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

* * * * * * * * * * * * * *

FINAL DECISION AND ORDER
ON AMENDED CHARGES

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

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

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

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

STIPULATION OF FACT

The parties entered into the following stipulation of fact:

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

FINDINGS OF FACT

Panel B finds that the following facts were proved by the preponderance of evidence[3]:

Background

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

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

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

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[2] Panel B accepts the stipulation.

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

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

Complaint No. 1, filed by Complainant 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. The Respondent went over and pulled tape off the patient. The Respondent looked at the patient, whose buttocks had folded back over onto the lumbar area. The Respondent slapped[5] the patient's buttocks with a horizontal wrist movement of one hand, causing the patient's buttocks to jiggle. The Respondent's hand was in a vertical position with the fingers extended but not spread apart. His hand moved horizontally from his wrist. He slapped only one cheek of the patient's buttocks. As the Respondent slapped the patient's buttocks, the Respondent said, "Baby's

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

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

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

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

19. Complainant 2, Individual 5 (a registered nurse), Individual 9 (a physician assistant), and an anesthesiologist[7] were present with the Respondent in the OR when the Respondent slapped the patient's buttocks.

20. Individual 9 did not report the incident.

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

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

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

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

[6] In this decision, where Panel B states that there was no medical reason for a particular act of the Respondent, Panel B used its "experience, technical competence, and specialized knowledge in the evaluation of evidence." Md. Code Ann., State Gov't § 10-213(i).
[7] The anesthesiologist did not testify at the ALJ hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Complaint No. 5, filed by Individual 10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[8] *See* footnote 6.

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

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

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

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

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

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

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

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

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

[9] *See* footnote 6.

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

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

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

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

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

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

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

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

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

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

Individual 4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Individual 6

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

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

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

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

Individual 7

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

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

Individual 11

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

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

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION

I. LEGAL AUTHORITIES AND STANDARDS OF CONDUCT

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

> **Health Occ. § 14-404**
>
> (a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> * * *
>
> (3) Is guilty of:
> (i) Immoral conduct in the practice of medicine; or
> (ii) Unprofessional conduct in the practice of medicine[.]

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

> **Health Occ. § 14-101(o)**
>
> (1) "Practice medicine" means to engage, with or without compensation, in medical:
> (i) Diagnosis;
> (ii) Healing;
> (iii) Treatment; or
> (iv) Surgery.

> (2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:
>
> (i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment of an individual:
>
> 1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or . . .

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

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

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

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

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

(State's Ex. 31A, at S-530.)

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

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

> physicians disruptively, that is, speak or act in ways that may negatively affect patient care, including conduct that interferes with the individual's ability to work with other members of the health care team, or for others to work with the physician.
>
> Disruptive behavior is different from criticism offered in good faith with the aim of improving patient care and from collective action on the part of physicians.

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

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

II. PANEL B'S CREDIBILITY DETERMINATION OF THE RESPONDENT

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

A. Slapping Anesthetized Patient's Buttocks

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

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

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

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

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

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

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

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

B. Respondent Telling Complainant 2 that Wanted to Spank Her

Complainant 2 testified that on one occasion she

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

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

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

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

C. The Respondent and Individual 4

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

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

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

At the second interview, the Respondent testified,

> [Individual 4], I, I would bring coffee to [Individual 4]. I didn't know what kind of coffee she liked, you know, and people are very particular about their coffee, so [Individual 4] would tell me what coffee she wanted. This isn't something where I'm forcing coffee on someone.
>
> And that sort of sparked a friendly relationship at the hospital and that friendly relationship morphed into a romantic relationship outside of the hospital.
>
> And on one occasion she drove to my administrative office, which is about a mile or so away from the hospital, after hours, specifically to have an encounter with me. She drove her own car, you know, I wasn't there with her.
>
> And, and that lasted a very short time, but the reason that it ended was strictly on – I ended it. And the reason it ended was because she made a demand for money to me and that, you know, freaked me out. I was extremely concerned, obviously, because there was no talk of that at all.
>
> And obviously it is an implied threat to me, and so, and so that's how that ended.

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

> A. No, not, no, I didn't. It took me a while to sort of put two and two together.
>
> At the very end when we were talking about strawberry, it, it hit like that, because I didn't call her by her name.
>
> Q. Oh, okay.

A. There are plenty of people in the, believe it or not, in the O.R. I wouldn't be able to tell you their whole name frequently.
Q. But you had a sexual relationship with her?
A. We had a romantic relationship, yes.
Q. Okay. And when you say romantic, was there sexual intercourse?
A. Well, yes, there was.
Q. Okay.
A. The one time.

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

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

D. Conclusion – Panel's Credibility Determination of Respondent

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

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

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

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

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

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

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

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

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

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

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

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

C. Individual 4

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

IV. SPECIFIC CONDUCT TO WHICH THE RESPONDENT TOOK EXCEPTION

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

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

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

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

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

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

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

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

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

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

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

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

B. Individual 7

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

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

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

C. Individual 10

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

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

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

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

> Q. . . . . And typically that work in preparing the patients would have been strictly your province during the time that you were working there. Is that right?
> A [Individual 9]. Not necessarily, no. Dr. Benalcazar consented some patients.
> Q. Some patients?
> A. Yeah, he did.
> Q. That was a rarity?
> A. No, not a rarity I would say.

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

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

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

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

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

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

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

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

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

D. Individual 6

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

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

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

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

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

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

E. Individual 11

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

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

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

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

V. EXCEPTIONS - DUE PROCESS

A. Demand Letter

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

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

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

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

The Respondent also asserts in his exceptions that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Investigation – Witness Statements

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

THE SANCTION

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

ORDERED that the order for summary suspension on Dr. Benalcazar's license, issued on July 2, 2021, and affirmed in a final decision and order on August 1, 2022, will be terminated as moot upon the reinstatement of the Respondent's expired license under Health Occ. § 14-317[16]; and it is further

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

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

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

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

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

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

(a) Within **5 business days** from the commencement of the minimum one-year suspension, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;

(b) Within **15 business days** from the commencement of the minimum one-year suspension, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;

(c) the Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

05/18/2023
Date

Signature On File

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

NOTICE OF RIGHT TO APPEAL

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

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

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