded that the Student provided a more credible account of what occurred on September 12, 2018 than Dr. Singal. The Panel adopts the ALJ's credibility determinations and finds the Student credible. The Student's testimony was also corroborated by the email she sent later the same afternoon and the written statement she drafted a few days after the incident.

Dr. Singal argues that the Board could have subpoenaed the Student's attendance log or her phone records and alleges that he cannot conduct discovery in a Board case and that he has to rely on the Board's investigative powers. Dr. Singal is incorrect. Both the Board's and OAH's

regulations permit either party to request discovery and subpoena witnesses and documents. *See* COMAR 10.32.02.04, 28.02.01.13 and 28.02.01.14. The Panel finds in looking at the totality of the evidence that was admitted, that the evidence was sufficient to support the Student's testimony regarding the specifics of the conversation.

### **Admission of Interview Transcripts**

Dr. Singal also takes exception to the ALJ's decision to admit into evidence Board interview transcripts of witnesses who did not testify at the hearing. Dr. Singal recognizes that hearsay is allowed in administrative proceedings, but argues that the transcripts should not have been admitted in this case that hinged on credibility determinations, which cannot be judged without the benefit of cross-examination. The ALJ considered Dr. Singal's objection to the introduction of the witness transcripts, but decided to admit the exhibits into evidence on the basis that they were relevant and reliable.

The Administrative Procedure Act provides that "[e]vidence may not be excluded solely on the basis that it is hearsay." Md. Code Ann., State Gov't § 10-213(c). If credible and sufficiently probative, hearsay may be the sole basis for the decision of an administrative body. *See Fairchild Hiller Corp. v. Supervisor of Assmts.*, 267 Md. 519 (1973). An agency must carefully consider hearsay reliability and probative value; one important consideration is the nature of the hearsay evidence. *Travers v. Baltimore Police Dep't*, 115 Md. App. 395 (1997). Further, "[a]lthough we recognize the basic tenet of fairness in administrative adjudications is the requirement of an opportunity for reasonable cross-examination, fairness also requires the complaining party to avail itself of the opportunity to cross-examine." *Para v. 1691 Ltd. P'ship*, 211 Md. App. 335, 384 (2013) (internal citations and quotation marks omitted).

Here, the evidence in question is transcribed witness interviews that were taken under oath by the Board's investigator. Dr. Singal had the opportunity to cross-examine the Board investigator regarding the witness interviews. Dr. Singal also had the opportunity to, but did not subpoena the witnesses to testify. *See Para*, 211 Md. App. at 384 ("the complaining party must subpoena testimony or a witness of the production of any evidence when the administrative proceeding permits.").

The ALJ found that the failure of the Board to produce additional witnesses did not amount to a paucity of reliable evidence in the matter. The Panel finds that the ALJ did not err in admitting the transcribed witness interviews over Dr. Singal's objection. The test of admissibility is the probative value of the evidence, not its credibility. "Probative value relates to the degree by which the evidence advances the inquiry; whereas credibility relates to the weight to be given to the evidence by the trier of fact." *Eichberg v. Maryland Bd. of Pharmacy*, 50 Md. App. 189, 194 (1981). Dr. Singal argues that the consideration of the interviews was unduly prejudicial because the questions during the interview may have been leading and suggestive, but the credibility of the evidence goes to the weight given to the evidence and not the admissibility. Because Dr. Singal and the Student were the only witnesses to the conversation, the Panel places greater weight on their testimony and gives less weight to the transcripts of individuals who did not testify at the hearing.

#### **Past history of Complainant**

Dr. Singal takes exception to the ALJ precluding him from inquiring into the past history of the Student and argues that her therapy and financial stresses might have shed light on her motive to make up the complaint to avoid an evaluation.



During the hearing, Dr. Singal's counsel asked the Student questions regarding the reasons she left the gymnastics program at her former college and the State objected on the basis of relevance. Dr. Singal's counsel explained that it was for background and stated that she would move on. Counsel did not state that the gymnastics line of questioning was being offered to show her motive to fabricate the allegations in order to avoid an evaluation of her performance at Dr. Singal's office. The ALJ overruled the objection and allowed questions regarding the Student's educational background, but stated that she was not going to allow further questioning about the gymnastics program because nothing more could possibly be relevant. Likewise, the ALJ allowed the question regarding her therapy, but did not allow expanded questioning on the topic because it was not relevant. Finally, the ALJ overruled the objection and allowed questioning about the Student's financial stressors and her being late on rent payments, but found that further questioning regarding the Student's landlord bringing a lawsuit against her went "too far afield". The Panel agrees with the ALJ's relevance determinations.

### **Unprofessional and Immoral Conduct**

Finally, Dr. Singal takes exception to the ALJ's findings that he engaged in immoral and unprofessional conduct by making detailed and sexually explicit statements to the Student on September 12, 2018. He argues that if the Board finds that the alleged encounter did occur and that he did make the statements in question that, at most, his conduct was unprofessional and was not immoral. As discussed above, the Panel does find that the conversation, as reported by the Student, occurred. The Panel, however, agrees with Dr. Singal that while the conversation was highly inappropriate and unprofessional, it was not immoral.

### **CONCLUSIONS OF LAW**

Based on the findings of fact and discussion of Dr. Singal's exceptions, as set forth above, Disciplinary Panel B concludes that Dr. Singal is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). The Panel dismisses the charge of immoral conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(i).

### **SANCTION**

The ALJ recommended a sanction of a ninety day suspension, placement in the Maryland Professional Rehabilitation Program ("MPRP"), and a fine of \$10,000. Both parties filed exceptions to the ALJ's proposed sanction. The State requests that the Board add a three year period of probation to the ALJ's proposed sanction given Dr. Singal's egregious conduct and prior board disciplinary history. Dr. Singal asks for dismissal of the charges, but in the event that the Panel finds that the facts were substantiated, he asks the Panel to only impose a reprimand.

As discussed above, the Panel adopts the ALJ's credibility determinations and finds that the incident described by the Student did occur. As discussed above, the Panel concluded, as a matter of law, that Dr. Singal was guilty of unprofessional conduct in the practice of medicine, and the Panel dismissed the charge of immoral conduct in the practice of medicine. Accordingly, a sanction is appropriate. Dr. Singal asks the Panel not to suspend his license and instead to impose a simple reprimand. While the Panel does not believe that a suspension is warranted, the Panel does believe that probation with enrollment in MPRP is appropriate to ensure that Dr. Singal is being monitored and undergoes any treatment or therapy deemed necessary by the program.

## ORDER

It is, by an affirmative vote of a majority of the quorum of Disciplinary Panel B, hereby:

**ORDERED** that Krishan Singal, M.D., License No. D36900, is **REPRIMANDED**; and  
it is further

**ORDERED** that Dr. Singal is placed on **PROBATION** for a minimum of **TWO (2) YEARS**.<sup>2</sup> During probation, Dr. Singal shall comply with the following terms and conditions of probation:

1. Dr. Singal shall enroll in the Maryland Professional Rehabilitation Program (“MPRP”) as follows:
  - (a) Within 5 business days, Dr. Singal shall contact MPRP to schedule an initial consultation for enrollment;
  - (b) Within 15 business days, Dr. Singal shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
  - (c) Dr. Singal shall fully and timely cooperate and comply with all MPRP’s referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
  - (d) Dr. Singal shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Dr. Singal shall not withdraw his release/consent;
  - (e) Dr. Singal shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Dr. Singal’s current therapists and treatment providers) verbal and written information concerning Dr. Singal and to ensure that MPRP is authorized to receive the medical records of Dr. Singal, including, but not

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<sup>2</sup> If Dr. Singal’s license expires during the period of probation, the probation and any conditions will be tolled.

limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Singal shall not withdraw his release/consent;

- (f) Dr. Singal's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Final Decision and Order; and it is further

**ORDERED** that a violation of probation is a violation of this Final Decision and Order; and it is further

**ORDERED** that Dr. Singal shall not apply for early termination of probation; and it is further

**ORDERED** that after a minimum of two years, if Dr. Singal has complied with all terms and conditions of probation, Dr. Singal may submit a written petition for the termination of probation. After consideration of the petition, the probation may be terminated through an order of a disciplinary panel. Dr. Singal may be required to appear before a disciplinary panel to discuss his petition to terminate the probation. The disciplinary panel may grant the petition to terminate the probation through an order of the disciplinary panel, if Dr. Singal has complied with all of the probationary conditions, and there are no pending complaints related to the charges; and it is further

**ORDERED** that if Dr. Singal allegedly fails to comply with any term or condition imposed by this Final Decision and Order, Dr. Singal shall be given notice and an opportunity for a hearing. If the disciplinary panel determines that 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. If the disciplinary panel

determines that there is no genuine dispute as to a material fact, Dr. Singal 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 Dr. Singal has failed to comply with any term or condition of this Final Decision and Order, the disciplinary panel may reprimand Dr. Singal, place Dr. Singal on probation with appropriate terms and conditions, or suspend or revoke Dr. Singal'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 upon Dr. Singal; and it is further

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

**ORDERED** that the effective date of this Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board. The Executive Director signs the Final Decision and Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Order, and it is further

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

***Signature on File***

02/24/2022  
Date

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

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Singal has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Singal files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

Maryland State Board of Physicians  
Christine A. Farrelly, Executive Director  
4201 Patterson Avenue  
Baltimore, Maryland 21215

Notice of any petition should also be sent to the Board's counsel at the following address:

Stacey Darin  
Assistant Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201

# **Attachment A**

MARYLAND STATE BOARD OF  
PHYSICIANS

v.

KRISHAN SINGAL, MD  
RESPONDENT

LICENSE No.: D36900

\* BEFORE RACHAEL BARNETT,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: MDH-MBP2-71-20-27042

\* \* \* \* \*

PROPOSED DECISION

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On August 31, 2020, a disciplinary panel of the Maryland State Board of Physicians (Board) issued charges against Krishan Singal, MD (Respondent) alleging violations of the State law governing the practice of medicine, the Maryland Medical Practice Act (the Act)<sup>1</sup> based on his conduct towards a Physician Assistant Student (the Student). Md. Code Ann., Health Occ. §§ 14-101 through 14-508, and 14-601 through 14-607 (2014 & Supp. 2020). Specifically, the Respondent is charged with violating section 14-404 of the Act. Health Occ. § 14-404(a)(3)(i) and (ii) (Supp. 2020); Code of Maryland Regulations (COMAR) 10.32.02.03E(3)(d). The disciplinary panel to which the complaint was assigned forwarded the charges to the Office of the Attorney General for prosecution, and another disciplinary panel delegated the matter to the Office of Administrative Hearings (OAH) for issuance of Proposed Findings of Fact, Proposed

<sup>1</sup> The Act is found at Md. Code Ann., Health Occ. II §§ 14-101 *et seq.*



Conclusions of Law and a Proposed Disposition. COMAR 10:32.02:03E(5); COMAR 10.32.02.04B(1).

I held a hearing on April 12, 13 and May 10, 2021 via Webex, an on-line platform. Health Occ. § 14-405(a) (Supp. 2020); COMAR 10.32.02.04; COMAR 28.02.01.20B. Debra Smith, Assistant Attorney General and Administrative Prosecutor, represented the State of Maryland (State). M. Natalie McSherry, Esquire, represented the Respondent, who was present.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings Before the Board of Physicians, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 10.32.02; COMAR 28.02.01.

#### ISSUES

1. Did the Respondent violate the cited provisions of the applicable law? If so,
2. What sanctions are appropriate?

#### SUMMARY OF THE EVIDENCE

##### Exhibits<sup>2</sup>

I admitted the following exhibits into evidence on behalf of the Board:

- Bd. Ex. 2 - Complaint form, October 10, 2018
- Bd. Ex. 3 - Subpoena Duces Tecum, November 1, 2019
- Bd. Ex. 4 - Email exchange between staff members of [REDACTED] September 2018
- Bd. Ex. 9 - Email exchange between staff members of [REDACTED] September 2018
- Bd. Ex. 10 - Transcript of Board's interview with the Student, February 11, 2019

<sup>2</sup> The Board and the Respondent both submitted exhibit binders including some exhibits that were not ultimately admitted into evidence.

- Bd. Ex. 11 - Affiliation Agreement between the Respondent and [REDACTED] May 22, 2009
- Bd. Ex. 12 - Transcript of Board's interview with [REDACTED] March 7, 2019
- Bd. Ex. 13 - Cover letter from the Board, March 21, 2019, with attached unsigned Authorization for Release of Information, undated
- Bd. Ex. 14 - Signed Authorization for Release of Information, March 29, 2019
- Bd. Ex. 15 - Letter from the Respondent to the Board, April 24, 2019
- Bd. Ex. 16 - Subpoena Ad Testification, August 28, 2019 and attached interview with the Respondent, September 19, 2019
- Bd. Ex. 17 - Consent Order between the Respondent and the Board, May 25, 1994
- Bd. Ex. 18 - Physician Profile Portal result for the Respondent, November 21, 2019
- Bd. Ex. 19 - Letter from [REDACTED] to the Respondent, October 10, 2018
- Bd. Ex. 20 - Letter from [REDACTED] December 11, 2018
- Bd. Ex. 21 - Email exchange between the Student and faculty and [REDACTED] various dates in September – October 2018, with attached statement, September 16, 2018, with attached email correspondence between faculty members, various dates in September – October 2018
- Bd. Ex. 22 - Board's Investigation Memoranda, November 4, 2019 & July 8, 2019
- Bd. Ex. 23 - Board's Report of Investigation, November 22, 2019
- Bd. Ex. 24 - Transcript of Board's Interview with [REDACTED] March 6, 2019
- Bd. Ex. 25 - Transcript of Board's Interview with Professor [REDACTED] July 16, 2019
- Bd. Ex. 26 - Memorandum from the Board, June 22, 2020, with attached documents:
  - Respondent's employee list
  - Transcript of Board Interview with [REDACTED] May 11, 2020

I admitted the following exhibits into evidence on behalf of the Respondent:

- Resp. Ex. 1 - Respondent's Curriculum Vitae, various dates
- Resp. Ex. 6 - List of Precepted Students Provided to the Board, various dates

Resp. Ex. 7 - Letters from the Board to various Physician's Assistant students of [REDACTED] June 21, 2019

Resp. Ex. 9 - Investigations Memoranda of the Board, various dates in June - July 2019

Resp. Ex. 10 - Diagram of the Respondent's medical office

Resp. Ex. 11 - Consent Orders between the Board and various physicians, various dates

Testimony

The following witnesses testified on behalf of the Board: Amanda Miller, Compliance

Analyst for the Board; [REDACTED]

The Respondent testified in his own behalf, and presented the following witnesses: [REDACTED]

[REDACTED] Medical Assistant; [REDACTED] Office Assistant; and [REDACTED]

Pediatrician [REDACTED]

**PROPOSED FINDINGS OF FACT**

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Respondent was a licensed physician in the State of Maryland. He is board certified in the United States<sup>3</sup> in Cardiology (1988) and in Internal Medicine (1988).

<sup>3</sup> The Respondent was previously board-certified in India.

2. On May 25, 1994, the Respondent entered into a consent order with the Board, under which his license to practice medicine in Maryland was suspended for six months in Maryland and he agreed to the following facts:

- a. The Respondent admits that on July 28 and September 22, 1992 he had sexual contact with an employee of [REDACTED] who was working for the Respondent at the time of the encounter.
- b. The Respondent admits that he had sexual contact and sexual intercourse with another employee of [REDACTED] and that he also provided medical care to her, as a patient.<sup>4</sup>

3. Since in or around 2000, the Respondent has practiced medicine at offices located in Glen Burnie and Pasadena, Maryland. There are other providers and office staff who work in these offices, including the Respondent's wife.

4. In May 2009, the Respondent entered into an agreement with [REDACTED] [REDACTED] (the College) to become a preceptor with the Physician Assistant Program (the Program).

5. The Program takes approximately two years to complete, with the first year being classroom-based instruction and the second year consisting of several five-week-long clinical rotations in various medical fields.

6. In 2018, the Student was a second-year student at the College in the Program. She was twenty-seven years old at the time.

7. Between August 2018 and September 2018, the Student was assigned to a rotation with the Respondent in Cardiology. She reported to either of his office locations daily and

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<sup>4</sup> The way the Consent Order is written, I cannot decipher whether there was one or two incidents with this employee/patient.

observed him conduct evaluations of patients. At the end of each day, the Student and Respondent would go into his private office alone and discuss the patients they had seen together and make small talk.

8. In the Glen Burnie location, the Respondent's private office was located towards the back of the building, away from the reception area. The Respondent kept his office door open.

9. At some point during her rotation, the Respondent suggested the Student become a dentist (instead of a Physician Assistant) and marry his son. The Student never met the Respondent's son.

10. On September 12, 2018, the Student and the Respondent finished seeing patients early that afternoon and met (alone) in his office at the end of the day. The Student asked the Respondent whether he had any vacations planned. The Respondent replied that he did not; however, he vacations in Jamaica where there are adult resorts, which he suggested the Student might enjoy.

11. The Respondent then began describing acts of public arousal and sex he observed while on vacation in Jamaica. These acts he described included:

- a. Heterosexual sex on the beach in the "doggy style" position, which the Respondent explained had the benefit of deep penetration for the man;
- b. Heterosexual sex in swimming pools, with women's breasts thrashing around;
- c. Heterosexual oral sex in the water, which he commented was a great sensation for both men and women; and
- d. Watching a women's nipples harden visibly through her bikini top during arousal.

12. The Respondent inquired about the Student's sexual fantasies. She did not provide any information.

13. The Respondent asked the Student whether she had ever seen a couple have sex in public before, to which she replied she had not and would not want to because it's something private. The Student asked the Respondent if he would leave when he saw people having sex in public. The Respondent replied, "No we<sup>5</sup> were cheering them on." (Bd. Ex. 21).

14. The Respondent recommended the Student try having sex publicly in Jamaica, in the "doggy style" position.

15. The Student attempted to change the topic by bringing up fall-weather travel destinations in Europe and explained she likes to be cozy and wear more clothing.

16. Not satisfied with this answer, the Respondent asked the Student what she was wearing right now, to which she answered that she had on two tank tops to ensure that her cleavage does not show.

17. The Respondent inquired about the Student's bra strap and asked if there was a chance he could see her nipples, winking at her. She answered in the negative.

18. The conversation ended with the Respondent saying he would have to take the Student on vacation in Jamaica one day and that he would love to see her in a bikini on the beach, performing sex in the "doggy style" position.

19. The Student said her good-byes to the office staff and left for the day.

20. Once in her car, the Student broke down in tears and called her sister and explained what happened.

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<sup>5</sup> The Respondent did not say who he was with. Presumably, "we" refers to himself and his wife, who the Student knew since his wife also worked in the medical office.

21. Once home, the Student called [REDACTED] her friend from the College, and told her what had happened; her friend encouraged her to report the incident to the College and assisted her with drafting an email.

22. At 4:39 PM, the Student sent an email to Professor [REDACTED] entitled "Re: SEXUAL HARASSMENT, Cardiology rotation." She reported the incident and stated, "I do not feel comfortable going to his office tomorrow, 9/13/18, and would like to sit down and meet with you and [REDACTED] to discuss the future of my rotation." (Bd. Ex. 4).

23. On September 13, 2018, at approximately 8:00 AM, the Student met with [REDACTED] [REDACTED] at the College. As the Student disclosed the incident from the prior day, she was tearful and shaking. She expressed her fear of failing out of the Program based on the incident.

24. [REDACTED] decided the Student would not return to her rotation with the Respondent. [REDACTED] directed the Student to speak with other staff at the College and to compose a written statement describing the incident.

25. The Student composed a two-page description of the incident and provided it to the College. The statement is dated September 16, 2018.

26. On September 24, 2018, the Student met with [REDACTED] Dean of the School of Business and Law at [REDACTED]

27. The matter was referred to the Board for investigation. The Board investigated this matter; the investigation included several transcribed interviews.

### DISCUSSION

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 28.02.01.21K. To prove an assertion or a claim by a

preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). In this case, the Department bears the burden to show the Respondent violated section 14-404(a)(3)(i) and/or (ii) of the Act by a preponderance of the evidence. COMAR 28.02.01.21K(1)-(2)(a).

The grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act include the following:

(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:
  - (i) Immoral conduct in the practice of medicine; or
  - (ii) Unprofessional conduct in the practice of medicine;

In this matter, the following regulations are also applicable:

COMAR 10.32.17.03

A. Health care practitioners may not engage in sexual misconduct.

C. Sexual misconduct includes, but is not limited to:

- (1) Engaging in sexual harassment of a patient, key third party, employee, student, or coworker regardless of whether the sexual harassment occurs inside or outside of a professional setting.

COMAR 10.32.17.02B

- (4) "Sexual harassment" means an unwelcome sexual advance, request for sexual favor, or other verbal or physical conduct of a sexual nature.

The parties presented credibility-based arguments since the Student and the Respondent were alone in the Respondent's office on September 12, 2018. The Respondent disputed that he



ever made sexual comments towards the Student, and the Board argued that he did so. For the reasons that follow, I find the Student provided a more credible account of what occurred on September 12, 2018 than the Respondent.

The Respondent testified at the hearing that at the time of his interview with the Board, he was unaware of who the Student was who had accused him of inappropriate sexual remarks. During his interview with the Board, he testified that he had no memory of the Student, would not discuss his Jamaican vacations with a student, and denied ever seeing people have sex publicly. Once he was aware of the Student's identity at the hearing, he acknowledged during his testimony that he suggested fixing her up with his son, who was single at the time. However, the Respondent did not provide any account of the September 12, 2018 conversation with the Student. The Respondent's lack of memory of who the Student was and failure to provide any account of the September 12, 2018 conversation creates a credibility challenge, because he failed to offer any reliable information about the incident.

On the other hand, the Board argued the Student's account of the incident remained fairly consistent over time. The Student's September 16, 2018 written statement, February 11, 2019 sworn testimony at the Board, as well as her testimony given at the hearing in this matter on April 12, 2021 provide very similar accounts of the September 12, 2018 conversation with the Respondent. In each account, the Student began a casual conversation by asking about vacation plans and then was unpleasantly surprised by the Respondent's description of sexual encounters at a couples' resort in Jamaica.

The Student's original written statement from September 16, 2018 includes the most details of the conversation with the Respondent, which makes sense because she drafted it only four days after the incident occurred. Her February 11, 2019 interview with the Board tells the same story of the incident; however, she uses different language when speaking than when

writing. In her transcribed interview, when she recounted the Respondent telling her about observing public sex, she stated that she had responded, "I was like, oh well, wouldn't you just leave? I would leave." (Bd. Ex. 10). However, in her written statement she provided to the College, she covered the same element of conversation but summarized it as follows, "I asked him, 'Didn't you leave?'" (Bd. Ex. 21). Her testimony is worded more casually than her written statement; however, the meaning is the same. Indeed, the Student's account remained consistent over time.

The Board also argued that the Student's account of the incident is reliable due to its graphic and detailed nature. The Student testified that she had never been on vacation before and was a virgin at the time of the September 12, 2018 conversation. She then recounted the Respondent's telling of all the sexual acts he observed while on vacation in Jamaica. Her testimony was explicit – the Respondent told her about watching couples perform oral sex in the water, as well as "doggy style" sex on the beach, which he commented had the benefit of good penetration for the man. He also described women's nipples hardening with arousal. This content was detailed and appears to come from the perspective of a heterosexual man. The recitation of the various positions the couples is extremely detailed, comes from a male perspective, and is therefore less likely to be fabricated by the Student.

The Board also argued that the Student had no reason to fabricate this incident. This is a particularly convincing argument. As [REDACTED] testified during her interview with the Board, the Student was "shaking" as she described the incident from the day before and was afraid of failing out of the Program for disclosing the incident. (Bd. Ex. 12). The Student testified before the Board that she "froze" and "felt like an idiot" for not just walking away, but added that since the Respondent was grading her it was a "tough situation." (Bd. Ex. 10). The testimony of the Student and [REDACTED] both evoke the fear the Student felt during the situation and while

disclosing it the following day. The Student believed her career was on the line and did not want to jeopardize it; however, she felt she had to disclose the incident because she did not want to return to her rotation with the Respondent, per her initial email sent on September 12, 2018 to Professor [REDACTED]. In the email, written the on the date of the incident, the Student stated, "I do not feel comfortable going to his office tomorrow, 9/13/18, and would like to sit down and meet with you and [REDACTED] to discuss the future of my rotation." (Bd. Ex. 4).

It appears the Student's motivation was to conclude her rotation with the Respondent prematurely because she was uncomfortable with the Respondent's sexualized remarks to her. There is no evidence that she had any motivation to fabricate the events of September 12, 2018. Rather, she had to overcome her fear of ruining her career in order to do so. Additionally, the Respondent put forth no argument to explain why the Student would fabricate this incident. In sum, the Student provided credible testimony about the September 12, 2018 incident involving the Respondent.

The Respondent argued that the Respondent would not have engaged in such a conversation with the Student for several reasons. First, the Respondent's office door was open and another member of the office could have walked by and heard the conversation. Indeed, Respondent Exhibit 10 reflects that the Respondent's office was next to another doctor's cubicle and diagonally across from the staff lounge, creating a lack of audio privacy. Clearly, there was a risk to the Respondent in having a conversation of a sexual nature in this setting; however, no one testified that they were in the back area of the office at the time the conversation occurred. Furthermore, having a sexual conversation in the workplace is inherently risky, yet some people engage in this conduct, nonetheless.

Second, the Respondent argued that Board's investigation did not reveal any similar allegations by previous Physician Assistant students placed with the Respondent, nor by any

members of the Respondent's office staff, making the allegations in this matter unlikely to be true. In particular, [REDACTED], a medical assistant for the Respondent, testified that she never heard him speak that way to a woman. If anything, his office staff believed the Respondent had an issue with his temper. [REDACTED] a former staff person, testified to the Board that the staff had to call the police as the result of a heated argument the Respondent had with a patient. (Bd. Ex. 16). I do not doubt that the Respondent was more often temperamental than sexual in the workplace; however, that does not mean he did not engage in a sexualized conversation with the Student on September 12, 2018. Additionally, the Respondent has a history of inappropriate sexual behavior in the workplace, per the consent order with the Board.

The Respondent also argued that the Student's statements were not corroborated because her sister, [REDACTED] and Professor [REDACTED] did not testify. While the testimony of one or more of these individuals may have bolstered the Board's case, both [REDACTED] and Professor [REDACTED] were interviewed by the Board under oath. During her Board interview, [REDACTED] recalled the phone call she received from the Student shortly after the incident and recounted advising her to report the incident to the College. Professor [REDACTED]'s recall of how the incident was reported to him was consistent with [REDACTED] however, [REDACTED]'s recall was more detailed, and [REDACTED] testified in this matter. Her testimony was consistent with the transcript of her Board interview and therefore, I found her to be a credible witness. It is hard to comment on the sister's potential testimony, because no transcript of Board interview is included in the record. In sum, the Board presented the testimony of the Student and [REDACTED] both of whom I found credible. The Board also presented the testimony of [REDACTED] who met with the Student on September 24, 2018. She commented that the Student was "visibly upset" when discussing the incident, which was similar to how [REDACTED] described her on September 13, 2018. I find the testimony about how the Student reported the incident was consistent across witnesses and the

testimony the Student provided at the hearing was consistent with that of her transcribed interview with the Board. For these reasons, the failure of the Board to produce additional witnesses did not amount to a paucity of reliable evidence in the matter.

In conclusion, the Board proved by a preponderance of evidence that on September 12, 2018, the Respondent engaged in immoral and unprofessional conduct when he spoke in detail to the Student about public acts of sexual activity, suggested she engage in such activity, inquired of her sexual fantasies, commented on her bra strap and asked to see her nipples. Md. Code Ann., Health Occ. § 14-404(a)(3)(i-ii) (Supp. 2020). The Respondent's statements and requests of the Student constituted acts of sexual harassment. COMAR 10.32.17.02B(4). Such acts are impermissible for a healthcare practitioner. COMAR 10.32.17.03(A).

#### Sanctions

In this case, the Board has stated that it seeks to impose the disciplinary sanctions of a ninety-day suspension and placement of the Respondent in the Board's Rehabilitation Program. Md. Code Ann., Health Occ. § 14-404(a) (Supp. 2020); COMAR 10.32.02.09A-B(6); COMAR 10.32.02.10. Considering the Respondent engaged in a highly inappropriate sexual conversation with a student and that he had a previous disciplinary action before the Board, I find the ninety-day suspension is merited. Furthermore, his placement in the Board's Rehabilitation Program is appropriate to ensure a similar instance does not happen again in his practice of medicine.

Under the applicable law, the Board also may impose a fine instead of or in addition to disciplinary sanctions against a licensee who is found to have violated section 14-404. COMAR 10.32.02.09. In this case, the Board is seeking a fine of \$10,000.00. Again, such a fine is appropriate in light of the Respondent's conduct.

**PROPOSED CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated the alleged provisions of the law. Md. Code Ann., Health Occ. § 14-404(a)(3)(i-ii) (Supp. 2020). As a result, I conclude that the Respondent is subject to disciplinary sanctions of a ninety-day suspension and placement in the Board's Rehabilitation Program for the cited violations. *Id.*; COMAR 10.32.02.09; COMAR 10.32.02.10B(3).

I further conclude that the Respondent is subject to a fine of \$10,000 for the cited violations. COMAR 10.32.02.10B(3)

**PROPOSED DISPOSITION**

I **PROPOSE** that charges filed by the Maryland State Board of Physicians against the Respondent on August 31, 2020 be **UPHELD**; and

I **PROPOSE** that the Respondent be sanctioned by a ninety-day suspension; and

I **PROPOSE** that the Respondent be ordered to pay a fine of \$10,000.

August 3, 2021  
Date Decision Mailed

RAB/at  
# 193389

*Rachael Barnett*

\_\_\_\_\_  
Rachael Barnett  
Administrative Law Judge

**NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216(a) (2014); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2014); COMAR 10.32.02.05C. The OAH is not a party to any review process.


**Copies Mailed to:**


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