IN THE MATTER OF	*	**BEFORE THE**
TARIQUE A. FIROZVI, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: D14221	*	**Case Number: 7715-0017**

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

SUPPLEMENTAL ORDER AFTER SHOW CAUSE HEARING

On November 5, 2015, the Attorney General's Office issued a Violation of Final Decision and Order and Notice to Show Cause to Tarique A. Firozvi, M.D. Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") held a Show Cause hearing on December 2, 2015 and Dr. Firozvi declined to present written or oral argument.

FINDINGS OF FACT

UNDERLYING FINAL DECISION AND ORDER

On July 24, 2014, following an evidentiary hearing before an Administrative Law Judge, Disciplinary Panel A issued a Final Decision and Order, which concluded as a matter of law that Dr. Firozvi acted unprofessionally in the practice of medicine and was professionally incompetent. *See* Health Occ. § 14-404(a)(3)(ii), (a)(4). Disciplinary Panel A found that Dr. Firozvi engaged in sexual impropriety based on his failure to respect a female patient's privacy and his failure to appreciate what was required of him with respect to patient sensibilities during his examination of the patient. *See id.*, COMAR 10.32.17. Disciplinary Panel A's Final Decision and Order is appended to this Order as "Exhibit 1."

Under the terms of the Final Order, Dr. Firozvi was reprimanded and fined ten thousand dollars. Dr. Firozvi timely paid the fine. Dr. Firozvi was also ordered to enroll

in the Maryland Physician's Rehabilitation Program ("MPRP") and "undergo evaluation and treatment as determined by the MPRP." The Final Decision and Order further:

> **ORDERED** that Dr. Firozvi shall fully, timely and satisfactorily cooperate and comply with any recommendations and requirements of the MPRP; and it is further . . .
>
> **ORDERED** that any violation of the terms and conditions this Final Decision and Order, including failure to pay the fine or a failure to enroll in and cooperate and comply with the MPRP, shall be deemed a violation of this Order; and it is further
>
> **ORDERED** that if Dr. Firozvi violates any of the terms and conditions of this Final Decision and Order, Disciplinary Panel A, after notice and an opportunity for an evidentiary hearing at the Office of Administrative Hearings if there is a genuine issue as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any sanction that the Panel may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including the revocation or suspension of his license, probation or additional conditions, and/or an additional fine[.]

VIOLATION OF THE CONSENT ORDER

On September 4, 2014, Dr. Firozvi entered into a Participant Rehabilitation Agreement (the "Agreement") with the MPRP. Pursuant to the Agreement, Dr. Firozvi was evaluated by the MPRP in December 2014. In January 2014, the MPRP recommended that Dr. Firozvi successfully complete an approved physician re-entry program and evaluation. The MPRP advised Dr. Firozvi that he must complete the physician re-entry evaluation before May 2015 or he would be terminated from the MPRP for cause. On May 12, 2015, the MPRP sent a letter to the Board informing it that Dr. Firozvi's case was closed for cause based on his failure to undergo a physician re-entry evaluation.

SHOW CAUSE HEARING

On November 5, 2015, the Attorney General's office issued a Violation of Final Decision and Order and Notice to Show Cause. Dr. Firozvi did not submit any written response. On December 2, 2015, Disciplinary Panel A held a Show Cause hearing. Dr. Firozvi, through his attorney, informed the State that he would not be present or participate because he was caring for his ill wife.

At the Show Cause hearing, the State argued that Dr. Firozvi's failure to comply with the MPRP's required physician re-entry evaluation constituted a failure to "satisfactorily cooperate and comply with any recommendations and requirements of the MPRP." The State recommended that the Board revoke Dr. Firozvi's license. Dr. Firozvi did not appear and did not present any written or oral arguments.

CONCLUSIONS OF LAW

Disciplinary Panel A concludes that Dr. Firozvi violated its Final Decision and Order by failing to comply with the requirements of the MPRP.

ORDER

On an affirmative vote of a majority of a quorum of Disciplinary Panel A, it is hereby

ORDERED that Tarique A. Firozvi, M.D.'s license is hereby **REVOKED**; and it is further

ORDERED that this Order is a public document.

12/21/2015
Date

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

IN THE MATTER OF	*	**BEFORE THE MARYLAND**
TARIQUE FIROZVI, M.D.	*	**STATE BOARD OF**
Respondent.	*	**PHYSICIANS**
License No. D14221	*	**Case No.: 2013-0004**

Attachment A

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

FINAL DECISION AND ORDER

On March 13, 2013, the Maryland State Board of Physicians ("Board") charged Tarique Firozvi. M.D. with engaging in unprofessional conduct in the practice of medicine and being professionally, physically or mentally incompetent, in violation of the Maryland Medical Practice Act, Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) and (4), respectively. The Board also charged Dr. Firozvi with sexual impropriety under the Code of Maryland regulations ("COMAR") 10.32.17. The Board's charges were based on Dr. Firozvi's failure to allow a female patient privacy while she undressed and dressed, and his removal of her bra and pulling down of her pants and underwear while he performed a physical examination.

On January 7 and 8, 2014, an evidentiary hearing was held at the Office of Administrative Hearings. In a proposed decision issued on April 2, 2014, Administrative Law Judge ("ALJ") Lorraine E. Fraser upheld the Board's charges. As a sanction, the ALJ proposed that the Board issue a reprimand, impose a $10,000 fine, and require Dr. Firozvi to obtain evaluation and treatment as recommended by the Maryland Physician's Rehabilitation Program ("MPRP"). Neither Dr. Firozvi nor the State filed exceptions with the Board to the ALJ's Proposed Decision. On June 11, 2014, the case was before Disciplinary Panel A for final disposition. After considering the entire record, Disciplinary Panel A issues this Final Decision and Order as the final disposition in this case.

FINDINGS OF FACT

With the clarifications noted below, Disciplinary Panel A adopts the parties' Stipulations of Fact numbered 1-42 and the ALJ's Proposed Findings of Fact numbered 1-29 as Findings of Fact. (The ALJ's Proposed Decision of April 2, 2014 is incorporated by reference into this Final Decision and Order and is appended to this Order as Attachment A). Disciplinary Panel A also adopts the ALJ's Discussion on pages 12-23 of the Proposed Decision. Regarding the parties' Stipulation #15, the ALJ's Proposed Findings # 17 and 18, and the ALJ's Discussion on page 14 of the Proposed Decision, the Board clarifies that an examination of a patient's femoral or peripheral pulses does not require a physician to wear gloves. Dr. Firozvi's conduct in remaining in the room while the patient undressed, however, and in unhooking her bra and pulling down her pants and underpants was unprofessional, professionally incompetent and sexually demeaning to the patient. He did not know or understand how to respect the patient's privacy as she disrobed and failed to appreciate what was required of him with respect to her sensibilities during his examination. The findings of fact were proven by a preponderance of the evidence.

CONCLUSIONS OF LAW

Disciplinary Panel A concludes that Dr. Firozvi engaged in unprofessional conduct in the practice of medicine, in violation of Md. Code Ann., Health Occ. § 14-404(a)(3)(ii), and that he was professionally incompetent, in violation of Md. Code Ann., Health Occ. § 14-404(a)(4). The panel further concludes that Dr. Firozvi engaged in sexual impropriety, in violation of COMAR 10.32.17. 01 and .02 B(2)(a) and (b)(i), .02 B(3)(a), and .03.

ORDER

By an affirmative vote of a majority of a quorum of Disciplinary Panel A, it is, hereby

ORDERED that the Board's charges against Tarique Firozvi, M.D., License No.

D14221, be **UPHELD**; and it is further

ORDERED that Dr. Firozvi be **REPRIMANDED**; and it is further

ORDERED that within **THIRTY (30) DAYS** of the date of this Final Decision and Order, Dr. Firozvi shall pay a monetary fine in the amount of **TEN THOUSAND DOLLARS ($10,000)**. The payment shall be by certified or bank-guaranteed check made payable to the Maryland State Board of Physicians. The check should be mailed to: Maryland State Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that within **TEN (10) DAYS** of the date of this Final Decision and Order, Dr. Firozvi shall enroll in the Maryland Physician's Rehabilitation Program ("MPRP") and subsequently undergo evaluation and treatment as determined by the MPRP; and it is further

ORDERED that Dr. Firozvi shall fully, timely and satisfactorily cooperate and comply with any recommendations and requirements of the MPRP; and it is further

ORDERED that Dr. Firozvi shall sign any written releases or consent forms required by the MBRP to authorize the MPRP to exchange with (i.e. disclose to and receive information from) outside entities' verbal and written information about him, and to allow Disciplinary Panel A and the MPRP to receive all verbal and written treatment records and reports from any current or future treating providers or other appropriate health professionals designated by the MPRP; and it is further

ORDERED that any violation of the terms and conditions of this Final Decision and Order, including a failure to pay the fine or a failure to enroll in and cooperate and comply with the MPRP, shall be deemed a violation of this Order; and it is further

ORDERED that if Dr. Firozvi violates any of the terms and conditions of this Final Decision and Order, Disciplinary Panel A, after notice and an opportunity for an evidentiary

hearing at the Office of Administrative Hearings if there is a genuine issue as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any sanction that the Panel may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including the revocation or suspension of his license, probation or additional conditions, and/or an additional fine; and it is further

ORDERED that Dr. Firozvi shall practice according to the Maryland Medical Practice Act and in accordance with all applicable laws, statutes and regulations pertaining to the practice of medicine; and it is further

ORDERED that Dr. Firozvi is responsible for all costs incurred in fulfilling the terms and conditions set forth in this Final Decision and Order; and it is further

ORDERED that this is a Final Decision and Order of a disciplinary panel of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 *et seq.* (Repl. Vol. 2009).

7/24/14
Date

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

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

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

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

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

Noreen M. Rubin
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201

MARYLAND STATE BOARD	*	BEFORE LORRAINE E. FRASER,
OF PHYSICIANS	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
TARIQUE FIROZVI, M.D.,	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	OAH No.: DHMH-SBP-71-13-33433
License No. D14221	*	BOARD CASE No.: 2013-0004

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

PROPOSED DECISION

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

STATEMENT OF THE CASE

On March 13, 2013, Maryland's State Board of Physicians (the Board) issued to the Respondent, Tarique Firozvi, M.D., Charges under the Maryland Medical Practice Act (the Charges). The Board alleged that the Respondent engaged in unprofessional conduct in the practice of medicine and that he was professionally, physically, or mentally incompetent, in violation of section 14-404(a)(3)(ii), and (4) of the Maryland Annotated Code's Health Occupations Article.[1] The Board also charged the Respondent with sexual impropriety under Code of Maryland Regulations (COMAR) 10.32.17. The Respondent denied these Charges. Consequently, on August 26, 2013, the Board forwarded the matter to the Office of Administrative Hearings (OAH).

[1] Throughout this Proposed Decision, the 2009 Replacement Volume and 2013 Supplement to the Maryland Annotated Code's Heath Occupations Article will be collectively referred to as the Heath Occupations Article.

A scheduling conference was held on September 13, 2013, and a prehearing conference was held on November 12, 2013.

On January 7 and 8, 2014, I conducted a hearing on the merits at OAH's Administrative Law Building in Hunt Valley, Maryland, pursuant to Section 14-405(a) of the Heath Occupations Article. Assistant Attorney General Tracee Orlove Fruman represented the State. Joan Cerniglia-Lowensen, Esquire, represented the Respondent.

The contested case provisions of the Administrative Procedure Act, the Board's Rules of Procedure and OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 10.32.02; COMAR 28.02.01.

ISSUES

Is the Respondent guilty of unprofessional conduct in the practice of medicine, in violation of section 14-404(a)(3)(ii) of the Maryland Annotated Code's Health Occupations Article?

Is the Respondent guilty of being professionally, physically, or mentally incompetent, in violation of section 14-404(a)(4) of the Maryland Annotated Code's Health Occupations Article?

Did the Respondent engage in sexual impropriety, in violation of COMAR 10.32.17?

What sanction, if any, is appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The following documents were admitted as joint exhibits:

Joint Ex. 1 Baltimore County Police Department Crime Report, 7/17/12

Joint Ex. 2 Report of Disciplinary Action to the Board from MedStar Physician Partners, 7/16/12, received 8/6/12

Joint Ex. 3 Letters (2) to the Respondent from Edward M. Miller, M.D., President, MedStar Physician Partners, 4/13/12

Joint Ex. 4 Letter to Kimberly Edwards, Maryland Board of Physicians, from K. Nichole Nesbitt, Goodell, DeVries, Leech & Dann, L.L.P., 9/12/12, with attached documents: Incident Description, 7/13/12; Interview notes by Barbara Lovelace, 8/2/12; Appointments Worksheet Report

Joint Ex. 5 Charges Under the Maryland Medical Practice Act, 3/13/13

The State submitted the following documents, which I admitted into evidence as follows:

State Ex. 1 Excerpts of the Patient's medical records, March-July 2012

State Ex. 2 Investigative Report, 11/26/12

State Ex. 3 Report of Henry Silverman, M.D., M.A., 11/5/13

State Ex. 4 Curriculum Vitae of Henry J. Silverman, M.D., M.A., October 2013

The Respondent submitted the following document, which I admitted into evidence:

Respondent Ex. 1 Curriculum Vitae of Daniel Crumpton Hardesty, M.D., FACP

Testimony

The State presented the testimony of the following witnesses:

- The Patient[2]
- Henry Silverman, M.D., M.A., accepted as an expert in ethics and professionalism

The Respondent testified on his own behalf and presented the testimony of the following additional witnesses:

- Melissa Coker, Patient Service Coordinator, MedStar Physicians
- Celena Smith, Clerical Temp, MedStar Physicians
- Shalonda Gregg, Medical Assistant, MedStar Physicians
- Daniel Hardesty, M.D., FACP, accepted as an expert in professional standards in internal medicine

[2] The Patient's name is redacted in this Proposed Decision to protect her confidentiality. The Respondent knows her identity.

STIPULATIONS OF FACT

The parties entered into the following stipulations of fact:

1. At all relevant times, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on or about August 14, 1972. His license is presently active and is scheduled to expire on September 30, 2014.
2. The Respondent is not board-certified in any medical specialties.
3. At all relevant times, the Respondent was employed by Clinic A, in Dundalk, Maryland.
4. At all relevant times, the Respondent maintained hospital privileges at Facility A.
5. On or about July 19, 2012, the Board received a police report from the Baltimore County Police Department regarding an incident involving the Respondent and a Clinic A patient (the Patient).
6. At all relevant times, the Patient was a fifty-two year-old female scheduled to undergo angioplasty, stent placement, and bypass surgery.
7. The Patient had a complicated medical history with multiple co-morbidities.
8. On June 28, 2012, an angiogram was performed on the Patient to confirm the need for the angioplasty and stent placement. The Patient was required to obtain a pre-operative examination and EKG[3] for that procedure as well.
9. On July 13, 2012, the Patient presented at Clinic A in order to be cleared for a surgical procedure. The Patient's treating physician was unavailable, so she saw the Respondent instead.
10. The Patient had previously completed her pre-operative physical with her regular treating physician, as well as the required stress test, cardiac clearance, laboratory testing, chest x-ray, and vein mapping.

[3] Electrocardiogram

11. The Patient stated that the Respondent asked her to provide an in-depth medical history, which she did.

12. The Respondent did not leave the room while the Patient undressed.

13. There was no chaperone present in the examination room at any time.

14. The Respondent performed a physical examination of the Patient, including checking her abdomen, and did not wear gloves.

15. The Respondent checked her [the Patient's] peripheral pulses. He was not wearing gloves.

16. After the physical examination, a nurse entered the examination room with the EKG machine.

17. After the EKG was complete and the nurse left the room, the Respondent provided the Patient with his cellular telephone number and indicated that he makes house calls.

18. The Patient spoke with a representative of Clinic A and reported the alleged incident.

19. On July 17, 2012, the Patient filed a police report with the Baltimore County Police Department.

20. Thereafter the Board initiated an investigation.

21. On August 27, 2012, members of the Board's staff interviewed the Patient under oath.

22. On August 28, 2012, members of the Board's staff interviewed the Respondent under oath.

23. The Respondent stated that it is his practice to remain in the examination room while his patients are undressing, and to assist them with undressing whether or not they have requested his assistance.

24. The Respondent stated that he keeps a white sheet on the examination table at all times for the patients to use to cover themselves.

25. The Respondent stated that he does not routinely use chaperones, unless a situation arises when he feels a chaperone is necessary.

26. The Respondent stated that regardless of the reason for a patient's visit, he typically conducts a thorough physical examination.

27. The Respondent stated that he does not use gloves when examining patients unless he is aware that the patient has an infection. The Respondent also stated that he wears gloves when performing a rectal or vaginal examination.

28. The Respondent stated that he routinely provides his cellular telephone number and offers house calls to his patients.

29. When asked about his encounter with the Patient, the Respondent stated that he spent approximately 30-to-40 minutes taking a full history and conducted a complete physical examination without the presence of a chaperone.

30. When asked if the Respondent removed the Patient's pants and undergarments, the Respondent stated, "I do not know. I'm quite sure she was never totally undressed."

31. The Respondent did not recall whether the Patient used the white sheet that he stated was on the examination table.

32. The Respondent stated that he might have helped the Patient unclasp her bra because he does so with many of his Patients.

33. The Respondent stated that he always conducts breast examinations with the patient lying down at first, and then with the patient sitting up if he perceives a lump. He denied starting the Patient's physical examination with a breast examination.

34. The Respondent denied making any comment about the Patient's grooming habits.

35. The Respondent did not recall the Patient demanding the EKG, or handing her a paper gown just before the nurse entered the examination room to conduct the EKG.

36. The Respondent did not recall being told that the Patient was there only for an EKG.

37. On August 27, 2012, members of the Board's staff interviewed Clinic A's office manager (Witness A) under oath.

38. During interviews of Clinic A's staff they testified that Clinic A's policy is to provide a chaperone for all patients who have to get undressed during the appointment, and patients are to disrobe in private.

39. During interviews of Clinic A's staff they testified that Clinic A requires the use of gloves when examining a patient.

40. As a result of the Patient's complaint, the Respondent's employment at Clinic A was suspended pending an investigation into the Patient's allegations.

41. Witness B, the nurse who conducted the Patient's EKG, remembered after the Patient's appointment, having had a conversation with another office staff member, Witness C, about the Patient only requiring an EKG.

42. Witness C took the telephone call when the Patient made the appointment for the EKG. She recalled checking with another member of the office staff about scheduling an "EKG-only" appointment because this is not a common practice in the office.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Respondent was raised in India. He became a physician in 1967 and moved to the United States in 1968, where he completed his residency. He speaks English with a marked accent.

2. From 1979 to 2012, the Respondent practiced internal medicine in his own office.
3. In 2012, two of the Respondent's long time employees became ill and stopped working for him. The Respondent found it difficult to maintain his independent practice without these employees.
4. On May 1, 2012, the Respondent joined Clinic A.
5. It was the Respondent's longstanding practice to remain in the examination room while his patients were undressing, and to assist them with undressing whether or not they had requested his assistance. The exam rooms in his former office had a curtain to divide the room between the desk area where he took patient histories and the exam table.
6. It was the Respondent's longstanding practice to keep a white sheet on the examination table at all times for patients to use to cover themselves.
7. It was the Respondent's longstanding practice to not wear gloves when examining patients unless a patient had an infection or he was performing a rectal or vaginal examination.
8. It was the Respondent's longstanding practice to routinely provide his cellular telephone number and offer house calls to his patients.
9. In a letter dated July 10, 2012, David P. Coll, M.D., F.A.C.S., (the Patient's vascular surgeon) asked the Respondent to perform a pre-operative consultation of the Patient prior to her vascular surgery. Dr. Coll asked the Respondent to address the potential risk and management of the Patient's following medical problems: Peripheral Vascular Disease, Diabetes, Hyperlipidemia, Coronary Artery Disease – history of Myocardial Infarction, Chronic Obstructive Pulmonary Disease, and Morbid Obesity. Dr. Coll also asked the Respondent to perform an EKG of the Patient.

10. On July 13, 2012, the Patient arrived for her appointment with the Respondent. The Patient believed that the Respondent was only going to perform an EKG because her regular physician, Dr. Krupitzer, had given her a physical on June 22, 2012. When the Patient registered upon her arrival, Melissa, a Clinic A employee, told the Patient that she would need a complete pre-operative physical examination based on the July 10, 2012 letter from Dr. Coll.
11. The Patient was shown to the examination room where she met the Respondent. The Respondent had Dr. Coll's July 10, 2012 order.
12. The Respondent asked the Patient questions about her medical history while both were seated in chairs and the Patient was dressed. The Patient told the Respondent that she needed her prescriptions refilled while she was there.
13. The Patient was taking a number of prescription medications including Hydromorphone, NovoLog 15, Lantus insulin, Ambien, Lorazepam, Effexor XR 75, and Wellbutrin XL.
14. The Respondent asked the Patient to get up and undress. The Patient sat on the exam table and took off her shirt; she did not remove her bra. The Respondent examined the Patient's head and neck. Then, the Respondent unhooked the Patient's bra and tossed it on a chair. The Respondent did not offer the Patient a gown, sheet, or drape. He did not ask the Patient if she needed assistance removing her bra or for permission to remove her bra.
15. While the Patient was sitting on the exam table, the Respondent held the Patient's breasts with both of his hands and moved them up and down. He put his hand under her breasts to inspect the apex beat of her heart. He also felt the Patient's back and legs with his hands.
16. The Respondent asked the Patient to lie down. He pressed on the upper part of her chest and pressed on her abdomen. He also performed a breast exam.

17. The Respondent pulled down the Patient's elastic waist pants and underwear and felt the femoral pulses in her groin. He told the Patient he needed to check for pulses. He did not ask the Patient if she needed assistance pulling down her pants and underwear or for permission to pull down her pants and underwear. He did not touch the Patient's vagina or give her a vaginal or rectal exam.
18. The Respondent removed the Patient's shoes, checked the pulses in her feet and ankles, then reached into a cabinet pulled out a white tissue drape and handed it to the Patient.
19. At that time, the EKG technician knocked on the door and entered with the EKG machine. The technician handed the Patient a blue drape. The technician performed the EKG and left the room.
20. The Respondent remained in the room sitting in a chair writing prescriptions for the Patient while the Patient got dressed. He did not assist or offer to assist the Patient to get dressed.
21. When the Respondent handed the Patient her prescriptions he also handed her his cell phone number and said that if she needed him to please call him and that he made house calls on Saturdays. He also directed her to provide a urine sample that day.
22. As the Patient was leaving the office she saw the EKG technician and asked what had just happened to her.
23. The Patient was very upset when she left the appointment with the Respondent. She texted her family and a friend. She then called Clinic A's office manager and told her that she had a horrible visit with the Respondent and that she just came in for an EKG. The Patient said that the Respondent asked her to get undressed, touched her breasts inappropriately, and touched her groin area. She also said the Respondent asked her if she wanted his cell phone

number because he makes house calls. In addition, she complained about the gown. The Patient also called Dr. Coll's office, who directed her to the Board of Physicians.

24. On July 16, 2012, the following Monday, the Patient went to work and discussed what had happened during her appointment with a co-worker and her employer. Her employer directed her to file a police report.

25. Also on July 16, 2012, Clinic A suspended the Respondent from practice so that it could investigate the Patient's complaint.

26. On July 17, 2012, the Patient filed a police report with the Baltimore County Police Department.

27. On August 13, 2012, Clinic A notified the Respondent that it had completed its investigation and found Patient A's allegations were unsubstantiated. As a condition of returning to work for Clinic A, Clinic A required the Respondent to submit to a neuropsychological examination and to agree to the following conditions: 1) the MA[4] will escort all patients to the exam rooms, obtain their weight, and obtain their vital signs; 2) female patients will wear a gown; 3) the Respondent will familiarize himself with Clinic A's chaperone policy and abide by it; 4) the MA will perform all blood work, EKGs, and testing; 5) the Respondent will start using the electronic medical records; 6) the Respondent will not give patients his cell phone number and will use Clinic A's answering service; 7) the Respondent will limit house calls or not do them at all; 8) the MA will give all injections; and 9) the Respondent will follow all of Clinic A's policies.

28. The Respondent agreed to abide by Clinic A's conditions.

29. Sometime thereafter, the Respondent retired from practicing medicine at Clinic A.

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[4] The term is not defined.

DISCUSSION

The Board has charged the Respondent under section 14-404(a)(3)(ii) and (4) of the Health Occupations Article, which provides:

> (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> . . . .
>
> (3) Is guilty of:
>
> . . . .
>
> (ii) Unprofessional conduct in the practice of medicine.
>
> (4) Is professionally, physically, or mentally incompetent.

The Board also charged the Respondent under the sexual misconduct regulations in COMAR 10.32.17. COMAR 10.32.17.01 and .02B(2)(a), (b), .02B(3) and .03 provide as follows:

> .01 Scope.
>
> This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.
>
> .02 Definitions.
>
> . . . .
>
> B. Terms Defined.
>
> . . . .
>
> (2) Sexual Impropriety.
>
> (a) "Sexual impropriety" means behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or a key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.
>
> (b) "Sexual impropriety" includes, but is not limited to:
>
> (i) Failure to provide privacy for disrobing;
>
> (ii) Performing a pelvic or rectal examination without the use of gloves;
>
> . . . .
>
> (3) "Sexual misconduct" means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:
>
> (a) Sexual impropriety. . . .

.03 Sexual Misconduct.

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

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

The State, as the moving party, has the burden of proof, by a preponderance of the evidence, to demonstrate that the Respondent engaged in unprofessional conduct in the practice of medicine and is professionally, physically, or mentally incompetent to practice medicine. Md. Code Ann., State Gov't § 10-217 (2009); Health Occupations Article § 14-405(b)(2) (2009); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) *citing Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959). *See also Schaffer v. Weast,* 546 U.S. 49, 56 - 57 (2005). For the reasons set forth below, I conclude that the State has met that burden

The State argued that the Respondent violated the trust the Patient placed in him as a physician. The State contended that the Respondent was unprofessional in the practice of medicine, was professionally incompetent, and engaged in sexual misconduct when he remained in the room while the Patient undressed, unclasped her bra, and removed her pants and underwear. The State asserted that the Respondent did not provide the Patient with a drape or gown and there was no curtain in the room to afford the Patient any privacy as she disrobed. The State maintained that the Patient was not expecting a full physical exam and did not consent to a breast exam. The State argued that the Respondent was unprofessional and professionally incompetent because he did not know how to respect a patient's privacy and failed to appreciate what was required of him to do so. The State agreed the Respondent is a good clinician but alleged that his practice had become so rote that he did not appreciate patient sensibilities. The State agreed that the Respondent was not intentionally seeking sexual gratification. The State

asserted that Clinic A gave the Respondent an opportunity to change his practice, but he declined. The State argued that revocation of the Respondent's license to practice medicine is the appropriate sanction.

The Respondent argued that there was miscommunication that caused the Patient to believe she was there only for an EKG so she was surprised by the full physical exam. The Respondent maintained that he was following Dr. Coll's order for a full pre-operative exam. The Respondent asserted that the Patient's testimony that the Respondent pulled off her pants and underwear completely while she was lying on her back defied physics and called her credibility into question. The Respondent maintained that he was not required to wear gloves to assess the Patient's femoral pulse and that a chaperone was not required. The Respondent asserted that the Patient had a drape and he believed she was having difficulty so he unclasped her bra. The Respondent contended that his retirement from Clinic A does not mean that he was unwilling to make changes. The Respondent argued that revocation is not the appropriate sanction. He maintained that he is willing to be educated and wants to continue to serve hospice patients.

This case rests on the credibility of the Patient and the Respondent. I made my findings of fact after carefully considering their testimony and the documentary evidence and finding what I believe most likely occurred during the Respondent's examination of the Patient on July 13, 2012. I found both the Patient and the Respondent to be sincere. The Patient was clearly upset immediately following her appointment with the Respondent and during the hearing. I believe the Patient's distress was caused by a combination of her belief that she was only there for an EKG, by the Respondent's failure to ensure the Patient's privacy during the exam, by the Respondent's failure to communicate fully to the Patient during the exam, and by assumptions the Respondent made in error, which he then acted upon. While I believe the Patient's distress

was and is real, I also believe that she exaggerated her description of events. I carefully reviewed the statements the Patient made when she called the office manager to complain the day of the appointment July 13 2012, the written statement the Patient gave to police on July 17, 2012, and the Patient's testimony on January 7, 2014. For example, in her written statement the Patient wrote that the Respondent grabbed her crotch and felt around her vaginal area. In her testimony, the Patient said the Respondent used his thumbs to feel the pulses in her groin and that his hands were toward her crotch, her vaginal area.

When the Patient arrived for her appointment on July 13, 2012, she believed she was there for only an EKG because she had a physical exam with Dr. Krupitzer on June 22, 2012. When the Patient checked in on July 13th, she handed her pre-operative paperwork from Dr. Coll to Melissa, a Clinic A employee. Dr. Coll's July 10, 2012, order was addressed to the Respondent and asked him to perform a pre-operative consultation of the Patient prior to her vascular surgery. Dr. Coll asked the Respondent to address the potential risk and management of the Patient's various serious medical problems. Dr. Coll also asked the Respondent to perform an EKG of the Patient. In short, Dr. Coll was asking for a physical exam and an EKG. Melissa read the order and told the Patient that she would need a complete pre-operative physical. The Patient did not respond to Melissa's statement. The Patient should have been aware at this point that she was going to have a physical exam.

The Patient was shown to an examination room and met the Respondent. The Respondent had Dr. Coll's order for a physical exam and EKG. At this point the Respondent was acting on the reasonable understanding that the Patient was there for, and had consented to, a physical exam. The Respondent began by asking the Patient questions about her medical history, during which the Patient told the Respondent that she needed her prescriptions refilled while she

was there. The Patient was dressed and both were seated in chairs. The Respondent then asked the Patient to get up and undress. The Patient sat on the exam table and took off her shirt; she did not remove her bra. The Respondent examined the Patient's head and neck. Then, the Respondent unhooked the Patient's bra, and tossed it on a chair. The Respondent testified that he believed that the Patient needed assistance getting undressed. He described how she was stiff and struggling, her equilibrium was wobbly, and he had helped her on to the scale and the exam table. This was where Respondent erred. First, the Respondent should have left the room to give the Patient privacy to undress. Second, if he had returned and found the Patient partially undressed, the Respondent should not have assumed that the Patient needed assistance getting undressed. He should have asked the Patient if she needed assistance getting undressed. If the Patient did request assistance, a chaperone would have been advisable, but at a minimum the Respondent should have asked the Patient for permission to remove her bra. Further, I believe the Respondent did not offer the Patient a gown, sheet, or drape. The Respondent testified that there was a sheet on the exam table, that he covered her with the sheet, and that he has always done it the same way for forty-five years. I believe this was the Respondent's practice but for whatever reason the Patient did not have the sheet that day. Perhaps the assistant who prepared the exam room between patients forgot to place a sheet on the table or perhaps the Patient was sitting on it and did not see it. Whatever the reason, I believe the Patient's testimony that she did not have a gown or drape over her, and that its absence added to her distress.

Once the Respondent removed the Patient's bra, he continued his examination of the Patient. While the Patient was sitting on the exam table, the Respondent held the Patient's breasts with both of his hands and moved them up and down. He put his hand under her breasts to inspect the apex beat of her heart. He also felt the Patient's back and legs with his hands. The

Respondent testified that he was attempting to examine the Patient's heartbeat and lungs, and observe whether her chest wall moved symmetrically but was having difficulty doing so because of the Patient's obesity. I found the Respondent's testimony credible and consistent with the Patient's description of what he was doing. I do not believe the Patient's testimony that the Respondent told her that this was a breast exam, rather, I believe the Respondent told the Patient that he was going to perform a breast exam.

Next, the Respondent asked the Patient to lie down. He pressed on the upper part of her chest and pressed on her abdomen. He also performed a breast exam. Then, the Respondent pulled down the Patient's elastic waist pants and underwear and felt the femoral pulses in her groin. He told the Patient he needed to check for pulses. Here again, the Respondent erred. The Respondent should have told the Patient that he needed to check her femoral pulses first, explained they were located on her groin, and explained that she needed to pull down or remove her pants. Again, at a minimum, the Respondent should have asked the Patient if she needed assistance pulling down her pants and underwear and/or for permission to pull down her pants and underwear. I believe the Respondent pulled down the front waistband of the Patient's pants and underwear in order to assess her femoral pulses. I do not believe the Patient's testimony that he pulled her pants and underwear down entirely in one swift motion while she was laying down on the exam table. Given the Patient's morbid obesity, it would be extremely difficult or impossible for the Respondent to remove her pants as she described. I also do not believe the Respondent made any comment about the Patient's grooming.

Finally, the Respondent removed the Patient's shoes, checked the pulses in her feet and ankles, then reached into a cabinet pulled out a white tissue drape and handed it to the Patient. At that time, the EKG technician knocked on the door and entered with the EKG machine. The

technician handed the Patient a blue drape. The technician performed the EKG and left the room. After the EKG, the Respondent remained in the room sitting in a chair writing prescriptions for the Patient while the Patient got dressed. Once again, the Respondent erred. He should have left the room to give the Patient privacy while she dressed.

When the Respondent handed the Patient her prescriptions he also handed her his cell phone number and said that if she needed him to please call him and that he made house calls on Saturdays. He also directed her to provide a urine sample that day.

Overall, the Respondent's actions that day are consistent with a doctor giving a patient a physical exam. I do not believe the Respondent was intending to sexually assault the Patient. However, the Respondent made assumptions and took actions that were not respectful of or sensitive to the Patient's privacy and dignity as a person. It is understandable that the Patient was shocked by the Respondent's removing her bra and pulling down her pants and failing to provide her privacy while she undressed and dressed. I do not believe the Respondent was intentionally trying to demean the Patient. Rather, I believe he was conducting his exam focused on the clinical information he was gathering and not adequately communicating with the Patient before he acted. Had the Respondent asked the Patient whether she needed assistance undressing, rather than assuming she needed help, there would not have been any miscommunication or misunderstanding between them.

Based on the facts I have found to be true, I find that the Respondent was unprofessional in the practice of medicine, professionally incompetent, and engaged in sexual misconduct when he remained in the room while the Patient undressed and dressed, when he removed her bra, and when he pulled down her pants and underwear. Therefore, I find the Respondent violated

section 14-404(a)(3)(ii) and (4) of the Health Occupations Article and COMAR 10.32.17.01 and .02B(2)(a), (b), .02B(3), and .03.

Proposed Sanctions

COMAR 10.32.02.11 sets forth the sanctioning guidelines for physicians and permits the Board to impose sanctions for violations of section 14-404(a) of the Health Occupations Article. COMAR 10.32.17.03 expressly provides that licensed physicians "may not engage in sexual misconduct" and that Health Occupations Article, §14-404(a)(3), "includes, but is not limited to, sexual misconduct." COMAR 10.32.02.11B provides, in pertinent part, that a physician found to be guilty of unprofessional conduct in the practice of medicine consisting of: sexual impropriety is subject to a maximum sanction of revocation and a $50,000.00 fine to a minimum sanction of a reprimand and a $10,000 fine.

As set forth above, sexual misconduct with a patient includes sexual impropriety. COMAR 10.32.17.02B(3). Also set forth above, sexual impropriety is defined to include sexually demeaning behavior toward a patient and failure to provide a patient privacy for disrobing. COMAR 10.32.17.02B(2).

With respect to specific sanctions to be imposed against a physician, COMAR 10.32.02.10 provides in pertinent part as follows:

> .10 Sanctioning and Imposition of Fines.
>
> A. General Application of Sanctioning Guidelines.
>
> . . . .
>
> (2) Except as provided in §B of this regulation, for violations of Health Article §§14-404(a) . . . Annotated Code of Maryland, the Board shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.

(3) Ranking of Sanctions.

(a) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:

(i) Reprimand;

(ii) Probation;

(iii) Suspension; and

(iv) Revocation.

(b) A stayed suspension in which the stay is conditioned on the completion of certain requirements is ranked as probation.

(c) A stayed suspension not meeting the criteria for § A(3)(b) of this regulation is ranked as a reprimand.

(d) A fine listed in the sanctioning guidelines may be imposed in addition to but not as a substitute for a sanction.

(e) The addition of a fine does not change the ranking of the severity of the sanction.

(4) The Board may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the chart.

(5) Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.

(6) If a licensee has violated more than one ground for discipline as set out in the sanctioning guidelines:

(a) The sanction with the highest severity ranking should be used to determine which ground will be used in developing a sanction; and
(b) The Board may impose concurrent sanctions based on other grounds violated.

. . . .

(8) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating

and mitigating factors set out in §B(5) and (6) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

. . . .

B. Aggravating and Mitigating Factors.

(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in §B(5) and (6) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(2) Nothing in this regulation requires the Board or an administrative law judge to make findings of fact with respect to any of these factors.

(3) A departure from the sanctioning guidelines set forth in Regulation .11 of this chapter is not a ground for any hearing or appeal of a Board action.

(4) The existence of one or more of these factors does not impose on the Board or an administrative law judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set out in the sanctioning guidelines.

(5) Mitigating factors may include, but are not limited to, the following:

(a) The absence of a prior disciplinary record;

(b) The offender self-reported the incident;

(c) The offender voluntarily admitted the misconduct, made full disclosure to the Board and was cooperative during the Board proceedings;

(d) The offender implemented remedial measures to correct or mitigate the harm arising from the misconduct;

(e) The offender made good faith efforts to make restitution or to rectify the consequences of the misconduct;

(f) The offender has been rehabilitated or exhibits rehabilitative potential;

(g) The misconduct was not premeditated;

(h) There was no potential harm to patients or the public or other adverse impact; or

(i) The incident was isolated and is not likely to recur.

(6) Aggravating factors may include, but are not limited to, the following:

(a) The offender has a previous criminal or administrative disciplinary history;

(b) The offense was committed deliberately or with gross negligence or recklessness;

(c) The offense had the potential for or actually did cause patient harm;

(d) The offense was part of a pattern of detrimental conduct;

(e) The offender committed a combination of factually discrete offenses adjudicated in a single action;

(f) The offender pursued his or her financial gain over the patient's welfare;

(g) The patient was especially vulnerable;

(h) The offender attempted to hide the error or misconduct from patients or others;

(i) The offender concealed, falsified or destroyed evidence, or presented false testimony or evidence;

(j) The offender did not cooperate with the investigation; or

(k) Previous attempts to rehabilitate the offender were unsuccessful.

In considering mitigating factors, I note that the Respondent has not had any prior disciplinary action taken against him, he was cooperative with the Board's proceedings, his misconduct was not premeditated, and he is willing to attend training. An aggravating factor is

the distress his actions caused the Patient. I believe the Respondent is sincere in his wish to continue to serve patients and his violations in this case were not actions deliberately intended to harm the Patient. Thus, I recommend the minimum sanction of a reprimand, a $10,000 fine, and training on respecting patient privacy, followed by an evaluation to determine the Respondent's professional competence to practice medicine. The Board should set the training and evaluation requirements.

CONCLUSIONS OF LAW

Based on the factual findings and discussion set forth above, I conclude, as a matter of law, that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of section 14-404(a)(3)(ii) of the Maryland Annotated Code's Health Occupations Article.

I conclude further, as a matter of law, that the Respondent is guilty of being professionally incompetent, in violation of section 14-404(a)(4) of the Maryland Annotated Code's Health Occupations Article.

I conclude further, as a matter of law, that the Respondent engaged in sexual impropriety, in violation of COMAR 10.32.17

Finally, I conclude as a matter of law that the Respondent is subject to sanctions under section 14-404(a)(3)(ii), (4), of the Maryland Annotated Code's Health Occupations Article. Based on the sanctioning guidelines and the mitigating and aggravating factors of this case, I conclude that a reprimand, a $10,000 fine, and training on respecting patient privacy, followed by an evaluation to determine the Respondent's professional competence to practice medicine are appropriate sanctions to be imposed for the Respondent's violations. COMAR 10.32.02.10 and .11 and 10.32.17.03.

PROPOSED DISPOSITION

I **PROPOSE** that the Board Order as follows:

1. The Board's Charges against the Respondent for unprofessional conduct in the practice of medicine **BE UPHELD**.
2. The Board's Charges against the Respondent for being professionally incompetent **BE UPHELD**.
3. The Board's Charges against the Respondent for sexual impropriety **BE UPHELD**.
4. The Board issue a Reprimand and impose a $10,000.00 fine for the Respondent's conduct.
5. The Board require the Respondent to obtain treatment and evaluation as recommended by the Physician's Rehabilitation Program.

April 2, 2014
Date Decision Mailed

Lorraine E. Fraser
Lorraine E. Fraser
Administrative Law Judge

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file written exceptions to this Proposed Decision with the Board of Physicians within fifteen days of issuance of the decision. Md. Code Ann., State Gov't § 10-216 (2009) and COMAR 10.32.02.03F. The Office of Administrative Hearings is not a party to any review process.

LEF
DOC # 148496

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