

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

MARK A. WHITE, M.D.

*

CASE NO. 22CV003828

Tenth District Case No. 23AP-00587

*

Appellant,

*

Judge Stephen L. McIntosh

*

vs.

*

Magistrate Browning

*

STATE MEDICAL BOARD OF OHIO

*

Appellee.

*

**ENTRY AFFIRMING THE STATE MEDICAL BOARD OF OHIO'S MAY 11, 2022
ORDER**

This matter is before the Court from the April 23, 2024 Judgment Entry issued by the Tenth District Court of Appeal, which reversed this Court's September 1, 2023 decision and order, and remanded the case to this Court for further proceedings consistent with the Tenth District's decision. This Court's September 1, 2023 decision and order is hereby vacated. Based upon the Tenth District Court's decision, this Court hereby orders that the State Medical Board's May 11, 2022 Order in the matter of Mark A. White, M.D., is AFFIRMED, effective on the date of signing of this entry.

IT IS SO ORDERED.

JUDGE MCINTOSH

Approved by:

/s/ Katherine Bockbrader

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Counsel for Appellant Mark A. White, M.D.

Franklin County Court of Common Pleas

Date: 05-06-2024

Case Title: MARK A WHITE -VS- STATE MEDICAL BOARD OF OHIO

Case Number: 22CV003828

Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to read "Stephen L. McIntosh", written over a circular official seal. The seal is for the Franklin County Court of Common Pleas, Ohio. It features a central sunburst design and the text "FRANKLIN COUNTY COURT OF COMMON PLEAS OHIO" around the perimeter. A banner at the bottom of the seal contains the motto "ALL THINGS ARE POSSIBLE IN GOD".

/s/ Judge Stephen L. McIntosh

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Mark A. White, M.D.,	:	
Appellant-Appellee,	:	No. 23AP-587
v.	:	(C.P.C. No. 22CV-3828)
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellant.	:	

D E C I S I O N

Rendered on April 23, 2024

On brief: *Crabbe, Brown & James, Larry H. James, and Christopher R. Green*, for appellee. **Argued:** *Christopher R. Green*.

On brief: *Dave Yost, Attorney General, Katherine Bockbrader, and Melinda Snyder*, for appellant. **Argued:** *Katherine Bockbrader*.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Appellant, State Medical Board of Ohio (“the board”), appeals from a judgment of the Franklin County Court of Common Pleas reversing an order of the board indefinitely suspending the medical license of appellee, Mark A. White, M.D., for at least one year. For the following reasons, we reverse the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} White is a physician who has been licensed to practice medicine in Ohio since 1997. By notice of opportunity for hearing dated November 10, 2020, the board notified White that it proposed to take disciplinary action against his license to practice medicine. The board alleged White engaged in sexual misconduct with a patient, in violation of R.C.

4731.22(B)(6), 4731.22(B)(20), and Ohio Adm.Code 4731-26-02(A). White timely requested a hearing in response to the notice.

{¶ 3} A board hearing examiner held a hearing on the matter on July 29 and 30, 2021. To begin the hearing, White's counsel conceded that White engaged in sexual misconduct with Patient 1, as that term is defined in Ohio Adm.Code 4731-26-01. The evidence at the hearing detailed White's friendship with Patient 1 and the circumstances of the sexual misconduct. The board called White as a witness as if on cross-examination, and he testified to the following facts.

{¶ 4} White, born in 1957, received his license to practice medicine in 1997, and currently has approximately 3,000 patients for whom he provides medical care. In approximately 2012, White met Patient 1, who was 20 years old at the time, at a social gathering for gay African American men. Afterwards they began attending church group meetings for gay African American men, of which White was a member, and extensively discussed the challenges of being gay and lack of acceptance in parts of the African American community. They became very good friends, with White becoming somewhat of a mentor to Patient 1. White introduced Patient 1 to other older gay African American men, who understood these issues. White had his first sexual encounter with Patient 1 in November 2014, prior to Patient 1's first visit to White's medical office, which occurred on June 29, 2015, with Patient 1 seeking treatment for an acute cough.¹ White testified that he had a second sexual encounter with Patient 1, on or about September 4 to 7, 2015, which was while he was a patient. Patient 1's last visit to White's office was in May 2019, a couple months before Patient 1 committed suicide.

{¶ 5} White was questioned regarding Exhibit V, which he identified as a book that Patient 1 had sent to Wesley Williams, a mutual friend. White first reviewed the book in September or October 2020, and he could not believe Patient 1 would make such untrue statements relating to White. In questioning White, the board's counsel recited various passages from the book to elicit his response to those passages. White did not object to this line of questioning.

¹ During the board's preliminary investigation of White's misconduct, White indicated his first of two sexual encounters with Patient 1 was following Patient 1's first office visit. But after reviewing his personal journal, White was able to recall the timing of the events more accurately.

{¶ 6} White acknowledged his mistake in engaging in sexual conduct with a patient, and he expressed sorrow for Patient 1's untimely death. But White also stated he did not believe that his sexual relationship with Patient 1, concurrent with their physician and patient relationship, was harmful to Patient 1.

{¶ 7} White called four individuals to attest to his good character and reputation within the community. Wesley Williams testified that he was good friends with both White and Patient 1. He described White as a great person who is dedicated to his community and Patient 1 as an "impressive young man" in need of a mentor to accomplish his lofty goals. (July 29, 2021 Tr. Vol I at 109.) Attorney Charles Postlewaite testified to White's positive attributes, including his honesty, integrity, and concern for others. Postlewaite described White as someone involved and respected within his community, and he expressed concern at the harm that could result if White's license to practice medicine was suspended. Businessman, Ernest Sullivan, testified that White continued to serve minorities within Columbus even when that may not have been the most lucrative career path for him. Sullivan described White as a caring person who positively impacts his community. Bishop Melvin Griffin, a local minister, also attested to White's good character and reputation within the community.

{¶ 8} Following the hearing, on April 14, 2022, the hearing examiner issued a report and recommendation with detailed findings of fact, including the finding that White had sexual contact with Patient 1 when Patient 1 was under his care. Based on these factual findings, the hearing examiner concluded that White's conduct with Patient 1 violated R.C. 4731.22(B)(6), 4731.22(B)(20), and Ohio Adm.Code 4731-26-02. The hearing examiner also recommended the board suspend White's license for a minimum of one year, commencing 31 days following the effective date of the order, and fine him \$6,000.

{¶ 9} White filed an objection to the hearing examiner's proposed order. He requested the opportunity to appear before the board to challenge the hearing examiner's recommendation that his license be suspended for a minimum of one year, commencing 31 days following the effective date of the order. He noted the practical difficulty of winding down his practice in 30 days, considering he has 3,000 patients, and he proposed, as an alternative punishment, surrendering his license one year after the order is filed. He did not, however, challenge any factual finding or conclusion of law of the hearing examiner.

The filing expressly states: “Respondent understands and respects the findings of the Hearing Examiner and accepts responsibility for his actions.” (Apr. 19, 2022 Respondent Mark A. White’s Obj. to Hearing Examiner’s Report at 1.) In sum, White’s objection challenged the hearing examiner’s recommended penalty but not any finding of fact or conclusion of law.

{¶ 10} At the board’s May 11, 2022 meeting, White and his counsel addressed the board. The board’s meeting minutes reflect White’s contrition for his conduct, and his concern that 30 days would be insufficient time to properly transfer the care of his patients to other physicians. The board’s meeting minutes indicate that White’s counsel, in challenging the penalty of a minimum year-long license suspension beginning 30 days after an order is filed, emphasized White’s contributions to the community and the absence of any other infraction in his 25-year professional career. White’s counsel reiterated the request, as made in his objections, that he be given one year to wind down his practice and then surrender his license. His counsel challenged the hearing examiner’s finding that he did not have remorse, asserting his monotone voice and straight-forward manner may have led to this misperception. Otherwise, there is no indication that White, or his counsel, challenged any finding of fact or conclusion of law reached by the hearing examiner.

{¶ 11} After White and his counsel addressed the board, multiple board members stated their thoughts and concerns regarding the matter, specifically emphasizing the profound negative impact White’s conduct had on Patient 1. In particular, board member Dr. Schottenstein noted that this case presents a good example for why sexual activity between a licensed physician and a patient is prohibited. He explained that the imbalance of power makes such activity inherently unacceptable as it is psychologically damaging to patients. The board voted to adopt the hearing examiner’s report and recommendation, including the proposed suspension of White’s medical license for a minimum of one year, commencing 31 days after the entry of the order. On May 11, 2022, the board mailed a copy of its order to White.

{¶ 12} On June 6, 2022, White filed an appeal from the board’s order to the trial court. The next day, he requested an order staying the board’s order, asserting likely hardship to him and his patients. The trial court granted the stay request. In support of his challenge to the board’s order, White argued the board’s order was unlawful because

the board considered evidence not admitted into the record, because the board disciplined him based on reasons not included in the violation notice, and because the board failed to consider his mitigation evidence. The trial court concluded the board violated White's due process rights because it considered evidence not admitted into the record, and because it disciplined him for reasons not charged in the notice of opportunity for hearing. On these bases, the trial court reversed the board's order and remanded the matter for further proceedings. Based on this disposition, the trial court did not analyze or resolve White's argument that the board's order was unlawful because it did not consider his mitigation evidence.

{¶ 13} The board timely appeals.

II. Assignments of Error

{¶ 14} The board assigns the following two assignments of error for our review:

[I.] The lower court erred in its interpretation of R.C. 119.07 and its holding that the Medical Board did not comply with R.C. 119.07 and violated Dr. White's due process rights by analyzing aggravating factors not expressly enumerated in the Notice of Opportunity for Hearing.

[II.] The lower court erred in holding that the Board violated due process by considering evidence that the appellant failed to object to and that was not prejudicial.

III. Standard of Review

{¶ 15} In reviewing an order of an administrative agency under R.C. 119.12, a common pleas court must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and whether the order is in accordance with law. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110 (1980). "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. "Substantial" evidence is evidence with some weight; it must have importance and value. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992).

{¶ 16} The common pleas court’s “review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court ‘must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.’” *Lies v. Ohio Veterinary Med. Bd.*, 2 Ohio App.3d 204, 207 (1st Dist.1981), quoting *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 280 (1955). The common pleas court must give due deference to the administrative agency’s resolution of evidentiary conflicts, but “the findings of the agency are by no means conclusive.” *Conrad* at 111. On questions of law, the common pleas court conducts a *de novo* review, exercising its independent judgment in determining whether the administrative order is “ ‘in accordance with law.’ ” *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471 (1993), quoting R.C. 119.12.

{¶ 17} An appellate court’s review of an administrative decision is more limited. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993). As to factual disputes, the appellate court is to determine only whether the common pleas court abused its discretion. *Id.*; *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 218 (1983). An abuse of discretion requires more than an error in judgment. To find an abuse of discretion, we must conclude that the trial court’s decision was without a reasonable basis and clearly wrong. *Miracle Home Health Care, L.L.C. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 12AP-318, 2012-Ohio-5669, ¶ 18. On purely legal questions, however, an appellate court’s review is plenary. *Big Bob’s, Inc. v. Ohio Liquor Control Comm.*, 151 Ohio App.3d 498, 2003-Ohio-418, ¶ 15 (10th Dist.).

IV. Discussion

{¶ 18} Because they involve interrelated issues, we discuss together the board’s first and second assignments of error. In its first assignment of error, the board contends the trial court erred in concluding the board violated R.C. 119.07 by not including necessary information in the notice of opportunity for hearing. The board’s second assignment of error asserts the trial court erred in finding the board violated White’s due process rights in considering a document not admitted into evidence, Exhibit V. Both of these assignments of error have merit.

{¶ 19} As a preliminary matter, we note White, in objecting to the hearing examiner’s report and recommendation, did not raise the issues later presented to the trial

court for review. “Generally, a party waives the right to appeal an issue that could have been but was not raised in earlier proceedings. * * * This principle has been applied in appeals from administrative agencies.” *MacConnell v. Ohio Dept. of Commerce*, 10th Dist. No. 04AP-433, 2005-Ohio-1960, ¶ 21 (when license applicant failed to object to evidentiary defects before the administrative tribunal, those defects could not be asserted as grounds for appeal). Because White did not raise these issues in his objections, the board was not given the opportunity to address them. Thus, White waived his arguments concerning the notice of opportunity for hearing and the consideration of Exhibit V. And, even if not waived, the trial court erred in not finding White’s arguments fail on the merits.

{¶ 20} Chapter 4731 of the Revised Code vests the board with broad authority to regulate the medical profession in Ohio and to discipline physicians for non-compliant conduct. *Griffin v. State Med. Bd. of Ohio*, 10th Dist. No. 09AP-276, 2009-Ohio-4849. This includes the authority to impose a wide range of sanctions, pursuant to R.C. 4731.22, ranging from reprimand to revocation. “The discretion granted to the board in imposing a wide range of potential sanctions reflects the deference due to the board’s expertise in carrying out its statutorily granted authority over the medical profession.” *Demint v. State Med. Bd. of Ohio*, 10th Dist. No. 15AP-456, 2016-Ohio-3531, ¶ 63. In setting the appropriate sanction for violations alleged and proven, the board may consider mitigating and aggravating circumstances, including uncharged misconduct. *Macheret v. State Med. Bd. of Ohio*, 188 Ohio App.3d 469, 2010-Ohio-3483, ¶ 28 (10th Dist.). See *Froehlich v. Ohio State Med. Bd.*, 10th Dist. No. 15AP-666, 2016-Ohio-1035, ¶ 31 (finding medical review board may consider aggravating circumstances, including uncharged misconduct, when considering the appropriate sanction against the physician); *Urban v. Ohio State Med. Bd.*, 10th Dist. No. 03AP-426, 2004-Ohio-104, ¶ 17 (noting the board may consider aggravating and mitigating circumstances in deciding on the appropriate penalty for physician misconduct).

{¶ 21} Pursuant to R.C. 119.07, the board must provide notice to a party and the notice “shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of service.” This statute is consistent with principles of due process. It is axiomatic that “[d]ue process entitles an individual to

fair notice of the precise nature of the charges to be brought forth at a disciplinary proceeding.” *Applegate v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-78, 2007-Ohio-6384, ¶ 23, citing *Althof v. Ohio State Bd. of Psychology*, 10th Dist. No. 05AP-1169, 2007-Ohio-1010, ¶ 19. But due process is not violated unless the individual is actually disciplined for activities not mentioned in the hearing notice. *Id.* “Thus, due process does not preclude a disciplinary body from considering uncharged misconduct in determining a suitable sanction.” *Macheret* at ¶ 27.

{¶ 22} Here, the notice of opportunity for hearing provided to White stated the following reasons as bases for possible discipline:

In the course of your practice, you undertook the treatment, provided care and/or prescribed medications to Patient 1, as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)

On or about September 3, 2020, you admitted to a Board Investigator that you engaged in sexual conduct with Patient 1 on two occasions. You further stated that you first engaged in sexual conduct with Patient 1 on or about September 4 to 7, 2015, Labor Day weekend. You further stated that you again engaged in sexual conduct with Patient 1 in or around January 2017. The patient record documents that you provided medical care from on or about June 29, 2015 to May 14, 2019, to Patient 1 which was concurrent with the two times you acknowledged engaging in sexual conduct with the patient.

(Nov. 10, 2020 Notice of Opportunity at 1.)

{¶ 23} The notice further indicated that White’s alleged conduct violated R.C. 4731.22(B)(6), 4731.22(B)(20), and Ohio Adm.Code 4731-26-02. Pursuant to R.C. 4731.22(B)(6), the board may discipline a licensee for the licensee’s “departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.” And, pursuant to R.C. 4731.22(B)(20), the board also may discipline a licensee for violating any rule adopted by the board. As pertinent here, Ohio Adm.Code 4731-26-02(A), states “a licensee shall not engage in sexual misconduct with a patient.” For the purpose of this rule, “[s]exual misconduct” means conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts,

feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual.” Ohio Adm.Code 4731-26-01(H). This includes sexual interaction. *Id.* Thus, the notice informed White of the basis for the proposed action, including the alleged misconduct and the specific statutes and rule that the conduct violated.

{¶ 24} The board’s violation findings align with this notice. Based on the evidence presented at the hearing, the hearing examiner found that White engaged in sexual activity with Patient 1 once during their physician-patient relationship. The hearing examiner concluded that White’s conduct with Patient 1 violated R.C. 4731.22(B)(6), 4731.22(B)(20), and Ohio Adm.Code 4731-26-02. Based on this conclusion, the hearing examiner also recommended the board suspend White’s license for a minimum of one year, commencing 31 days following the effective date of the order, and fine him \$6,000. The board voted to adopt the hearing examiner’s report and recommendation, including the proposed suspension of White’s medical license for a minimum of one year, commencing 31 days after the entry of the order. Thus, the board only disciplined White for violations charged in the notice of intent—namely, for his conduct in violation of R.C. 4731.22(B)(6), 4731.22(B)(20), and Ohio Adm.Code 4731-26-02. Insofar as the board considered other facts and circumstances in determining the appropriate sanction, including further details of White’s relationship with Patient 1, White’s degree of remorse for his misconduct, and the harm to Patient 1, that consideration was within the board’s discretion and did not demonstrate any deficiency in the notice of opportunity for hearing. *See Macheret, Froehlich, and Urban.* Thus, we agree with the board that the trial court erred in concluding the board violated R.C. 119.07 and due process principles by disciplining him for uncharged conduct.

{¶ 25} We also agree with the board that the trial court erred in concluding the board violated White’s due process rights by considering an exhibit that had been excluded from evidence. Patient 1 sent Exhibit V, a book titled “Mante Means Courage,” to Wesley Williams, who gave it to White after Patient 1’s passing. Williams believed that Patient 1 had authored the book. At the hearing, White denied many of the statements relating to him made in the book. The board initially moved to admit Exhibit V into evidence but later withdrew this motion. In her report and recommendation, which was adopted by the

board, the hearing examiner quoted the following passage in Exhibit V regarding a sexual encounter between White and Patient 1:

I was I'm embarrassed at myself and at my body. I couldn't look at Dr. White in the eyes, or anyone. Aside from feeling dirty, I wanted to go to sleep -- for I had not slept, but had been up, throughout the night, staring at the night, and at the walls, and listening to it, the night, and the walls, as they settled, into the earth, which I tried to do, settle into the couch. When I arrived at my dorm, when it was, perhaps, for the first time that day, morning, and I'd stepped out of the truck and around it and onto the sidewalk, and looked at Dr. White, somehow, and he'd grinned, like a robber, whom I could not take back my belongings from, and turned away from him, the robber, and swiped, and gone inside.

(Apr. 14, 2022 Report & Recommendation at 10-11.)

{¶ 26} White argued, and the trial court agreed, that the board violated his due process right by relying on contents of Exhibit V, particularly the above-quoted passage, in reaching its decision. The flaw in this reasoning is passages of Exhibit V, including the above-quoted passage, were read into the record during White's questioning. There was no objection to the recitation of these passages during White's questioning. And White does not allege that the hearing examiner relied on any passage of Exhibit V that was not read into the record. Although Exhibit V was not admitted into evidence in its entirety, no passage of that book read into the record was stricken or otherwise excluded from the record. *See State v. Blackburn*, 10th Dist. No. 88AP-73, 1988 Ohio App. LEXIS 4002, *10 (Sept. 29, 1988) ("although the trial court's ruling precluded admission of the exhibits, it had no effect on the testimony offered relative to those exhibits"). Thus, there was no error in the board citing those passages as part of its decision on the matter. Consequently, the trial court erred in concluding the board violated White's due process in relying on contents of Exhibit V.

{¶ 27} Based on the foregoing, we sustain the board's first and second assignments of error.

V. Disposition

{¶ 28} Having sustained the board's first and second assignments of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court for further proceedings consistent with law and this decision.

*Judgment reversed;
cause remanded.*

JAMISON and BOGGS, JJ., concur.

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

MARK A. WHITE, M.D.	:	
	:	
<i>Appellee,</i>	:	Case No. 22CV-03828
	:	
v.	:	
	:	JUDGE STEPHEN L.
	:	MCINTOSH
STATE MEDICAL BOARD OF OHIO,	:	
	:	
<i>Appellant.</i>	:	
	:	

NOTICE OF APPEAL

Appellant, State Medical Board of Ohio, by and through the undersigned counsel, hereby gives its Notice of Appeal to the Tenth District Court of Appeals from the Decision and Judgment Entry of the Franklin County Court of Common Pleas dated September 1, 2023, which reversed the Order of the State Medical Board of Ohio. The Judgement Entry was issued as a final appealable order on September 1, 2023, and is attached as Exhibit A.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Kyle Wilcox

Kyle C. Wilcox (0063219)

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*Counsel for Respondent-Appellant,
State Medical Bd. of Ohio*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing State's Notice of Appeal was served by email on September 28, 2023, upon the following:

Larry H. James LJames@cbjlawyers.com
Robert Lewis rlewis@cbjlawyers.com

/s/ Kyle C. Wilcox
KYLE C. WILCOX (0063219)

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

Mark A. White, M.D.,		Case No. 22CV-03828
Appellant,		Judge Stephen L. McIntosh
vs.		
State Medical Board of Ohio,		
<u>msmd63@gmail.com</u>		
Appellee.		

**Decision, Entry, and Order Granting, with Conditions, Appellant's
Motion to Suspend Order of State Medical Board of Ohio**

McIntosh, J.

This case is a Revised Code 119.12 administrative appeal, by Mark A. White, M.D. (Appellant), from an Order that the State Medical Board of Ohio mailed to Appellant on June 1, 2022. In the Order, the Board suspended Appellant's license to practice medicine and surgery in Ohio for an indefinite period of time, but not less than one (1) year, ordered Appellant to pay a fine, and established conditions for the reinstatement or restoration of Appellant's license. In the Order, the Board provided that, upon the reinstatement or restoration of Appellant's license, the license would be subject to certain probationary terms, conditions, and limitations for a period of at least two (2) years. In the Order, the Board established requirements for Appellant to report the Order to employers and other licensing authorities.

On June 7, 2022, pursuant to R.C. 119.12(E), Appellant filed a motion to suspend the Board's Order pending the Court's determination of the appeal. On June 7, 2022, the Board filed a memorandum opposing Appellant's motion. On June 8, 2022, Appellant filed a final reply memorandum in support of his motion.

Having considered the parties' arguments in support of and in opposition to Appellant's motion, it appears to the Court that an unusual hardship will result to Appellant from the execution of the Board's Order pending the Court's determination of the appeal, and that the health, safety, and welfare of the public will not be threatened by the Court's suspension of the Board's Order, **PROVIDED** Appellant complies with the conditions set forth below.

Accordingly, pursuant to R.C. 119.12(E) and for good cause shown, Appellant's motion to suspend the Order of the State Medical Board of Ohio is hereby **GRANTED**, and the Order is hereby **SUSPENDED** pending the Court's determination of the appeal, upon the following conditions:

1. Within **fourteen (14) days** of this Decision, Entry, and Order, Appellant shall submit documentation, to the State Medical Board of Ohio and to the Court, that he has enrolled in the three-phase longitudinal day-treatment program at the Acumen Institute in Lawrence, Kansas, as described on page 2 of the Order of the State Medical Board of Ohio. The documentation shall set forth the dates upon which Appellant will begin the first, second, and third phases of the program, and his anticipated completion date.
2. Appellant shall successfully complete the program in accordance with the schedule established by the Acumen Institute.
3. Appellant's participation in the program shall be at his own expense.

If Appellant does not comply with any of the foregoing conditions, this Order shall be revoked.

It is so **ORDERED**.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 06-17-2022

Case Title: MARK A WHITE -VS- STATE MEDICAL BOARD OF OHIO

Case Number: 22CV003828

Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to read "Stephen L. McIntosh", written over a circular official seal. The seal is for the Franklin County Court of Common Pleas, Ohio. It features a central sunburst design and the text "FRANKLIN COUNTY COURT OF COMMON PLEAS OHIO" around the perimeter. At the bottom of the seal, it says "IN GOD WE TRUST" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 22CV003828

Case Style: MARK A WHITE -VS- STATE MEDICAL BOARD OF OHIO

Motion Tie Off Information:

1. Motion CMS Document Id: 22CV0038282022-06-0799980000
Document Title: 06-07-2022-MOTION TO STAY - PLAINTIFF:
MARK A. WHITE
Disposition: MOTION GRANTED

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

Mark A. White, M.D.,		Case No. 22CV-03828
Appellant,		Judge Stephen L. McIntosh
vs.		
State Medical Board of Ohio,		
Appellee.		

**Decision and Judgment Entry Reversing Order Issued by State Medical Board of Ohio
and Remanding Case to Board for Further Proceedings**

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 119.12 administrative appeal, by Mark A. White, M.D. (Appellant), from an Order in which the State Medical Board of Ohio indefinitely suspended Appellant's medical license for at least one year, ordered Appellant to pay a \$6,000 fine, imposed conditions for the reinstatement or restoration of Appellant's license, and placed Appellant on probation for at least two years following the reinstatement or restoration of his license.

Pursuant to R.C. 119.12(E), this Court suspended the Board's Order pending the Court's determination of the appeal, and the Court imposed conditions upon Appellant during the suspension of the Board's Order. Appellant has provided the Court with documentation that he has complied with and continues to comply with the conditions imposed by the Court.

The record that the Board has certified to the Court reflects the following facts.



Facts

The pertinent facts of this case are not in dispute.

In 1992 Appellant received his medical degree from The Ohio State University College of Medicine. *Transcript of Proceedings, July 29-30, 2021 (Tr.)* 25. In 1996 he completed a residency in internal medicine at Mount Carmel Medical Center in Columbus, Ohio. *Tr.* 26. In 1997 he received his license to practice medicine in Ohio. *Tr.* 25.

From 1997 to 2014, Appellant was employed as a physician at Mount Carmel Health Stations, then a hospitalist at Riverside Methodist Hospital, and then a physician at Central Ohio Primary Care Physicians, all in Columbus. *Tr.* 27-29.

In 2014 Appellant established a family-medicine practice, Gateway Health and Wellness, where he has primarily served the underserved Nepali, Somali, and African American communities in Columbus. *Tr.* 30-31, 33-34. Appellant has approximately 3,000 patients and he sees 35 to 40 patients each day. *Tr.* 31. Appellant is assisted by two certified nurse practitioners. *Tr.* 31-32.

This appeal, and the disciplinary proceedings below, arose from Appellant's relationship with and treatment of Patient 1, a young man whom Appellant met in the summer of 2012 at a social gathering of gay African American men in Columbus. *Tr.* 38-39, 241-242. Patient 1 was a gay African American man who did not feel accepted in the community due to his sexuality, and whose father did not accept Patient 1's sexuality. *Tr.* 40, 44-47.

After Appellant met Patient 1, Patient 1 began attending meetings of a gay African American men's church group; Appellant was also a member of the group. *Tr.* 38-39. The group met weekly, and Patient 1 attended meetings approximately once a month. *Tr.* 39.

Appellant and Patient 1 became “very good friends” who spoke on the phone and occasionally met in person to go to dinner or a play, usually with a group of people. *Tr. 41-44.* Appellant became a mentor to Patient 1, and they discussed “being gay, being black, and not being out or being out, how white people looked at gay people, how black people looked at gay people.” *Tr. 41-44.* Appellant was not aware that Patient 1 was suffering from any mental health issues. *Tr. 95, 99.*

In November 2014, Appellant and Patient 1 first engaged in sexual activity. *Tr. 89-91.* By that time, they had been friends for several years and spoke frequently on the phone. *Tr. 90.* On that occasion in November 2014, Patient 1 called Appellant to request a back massage, Appellant invited Patient 1 to Appellant’s home, and Appellant gave Patient 1 a back massage, which led to consensual sexual activity. *Tr. 90-91, 158-160, 244-247.* After that evening, Appellant’s relationship with Patient 1 remained the same and they continued to speak on the phone. *Tr. 246-247.*

On June 29, 2015, approximately seven months after Appellant and Patient 1 engaged in sexual activity, Appellant provided medical treatment to Patient 1 for the first time. *Tr. 55; State’s Ex. 4.* Appellant was surprised when Patient 1 appeared at Appellant’s office, because they had never spoken about Patient 1 receiving medical treatment from Appellant. *Tr. 54.* On that date, Appellant treated Patient 1 for a cough. *Tr. 55-56.*

Two months later, on Labor Day Weekend in September 2015, Appellant and Patient 1 travelled together to Atlanta, Georgia to attend Atlanta Gay Pride. *Tr. 248-250.* Appellant invited Patient 1 to go because Appellant believed it would be a good experience for Patient 1 to see many gay African American people gathered in one place. *Tr. 249.* Appellant purchased their plane tickets and booked a hotel room with separate beds. *Tr. 249-250, 274.* Appellant did

not invite Patient 1 on the trip with the expectation that they would have sex, because Appellant wanted to go to Atlanta to meet other people and to experience Atlanta Gay Pride. *Tr. 250.* On one occasion during the trip, Appellant and Patient 1 engaged in consensual sexual activity. *Tr. 86.* That was the only sexual encounter between Appellant and Patient 1 after their physician-patient relationship began in June 2015. *Tr. 86.*

On one other occasion in 2015, Appellant provided medical treatment to Patient 1 during a medical appointment at Appellant's office on September 21, 2015. *Tr. 74; State's Ex. 4.*

After September 2015, Appellant did not provide medical treatment to Patient 1 for nearly three years, although they continued to communicate during that time. *Tr. 144, 252-253.*

In April 2018, Patient 1 went to Appellant's office for two medical visits, and Appellant completed a physical-examination form for Patient 1, for a program that Patient 1 had enrolled in to teach English in Thailand. *Tr. 144, 148-149, 241, 252-253; State's Ex. 4.*

Patient 1 then travelled to Thailand, where he spent approximately one year, and Appellant did not see Patient 1 again until May 14, 2019, when Patient 1 had a medical visit at Appellant's office. *Tr. 253-254; State's Ex. 4.*

In July 2019, Patient 1 committed suicide. *Tr. 8-10, 132; State's Ex. 6.* Appellant was shocked and sorrowful to learn of Patient 1's death, and at the administrative hearing before the Medical Board, Appellant expressed his sympathy to Patient 1's family, who attended the hearing. *Tr. 255-257.*

Proceedings Before the State Medical Board of Ohio

In a Notice of Opportunity for Hearing dated November 10, 2020, the State Medical Board of Ohio notified Appellant that the Board intended to determine "whether or not to limit, revoke, permanently revoke, suspend, refuse to grant or register or renew or reinstate your

license or certificate to practice medicine and surgery, or to reprimand you or place you on probation” for the following reason:

- (1) In the course of your practice, you undertook the treatment, provided care and/or prescribed medications to Patient 1, as identified in the attached Patient Key. ***

On or about September 3, 2020, you admitted to a Board investigator that you engaged in sexual conduct with Patient 1 on two occasions. You further stated that you first engaged in sexual conduct with Patient 1 on or about September 4 to 7, 2015, Labor Day weekend. You further stated that you again engaged in sexual conduct with Patient 1 in or around January 2017. The patient record documents that you provided medical care from on or about June 29, 2015 to May 14, 2019, to Patient 1 which was concurrent with the two times you acknowledged engaging in sexual conduct with the patient.¹

In the Notice of Opportunity for Hearing, the Board charged that Appellant’s conduct constituted “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in R.C. 4731.22(B)(20), to wit: Ohio Adm. Code 4731-26-02 (sexual misconduct with a patient). The Board charged that Appellant’s conduct, as described above, also constituted a violation of R.C. 4731.22(B)(6), which is “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.” The Board notified Appellant that he was entitled to a hearing on the Board’s proposed action against Appellant’s medical license, and Appellant requested a hearing.

Revised Code 4731.22(B)(6) and (20) provides:

§ 4731.22 Disciplinary actions by the state medical board.

¹ Contrary to the allegation in the Notice of Opportunity for Hearing, the evidence at the administrative hearing was that Appellant engaged in sexual conduct with Patient 1 in November 2014, seven months before Patient 1 became Appellant’s patient, and in September 2015, two months after Patient 1 became Appellant’s patient.

(B) *** [T]he board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a license or certificate to practice ***, refuse to issue a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate for one or more of the following reasons.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(20) *** [V]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

Ohio Adm. Code 4731-26-02 provides:

4731-26-02. Prohibitions.

Sexual misconduct, as that term is defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, between a licensee and a patient is never diagnostic or therapeutic.

(A) A licensee shall not engage in sexual misconduct with a patient *** as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.

On July 29 and 30, 2021, a Hearing Examiner conducted an administrative hearing on the Board's charge against Appellant. See *Transcript of Proceedings, July 29-30, 2021, pp. 1-293*.

On April 14, 2022, the Hearing Examiner issued a Report and Recommendation containing a summary of the evidence, findings of fact, conclusions of law, and a recommendation that the Board discipline Appellant for his conduct. The Hearing Examiner found that Appellant had engaged in sexual contact with Patient 1 on two separate occasions. The Hearing Examiner concluded that Appellant's conduct violated R.C. 4731.22(B)(20), to wit: Ohio Adm. Code 4731-26-02 (sexual misconduct with a patient), and that Appellant's violation

of Ohio Adm. Code 4731-26-02 also constituted a violation of R.C. 4731.22(B)(6). The Hearing Examiner recommended that the Board indefinitely suspend Appellant's medical license for at least one year, order Appellant to pay a \$6,000 fine, impose conditions for the reinstatement or restoration of Appellant's license, and place Appellant on probation for at least two years following the reinstatement or restoration of his license.

On April 19, 2022, Appellant filed objections to the Hearing Examiner's Report and Recommendation and requested an opportunity to appear before the Board to respond to the Report and Recommendation.

On May 11, 2022, the Board met to consider Appellant's case, at which time Appellant, his attorney, and the State's attorney addressed the Board. Following discussion, the Board voted to adopt the Hearing Examiner's Report and Recommendation.

On May 11, 2022, the Board entered an Order on its journal indefinitely suspending Appellant's medical license for at least one year, ordering Appellant to pay a \$6,000 fine, imposing conditions for the reinstatement or restoration of Appellant's license, and placing Appellant on probation for at least two years following the reinstatement or restoration of his license. By letter dated May 11, 2022, the Board notified Appellant of the Order.

On June 6, 2022, Appellant timely appealed the Board's Order to this Court pursuant to R.C. 119.12.

Standards of Appellate Review

Revised Code 119.12(M) provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record ***, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. ***

In an administrative appeal brought pursuant to R.C. 119.12, the common pleas court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with law. *Mansour v. State Med. Bd.*, 10th Dist. Franklin No. 17AP-615, 2018-Ohio-2605, ¶ 16. The common pleas court's review is a hybrid form of review in which the court apprises all the evidence, giving due deference to the administrative determination of conflicting evidence and credibility conflicts, but reviewing legal questions *de novo*. *Id.*

"Reliable" evidence is dependable; that is, it can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 571 (1992). In order to be reliable, there must be a reasonable probability that the evidence is true. *Id.* "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. *Id.* "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.*

The issue before this Court is whether the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. For the following reasons, the Court finds that the Board's Order is not supported by the requisite evidence and is not in accordance with law.

Analysis

Appellant has presented several assignments of error in support of this appeal, two of which are dispositive of the appeal.

Appellant's first assignment of error is that the Board's Order is contrary to law because it violates Appellant's right to due process. Specifically, Appellant contends that the Hearing Examiner, and thereafter the Board, considered and relied upon an exhibit that the Hearing

Examiner had excluded from evidence. The Court finds this assignment of error to be well taken, for the following reasons.

Respondent's Exhibit V was a book titled "Mante Means Courage" that had purportedly been written by Patient 1; the document was not signed. *Tr. 47, 290.* Appellant received the book in September or October 2020, after Patient 1's passing, when the book was given to Appellant by Wesley Williams, a mutual friend of Appellant and Patient 1. *Tr. 19.* Patient 1 had sent the book to Mr. Williams. *Tr. 19-20.* The book contains statements about Appellant, many of which were not true, Appellant testified. *Tr. 47-48.*

At the administrative hearing on July 30, 2021, the State's attorney moved the Hearing Examiner to admit Respondent's Exhibit V into evidence and Appellant's attorney objected. *Tr. 205.* The State's attorney asked Appellant's attorney to articulate his objection to the exhibit, which produced the following exchange between the attorneys:

MS. SNYDER [the State's attorney]: *** [I]f we're going to brief the admissibility of Respondent's Exhibit V *** I need to know exactly what the objection is so that I know what legal issues we're researching.

So if we could articulate the exact objection to that document, that would be helpful for the briefing.

MR. JAMES [Appellant's attorney]: No. one, from a relevancy standpoint of the charge against Dr. White, is that he had sex with a patient. The Doctor has stipulated to that fact that after the patient became his patient, he had sex post of that. That's number one.

No. two, it's highly prejudicial. No. three, there's no way of authenticating, there's no signature, we don't know where it came from, we have no idea what time it was, so the reliability and credibility of it, I haven't looked at all, but at least in my trial experience, this is one that I think is pretty straightforward. *Tr. 290-291.*

On August 11, 2021, the State withdrew its motion to admit Respondent's Exhibit V into evidence, and the Hearing Examiner excluded the document from the record. See *Entry Denying Admission of Exhibit and Setting Deadline for Closing Arguments, Oct. 20, 2021*.

However, when the Hearing Examiner issued her Report and Recommendation on April 14, 2022, she quoted the following passage from Respondent's Exhibit V, about the massage incident that led Appellant and Patient 1 to engage in sexual activity:

*** I was I'm embarrassed at myself and at my body. I couldn't look Dr. White in the eyes, or anyone. Aside from feeling dirty, I wanted to go to sleep -- for I had not slept, but had been up, throughout the night, staring at the night, and at the walls, and listening to it, the night, and the walls, as they settled, into the earth, which I tried to do, settle into the couch. When I arrived at my dorm, when it was, perhaps, for the first time that day, morning, and I'd stepped out of the truck and around it and onto the sidewalk, and looked at Dr. White, somehow, and he'd grinned, like a robber, whom I could not take back my belongings from, and turned away from him, the robber, and swiped, and gone inside. *Hearing Examiner's Report and Recommendation, April 14, 2022, pp. 10-11.*

The State contends that it was not error for the Hearing Examiner, and thereafter the Board, to rely upon the contents of Respondent's Exhibit V, because Appellant testified about some of the contents of the exhibit during cross-examination. However, after Appellant testified, the State withdrew its motion to admit the exhibit into evidence, and the Hearing Examiner excluded the exhibit from the record. Accordingly, the Hearing Examiner and the Board erred in relying upon the contents of the excluded exhibit.

In Appellant's reply brief in support of this appeal, he has presented an analogy that illustrates the error committed by the Hearing Officer and thereafter the Board in relying upon the contents of Respondent's Exhibit V. To wit: If a witness in a jury trial testifies about the contents of an exhibit that is thereafter excluded from evidence, that testimony will be ordered stricken from the record, and the jury will receive a curative instruction from the judge not to consider that testimony.

The Fourteenth Amendment to the United States Constitution and Section 16, Article I, of the Ohio Constitution require that administrative proceedings comport with due process. *Natoli v. Ohio State Dental Bd.*, 177 Ohio App. 3d 645, 2008-Ohio-4068, ¶ 18 (10th Dist. Franklin). Pursuant to due process, governmental agencies must provide constitutionally adequate procedures before depriving individuals of their protected liberty or property interests. *Id.* A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* At its core, due process insists upon fundamental fairness, and the requirement to conduct a hearing implies that a fair hearing must occur. *Id.*

Appellant, as a licensed professional, has a protected property interest in the practice of medicine and surgery. *Haj-Hamad v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 06AP-351, 2007-Ohio-2521, ¶ 53. The Hearing Examiner, and thereafter the Board, violated Appellant's right to due process when they relied upon Respondent's Exhibit V, which the Hearing Examiner had excluded from evidence.

Accordingly, Appellant was denied a fair hearing in violation of his due process rights, and Appellant's first assignment of error is well taken.

Appellant's second assignment of error is that the Board's Order is contrary to law because Appellant was disciplined based upon reasons that were not included in the Notice of Opportunity for Hearing, in violation of R.C. 119.07 and Appellant's due process rights. The Court finds this assignment of error to be well taken, for the following reasons.

Revised Code 119.07 provides:

§ 119.07 Notice of hearing; contents[.]

*** [I]n all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. **Notice *** shall include the charges or other reasons for the proposed action,**

the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of service. *** (Emphasis added.)

The fundamental requirement of procedural due process is notice and a hearing, that is, an opportunity to be heard. *Korn v. Ohio State Med. Bd.*, 61 Ohio App. 3d 677, 684 (10th Dist. Franklin 1988). Notice and a hearing are necessary to comply with due process in an administrative proceeding that revokes an individual's license to practice a profession. *Id.*

Procedural due process requires administrative agencies to give fair notice of the precise nature of the charges at issue in a disciplinary hearing. *Edmands v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 14AP-778, 2015-Ohio-2658, ¶ 23. The notice must include the charges or other reasons for the proposed action and the law or rule directly involved. *Id.*, ¶ 11. An administrative agency must provide a license holder with sufficient notice of the charges against the license holder to allow the preparation of a defense to the charges. *Sohi v. Ohio State Dental Bd.*, 130 Ohio App. 3d 414, 422 (1st Dist. Hamilton 1998). The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. *Althof v. Ohio State Bd. of Psychology*, 10th Dist. Franklin No. 05AP-1169, 2007-Ohio-1010, ¶ 19.

In the Notice of Opportunity for Hearing issued on November 10, 2020, the Board set forth the following allegation against Appellant:

On or about September 3, 2020, you admitted to a Board investigator that you engaged in sexual conduct with Patient 1 on two occasions. You further stated that you first engaged in sexual conduct with Patient 1 on or about September 4 to 7, 2015, Labor Day weekend. You further stated that you again engaged in sexual conduct with Patient 1 in or around January 2017. The patient record documents that you provided medical care from on or about June 29, 2015 to May 14, 2019, to Patient 1 which was concurrent with the two times you acknowledged engaging in sexual conduct with the patient.²

² As stated in an earlier footnote, contrary to the allegation in the Notice of Opportunity for Hearing, the evidence at the administrative hearing was that Appellant engaged in sexual conduct with Patient 1 in November 2014, seven

The Notice does not allege that Appellant engaged in any other conduct, and the Notice does not provide any other reasons for the Board's disciplinary proceedings against Appellant.

Appellant argues, accurately, that he was ultimately disciplined based upon conduct that was not alleged in the Notice of Opportunity for Hearing. For example, in the Hearing Examiner's Report and Recommendation issued on April 14, 2022, she presented her rationale for the proposed Board Order as follows:

Dr. White has admitted to two sexual encounters with a young man in college, 35 years his junior, a young man who he befriended and **whom he knew was struggling with his sexuality and his religion.** Dr. White befriended Patient 1, mentored Patient 1, and treated Patient 1. He **exploited those relationships with Patient 1 for his own sexual gratification.** In no event should Dr. White have allowed one thing to lead to another, as was oft repeated during testimony.

Patient 1 was vulnerable. He was approximately 20 when he met Dr. White who was 35 years old. Testimony shows that **Patient 1 struggled with his sexuality and reconciling it with his religion and community.** *** (Emphasis added.)

Thereafter, on May 11, 2022, when the Board met to consider Appellant's case, members of the Board made the following comments:

Dr. Schottenstein continued that Patient 1 spoke to a therapist in 2017 and the notes reflect that **he felt, in his words, "diminished" before God because he had wanted to save himself sexually for marriage, and he wondered if this sexual history had "ruined" him.** *** When Dr. White and Patient 1 engaged in sexual activity it was not in the context of a romantic relationship, and as a result **it left patient 1 feeling used.** Dr. Schottenstein stated that, contrary to Dr. White's testimony, **that arguably caused Patient 1 harm.**

*** Patient 1 was a young man with many gifts who **felt rejected by his family, his community, and his church because of his sexual orientation.** Patient 1 had been trying to process that rejection by reaching out to other gay, Black men for support. Dr. White, who is well-respected in the community, took Patient 1 under his wing. Patient 1 perceived that this was because Dr. White saw his potential and his worth, and he was gratified by that. However, Patient 1 realized in the aftermath of the sexual encounters that the real reason Dr. White took an interest in him was because he wanted something from Patient 1. **Patient 1 came**

months before Patient 1 became Appellant's patient, and in September 2015, two months after Patient 1 became Appellant's patient.

to feel like he had been groomed and that Dr. White's interest in him had been subterfuge. This was a devastating realization for Patient 1; it caused him to feel diminished and it reinforced all the negative feelings he had about himself that he had been trying to overcome.

Mr. Giacalone stated that he was disturbed by this situation and more disturbed by Dr. White's statement today, which Mr. Giacalone found to be robotic and included no mention of Patient 1. Mr. Giacalone reiterated that **Patient 1 had been a vulnerable young man** and that he and Dr. White referred to each other as mentor and mentee, yet **Patient 1 ultimately felt abused.** ***

Mr. Giacalone stated that **Patient 1 was a troubled young man** and Dr. White still cannot seem to see that this was an issue. *** (Emphasis added.)

In the Notice of Opportunity for Hearing, the Board informed Appellant that he was charged with having engaged in sexual misconduct with a patient on two occasions. Appellant was not notified that he would be required to defend himself against accusations that he had caused harm to Patient 1, or that Patient 1 was a vulnerable person whom Appellant had groomed for his own sexual gratification, or that Patient 1 was struggling with his sexuality and his religion. Accordingly, the Notice did not comply with R.C. 119.07.

Appellant also argues that, because the Notice of Opportunity for Hearing did not charge him with conduct for which he was ultimately disciplined, he was deprived of the opportunity to adequately defend himself against such accusations. Appellant asserts, persuasively, that if he had been provided with notice of the additional accusations against him, he could have called additional witnesses and produced additional evidence to rebut the additional accusations.

Accordingly, Appellant's second assignment of error is well taken.

In *Henry's Café, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233 (1959), the Supreme Court of Ohio held, at paragraphs two and three of the syllabus:

2. On appeal from an order of an agency (as defined in Section 119.01, Revised Code) to the Court of Common Pleas, the power of the court to modify such order is limited to the ground set forth in Section 119.12, Revised Code, *i.e.*, the absence of a finding that the order is supported by reliable, probative, and substantial evidence.

3. On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

In the instant case, it is not the holding of this Court that the Board abused its discretion in imposing the discipline that it imposed upon Appellant. To the contrary, it is the holding of this Court that the Board denied Appellant's procedural due process rights by disciplining him based upon evidence that had been excluded from the record by the Hearing Examiner, and based upon reasons that were not included in the Notice of Opportunity for Hearing.

Conclusion

Upon consideration of the entire record, the Court finds that the Order issued by the State Medical Board of Ohio on May 11, 2022, indefinitely suspending Appellant's medical license for at least one year, ordering Appellant to pay a \$6,000 fine, imposing conditions for the reinstatement or restoration of Appellant's license, and placing Appellant on probation for at least two years following the reinstatement or restoration of his license, is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Order is thereby **REVERSED**, and this case is hereby **REMANDED** to the Board for further proceedings consistent with this Court's decision.

This is a final, appealable order. Costs are hereby taxed to Appellee. Pursuant to Civ. R. 58(B), the Franklin County Clerk of Courts shall, within three (3) days of entering this judgment upon the Clerk's journal, serve all parties with notice of this judgment and its date of entry.

Copies electronically transmitted to all counsel of record.

Franklin County Court of Common Pleas

Date: 09-01-2023

Case Title: MARK A WHITE -VS- STATE MEDICAL BOARD OF OHIO

Case Number: 22CV003828

Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to read "Stephen L. McIntosh", written over a circular official seal. The seal is for the Franklin County Court of Common Pleas, Ohio. It features a central sunburst design and the text "FRANKLIN COUNTY COURT OF COMMON PLEAS OHIO" around the perimeter. At the bottom of the seal, it says "IN GOD WE TRUST" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 22CV003828

Case Style: MARK A WHITE -VS- STATE MEDICAL BOARD OF
OHIO

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

Mark A. White, M.D.,		Case No. 22CV-03828
Appellant,		Judge Stephen L. McIntosh
vs.		
State Medical Board of Ohio,		
Appellee.		

**Decision and Judgment Entry Reversing Order Issued by State Medical Board of Ohio
and Remanding Case to Board for Further Proceedings**

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 119.12 administrative appeal, by Mark A. White, M.D. (Appellant), from an Order in which the State Medical Board of Ohio indefinitely suspended Appellant's medical license for at least one year, ordered Appellant to pay a \$6,000 fine, imposed conditions for the reinstatement or restoration of Appellant's license, and placed Appellant on probation for at least two years following the reinstatement or restoration of his license.

Pursuant to R.C. 119.12(E), this Court suspended the Board's Order pending the Court's determination of the appeal, and the Court imposed conditions upon Appellant during the suspension of the Board's Order. Appellant has provided the Court with documentation that he has complied with and continues to comply with the conditions imposed by the Court.

The record that the Board has certified to the Court reflects the following facts.

SEP 08 2023

STATE MEDICAL BOARD OF OHIO

Facts

The pertinent facts of this case are not in dispute.

In 1992 Appellant received his medical degree from The Ohio State University College of Medicine. *Transcript of Proceedings, July 29-30, 2021 (Tr.)* 25. In 1996 he completed a residency in internal medicine at Mount Carmel Medical Center in Columbus, Ohio. *Tr.* 26. In 1997 he received his license to practice medicine in Ohio. *Tr.* 25.

From 1997 to 2014, Appellant was employed as a physician at Mount Carmel Health Stations, then a hospitalist at Riverside Methodist Hospital, and then a physician at Central Ohio Primary Care Physicians, all in Columbus. *Tr.* 27-29.

In 2014 Appellant established a family-medicine practice, Gateway Health and Wellness, where he has primarily served the underserved Nepali, Somali, and African American communities in Columbus. *Tr.* 30-31, 33-34. Appellant has approximately 3,000 patients and he sees 35 to 40 patients each day. *Tr.* 31. Appellant is assisted by two certified nurse practitioners. *Tr.* 31-32.

This appeal, and the disciplinary proceedings below, arose from Appellant's relationship with and treatment of Patient 1, a young man whom Appellant met in the summer of 2012 at a social gathering of gay African American men in Columbus. *Tr.* 38-39, 241-242. Patient 1 was a gay African American man who did not feel accepted in the community due to his sexuality, and whose father did not accept Patient 1's sexuality. *Tr.* 40, 44-47.

After Appellant met Patient 1, Patient 1 began attending meetings of a gay African American men's church group; Appellant was also a member of the group. *Tr.* 38-39. The group met weekly, and Patient 1 attended meetings approximately once a month. *Tr.* 39.

Appellant and Patient 1 became “very good friends” who spoke on the phone and occasionally met in person to go to dinner or a play, usually with a group of people. *Tr. 41-44.* Appellant became a mentor to Patient 1, and they discussed “being gay, being black, and not being out or being out, how white people looked at gay people, how black people looked at gay people.” *Tr. 41-44.* Appellant was not aware that Patient 1 was suffering from any mental health issues. *Tr. 95, 99.*

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On June 29, 2015, approximately seven months after Appellant and Patient 1 engaged in sexual activity, Appellant provided medical treatment to Patient 1 for the first time. *Tr. 55; State’s Ex. 4.* Appellant was surprised when Patient 1 appeared at Appellant’s office, because they had never spoken about Patient 1 receiving medical treatment from Appellant. *Tr. 54.* On that date, Appellant treated Patient 1 for a cough. *Tr. 55-56.*

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not invite Patient 1 on the trip with the expectation that they would have sex, because Appellant wanted to go to Atlanta to meet other people and to experience Atlanta Gay Pride. *Tr. 250.* On one occasion during the trip, Appellant and Patient 1 engaged in consensual sexual activity. *Tr. 86.* That was the only sexual encounter between Appellant and Patient 1 after their physician-patient relationship began in June 2015. *Tr. 86.*

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(B) *** [T]he board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a license or certificate to practice ***, refuse to issue a license or certificate, refuse to renew a license or certificate, refuse to reinstate a license or certificate, or reprimand or place on probation the holder of a license or certificate for one or more of the following reasons.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(20) *** [V]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board.

Ohio Adm. Code 4731-26-02 provides:

4731-26-02. Prohibitions.

Sexual misconduct, as that term is defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, between a licensee and a patient is never diagnostic or therapeutic.

(A) A licensee shall not engage in sexual misconduct with a patient *** as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.

On July 29 and 30, 2021, a Hearing Examiner conducted an administrative hearing on the Board's charge against Appellant. See *Transcript of Proceedings, July 29-30, 2021, pp. 1-293*.

On April 14, 2022, the Hearing Examiner issued a Report and Recommendation containing a summary of the evidence, findings of fact, conclusions of law, and a recommendation that the Board discipline Appellant for his conduct. The Hearing Examiner found that Appellant had engaged in sexual contact with Patient 1 on two separate occasions. The Hearing Examiner concluded that Appellant's conduct violated R.C. 4731.22(B)(20), to wit: Ohio Adm. Code 4731-26-02 (sexual misconduct with a patient), and that Appellant's violation

license or certificate to practice medicine and surgery, or to reprimand you or place you on probation” for the following reason:

- (1) In the course of your practice, you undertook the treatment, provided care and/or prescribed medications to Patient 1, as identified in the attached Patient Key. ***

On or about September 3, 2020, you admitted to a Board investigator that you engaged in sexual conduct with Patient 1 on two occasions. You further stated that you first engaged in sexual conduct with Patient 1 on or about September 4 to 7, 2015, Labor Day weekend. You further stated that you again engaged in sexual conduct with Patient 1 in or around January 2017. The patient record documents that you provided medical care from on or about June 29, 2015 to May 14, 2019, to Patient 1 which was concurrent with the two times you acknowledged engaging in sexual conduct with the patient.¹

In the Notice of Opportunity for Hearing, the Board charged that Appellant’s conduct constituted “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in R.C. 4731.22(B)(20), to wit: Ohio Adm. Code 4731-26-02 (sexual misconduct with a patient). The Board charged that Appellant’s conduct, as described above, also constituted a violation of R.C. 4731.22(B)(6), which is “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.” The Board notified Appellant that he was entitled to a hearing on the Board’s proposed action against Appellant’s medical license, and Appellant requested a hearing.

Revised Code 4731.22(B)(6) and (20) provides:

§ 4731.22 Disciplinary actions by the state medical board.

¹ Contrary to the allegation in the Notice of Opportunity for Hearing, the evidence at the administrative hearing was that Appellant engaged in sexual conduct with Patient 1 in November 2014, seven months before Patient 1 became Appellant’s patient, and in September 2015, two months after Patient 1 became Appellant’s patient.

of Ohio Adm. Code 4731-26-02 also constituted a violation of R.C. 4731.22(B)(6). The Hearing Examiner recommended that the Board indefinitely suspend Appellant's medical license for at least one year, order Appellant to pay a \$6,000 fine, impose conditions for the reinstatement or restoration of Appellant's license, and place Appellant on probation for at least two years following the reinstatement or restoration of his license.

On April 19, 2022, Appellant filed objections to the Hearing Examiner's Report and Recommendation and requested an opportunity to appear before the Board to respond to the Report and Recommendation.

On May 11, 2022, the Board met to consider Appellant's case, at which time Appellant, his attorney, and the State's attorney addressed the Board. Following discussion, the Board voted to adopt the Hearing Examiner's Report and Recommendation.

On May 11, 2022, the Board entered an Order on its journal indefinitely suspending Appellant's medical license for at least one year, ordering Appellant to pay a \$6,000 fine, imposing conditions for the reinstatement or restoration of Appellant's license, and placing Appellant on probation for at least two years following the reinstatement or restoration of his license. By letter dated May 11, 2022, the Board notified Appellant of the Order.

On June 6, 2022, Appellant timely appealed the Board's Order to this Court pursuant to R.C. 119.12.

Standards of Appellate Review

Revised Code 119.12(M) provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record ***, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. ***

In an administrative appeal brought pursuant to R.C. 119.12, the common pleas court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with law. *Mansour v. State Med. Bd.*, 10th Dist. Franklin No. 17AP-615, 2018-Ohio-2605, ¶ 16. The common pleas court's review is a hybrid form of review in which the court appraises all the evidence, giving due deference to the administrative determination of conflicting evidence and credibility conflicts, but reviewing legal questions *de novo*. *Id.*

"Reliable" evidence is dependable; that is, it can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 571 (1992). In order to be reliable, there must be a reasonable probability that the evidence is true. *Id.* "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. *Id.* "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.*

The issue before this Court is whether the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. For the following reasons, the Court finds that the Board's Order is not supported by the requisite evidence and is not in accordance with law.

Analysis

Appellant has presented several assignments of error in support of this appeal, two of which are dispositive of the appeal.

Appellant's first assignment of error is that the Board's Order is contrary to law because it violates Appellant's right to due process. Specifically, Appellant contends that the Hearing Examiner, and thereafter the Board, considered and relied upon an exhibit that the Hearing

Examiner had excluded from evidence. The Court finds this assignment of error to be well taken, for the following reasons.

Respondent’s Exhibit V was a book titled “Mante Means Courage” that had purportedly been written by Patient 1; the document was not signed. *Tr. 47, 290.* Appellant received the book in September or October 2020, after Patient 1’s passing, when the book was given to Appellant by Wesley Williams, a mutual friend of Appellant and Patient 1. *Tr. 19.* Patient 1 had sent the book to Mr. Williams. *Tr. 19-20.* The book contains statements about Appellant, many of which were not true, Appellant testified. *Tr. 47-48.*

At the administrative hearing on July 30, 2021, the State’s attorney moved the Hearing Examiner to admit Respondent’s Exhibit V into evidence and Appellant’s attorney objected. *Tr. 205.* The State’s attorney asked Appellant’s attorney to articulate his objection to the exhibit, which produced the following exchange between the attorneys:

MS. SNYDER [the State’s attorney]: *** [I]f we’re going to brief the admissibility of Respondent’s Exhibit V *** I need to know exactly what the objection is so that I know what legal issues we’re researching.

So if we could articulate the exact objection to that document, that would be helpful for the briefing.

MR. JAMES [Appellant’s attorney]: No. one, from a relevancy standpoint of the charge against Dr. White, is that he had sex with a patient. The Doctor has stipulated to that fact that after the patient became his patient, he had sex post of that. That’s number one.

No. two, it’s highly prejudicial. No. three, there’s no way of authenticating, there’s no signature, we don’t know where it came from, we have no idea what time it was, so the reliability and credibility of it, I haven’t looked at all, but at least in my trial experience, this is one that I think is pretty straightforward. *Tr. 290-291.*

On August 11, 2021, the State withdrew its motion to admit Respondent's Exhibit V into evidence, and the Hearing Examiner excluded the document from the record. See *Entry Denying Admission of Exhibit and Setting Deadline for Closing Arguments, Oct. 20, 2021*.

However, when the Hearing Examiner issued her Report and Recommendation on April 14, 2022, she quoted the following passage from Respondent's Exhibit V, about the massage incident that led Appellant and Patient 1 to engage in sexual activity:

*** I was I'm embarrassed at myself and at my body. I couldn't look Dr. White in the eyes, or anyone. Aside from feeling dirty, I wanted to go to sleep -- for I had not slept, but had been up, throughout the night, staring at the night, and at the walls, and listening to it, the night, and the walls, as they settled, into the earth, which I tried to do, settle into the couch. When I arrived at my dorm, when it was, perhaps, for the first time that day, morning, and I'd stepped out of the truck and around it and onto the sidewalk, and looked at Dr. White, somehow, and he'd grinned, like a robber, whom I could not take back my belongings from, and turned away from him, the robber, and swiped, and gone inside. *Hearing Examiner's Report and Recommendation, April 14, 2022, pp. 10-11.*

The State contends that it was not error for the Hearing Examiner, and thereafter the Board, to rely upon the contents of Respondent's Exhibit V, because Appellant testified about some of the contents of the exhibit during cross-examination. However, after Appellant testified, the State withdrew its motion to admit the exhibit into evidence, and the Hearing Examiner excluded the exhibit from the record. Accordingly, the Hearing Examiner and the Board erred in relying upon the contents of the excluded exhibit.

In Appellant's reply brief in support of this appeal, he has presented an analogy that illustrates the error committed by the Hearing Officer and thereafter the Board in relying upon the contents of Respondent's Exhibit V. To wit: If a witness in a jury trial testifies about the contents of an exhibit that is thereafter excluded from evidence, that testimony will be ordered stricken from the record, and the jury will receive a curative instruction from the judge not to consider that testimony.

The Fourteenth Amendment to the United States Constitution and Section 16, Article I, of the Ohio Constitution require that administrative proceedings comport with due process. *Natoli v. Ohio State Dental Bd.*, 177 Ohio App. 3d 645, 2008-Ohio-4068, ¶ 18 (10th Dist. Franklin). Pursuant to due process, governmental agencies must provide constitutionally adequate procedures before depriving individuals of their protected liberty or property interests. *Id.* A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* At its core, due process insists upon fundamental fairness, and the requirement to conduct a hearing implies that a fair hearing must occur. *Id.*

Appellant, as a licensed professional, has a protected property interest in the practice of medicine and surgery. *Haj-Hamad v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 06AP-351, 2007-Ohio-2521, ¶ 53. The Hearing Examiner, and thereafter the Board, violated Appellant’s right to due process when they relied upon Respondent’s Exhibit V, which the Hearing Examiner had excluded from evidence.

Accordingly, Appellant was denied a fair hearing in violation of his due process rights, and Appellant’s first assignment of error is well taken.

Appellant’s second assignment of error is that the Board’s Order is contrary to law because Appellant was disciplined based upon reasons that were not included in the Notice of Opportunity for Hearing, in violation of R.C. 119.07 and Appellant’s due process rights. The Court finds this assignment of error to be well taken, for the following reasons.

Revised Code 119.07 provides:

§ 119.07 Notice of hearing; contents[.]

*** [I]n all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party’s right to a hearing. **Notice *** shall include the charges or other reasons for the proposed action,**

the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of service. *** (Emphasis added.)

The fundamental requirement of procedural due process is notice and a hearing, that is, an opportunity to be heard. *Korn v. Ohio State Med. Bd.*, 61 Ohio App. 3d 677, 684 (10th Dist. Franklin 1988). Notice and a hearing are necessary to comply with due process in an administrative proceeding that revokes an individual's license to practice a profession. *Id.*

Procedural due process requires administrative agencies to give fair notice of the precise nature of the charges at issue in a disciplinary hearing. *Edmands v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 14AP-778, 2015-Ohio-2658, ¶ 23. The notice must include the charges or other reasons for the proposed action and the law or rule directly involved. *Id.*, ¶ 11. An administrative agency must provide a license holder with sufficient notice of the charges against the license holder to allow the preparation of a defense to the charges. *Sohi v. Ohio State Dental Bd.*, 130 Ohio App. 3d 414, 422 (1st Dist. Hamilton 1998). The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. *Althof v. Ohio State Bd. of Psychology*, 10th Dist. Franklin No. 05AP-1169, 2007-Ohio-1010, ¶ 19.

In the Notice of Opportunity for Hearing issued on November 10, 2020, the Board set forth the following allegation against Appellant:

On or about September 3, 2020, you admitted to a Board investigator that you engaged in sexual conduct with Patient 1 on two occasions. You further stated that you first engaged in sexual conduct with Patient 1 on or about September 4 to 7, 2015, Labor Day weekend. You further stated that you again engaged in sexual conduct with Patient 1 in or around January 2017. The patient record documents that you provided medical care from on or about June 29, 2015 to May 14, 2019, to Patient 1 which was concurrent with the two times you acknowledged engaging in sexual conduct with the patient.²

² As stated in an earlier footnote, contrary to the allegation in the Notice of Opportunity for Hearing, the evidence at the administrative hearing was that Appellant engaged in sexual conduct with Patient 1 in November 2014, seven

The Notice does not allege that Appellant engaged in any other conduct, and the Notice does not provide any other reasons for the Board's disciplinary proceedings against Appellant.

Appellant argues, accurately, that he was ultimately disciplined based upon conduct that was not alleged in the Notice of Opportunity for Hearing. For example, in the Hearing Examiner's Report and Recommendation issued on April 14, 2022, she presented her rationale for the proposed Board Order as follows:

Dr. White has admitted to two sexual encounters with a young man in college, 35 years his junior, a young man who he befriended and **whom he knew was struggling with his sexuality and his religion**. Dr. White befriended Patient 1, mentored Patient 1, and treated Patient 1. **He exploited those relationships with Patient 1 for his own sexual gratification**. In no event should Dr. White have allowed one thing to lead to another, as was oft repeated during testimony.

Patient 1 was vulnerable. He was approximately 20 when he met Dr. White who was 35 years old. Testimony shows that **Patient 1 struggled with his sexuality and reconciling it with his religion and community**. *** (Emphasis added.)

Thereafter, on May 11, 2022, when the Board met to consider Appellant's case, members of the Board made the following comments:

Dr. Schottenstein continued that Patient 1 spoke to a therapist in 2017 and the notes reflect that **he felt, in his words, "diminished" before God because he had wanted to save himself sexually for marriage, and he wondered if this sexual history had "ruined" him**. *** When Dr. White and Patient 1 engaged in sexual activity it was not in the context of a romantic relationship, and as a result **it left patient 1 feeling used**. Dr. Schottenstein stated that, contrary to Dr. White's testimony, **that arguably caused Patient 1 harm**.

*** Patient 1 was a young man with many gifts who **felt rejected by his family, his community, and his church because of his sexual orientation**. Patient 1 had been trying to process that rejection by reaching out to other gay, Black men for support. Dr. White, who is well-respected in the community, took Patient 1 under his wing. Patient 1 perceived that this was because Dr. White saw his potential and his worth, and he was gratified by that. However, Patient 1 realized in the aftermath of the sexual encounters that the real reason Dr. White took an interest in him was because he wanted something from Patient 1. **Patient 1 came**

months before Patient 1 became Appellant's patient, and in September 2015, two months after Patient 1 became Appellant's patient.

to feel like he had been groomed and that Dr. White's interest in him had been subterfuge. This was a devastating realization for Patient 1; it caused him to feel diminished and it reinforced all the negative feelings he had about himself that he had been trying to overcome.

Mr. Giacalone stated that he was disturbed by this situation and more disturbed by Dr. White's statement today, which Mr. Giacalone found to be robotic and included no mention of Patient 1. Mr. Giacalone reiterated that **Patient 1 had been a vulnerable young man** and that he and Dr. White referred to each other as mentor and mentee, yet **Patient 1 ultimately felt abused.** ***

Mr. Giacalone stated that **Patient 1 was a troubled young man** and Dr. White still cannot seem to see that this was an issue. *** (Emphasis added.)

In the Notice of Opportunity for Hearing, the Board informed Appellant that he was charged with having engaged in sexual misconduct with a patient on two occasions. Appellant was not notified that he would be required to defend himself against accusations that he had caused harm to Patient 1, or that Patient 1 was a vulnerable person whom Appellant had groomed for his own sexual gratification, or that Patient 1 was struggling with his sexuality and his religion. Accordingly, the Notice did not comply with R.C. 119.07.

Appellant also argues that, because the Notice of Opportunity for Hearing did not charge him with conduct for which he was ultimately disciplined, he was deprived of the opportunity to adequately defend himself against such accusations. Appellant asserts, persuasively, that if he had been provided with notice of the additional accusations against him, he could have called additional witnesses and produced additional evidence to rebut the additional accusations.

Accordingly, Appellant's second assignment of error is well taken.

In *Henry's Café, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233 (1959), the Supreme Court of Ohio held, at paragraphs two and three of the syllabus:

2. On appeal from an order of an agency (as defined in Section 119.01, Revised Code) to the Court of Common Pleas, the power of the court to modify such order is limited to the ground set forth in Section 119.12, Revised Code, *i.e.*, the absence of a finding that the order is supported by reliable, probative, and substantial evidence.

3. On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

In the instant case, it is not the holding of this Court that the Board abused its discretion in imposing the discipline that it imposed upon Appellant. To the contrary, it is the holding of this Court that the Board denied Appellant's procedural due process rights by disciplining him based upon evidence that had been excluded from the record by the Hearing Examiner, and based upon reasons that were not included in the Notice of Opportunity for Hearing.

Conclusion

Upon consideration of the entire record, the Court finds that the Order issued by the State Medical Board of Ohio on May 11, 2022, indefinitely suspending Appellant's medical license for at least one year, ordering Appellant to pay a \$6,000 fine, imposing conditions for the reinstatement or restoration of Appellant's license, and placing Appellant on probation for at least two years following the reinstatement or restoration of his license, is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Order is thereby **REVERSED**, and this case is hereby **REMANDED** to the Board for further proceedings consistent with this Court's decision.

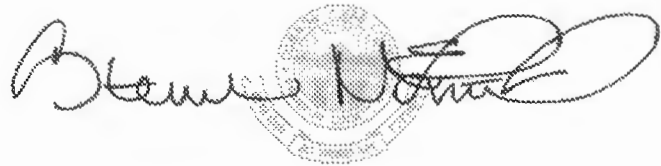
This is a final, appealable order. Costs are hereby taxed to Appellee. Pursuant to Civ. R. 58(B), the Franklin County Clerk of Courts shall, within three (3) days of entering this judgment upon the Clerk's journal, serve all parties with notice of this judgment and its date of entry.

Copies electronically transmitted to all counsel of record.

Franklin County Court of Common Pleas

Date: 09-01-2023
Case Title: MARK A WHITE -VS- STATE MEDICAL BOARD OF OHIO
Case Number: 22CV003828
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular, embossed seal of the Franklin County Court of Common Pleas. The signature is fluid and cursive.

/s/ Judge Stephen L. McIntosh

Electronically signed on 2023-Sep-01 page 16 of 16

SEP 08 2023

STATE MEDICAL BOARD OF OHIO

Court Disposition

Case Number: 22CV003828

Case Style: MARK A WHITE -VS- STATE MEDICAL BOARD OF
OHIO

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

SEP 08 2023

STATE MEDICAL BOARD OF OHIO

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SEP 08 2023
STATE MEDICAL BOARD OF OHIO

MARYELLEN O'SHAUGHNESSY

FRANKLIN COUNTY CLERK OF COURTS
GENERAL DIVISION, COURT OF COMMON PLEAS

CASE TITLE: MARK A WHITE -VS- STATE MEDICAL BOARD OF OHIO CASE NUMBER: 22CV003828

TO THE CLERK OF COURTS, YOU ARE INSTRUCTED TO MAKE:
ORDINARY MAIL

DOCUMENTS TO BE SERVED:
DECISION/ENTRY

PROPOSED DOCUMENTS TO BE SERVED:

UPON:
MARK A WHITE,
3433 AGLER ROAD
SUITE 1100
COLUMBUS, OH 43219-0000

STATE MEDICAL BOARD OF OHIO
30 EAST BROAD STREET
3RD FLOOR
COLUMBUS, OH 43215-0000

MELINDA R SNYDER
ASST ATTY GENERAL
HEALTH AND HUMAN SERV SEC
30 EAST BROAD ST, 26TH FL
COLUMBUS, OH 43215-3428

KYLE C WILCOX
ASST ATTORNEY GENERAL
HEALTH & HUMAN SERVICES
30 E BROAD ST, 26TH FL
COLUMBUS, OH 43215-0000

CHRISTOPHER R GREEN
CRABBE, BROWN & JAMES LLP
500 SOUTH FRONT STREET
COLUMBUS, OH 43215-0000

SEP 08 2023
STATE MEDICAL BOARD OF C

LARRY H JAMES
CRABBE,BROWN & JAMES
500 SOUTH FRONT STREET
SUITE 1200
COLUMBUS, OH 43215-0000

JUVENILE CITATIONS ONLY:

HEARING TYPE:

__ Date already scheduled at : Courtroom:

Electronically Requested by:

Attorney for:

SEP 08 2023

STATE MEDICAL BOARD OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

MARK A. WHITE, M.D.
3433 Agler Road, Suite 1100
Columbus, OH 43219,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO
30 East Broad Street, 3rd Floor
Columbus, OH 43215,

Appellee.

* **CASE NO.**
*
* **JUDGE**
*
* **Board Case No. 20-CRF-0176**
*
* **APPEAL FROM THE ENTRY OF**
* **AMENDED ORDER MAILED**
* **JUNE 1, 2022**
*
*
*

NOTICE OF APPEAL

Appellant, Mark A. White, M.D., by and through counsel, and pursuant to R.C. 119.12, timely submits this Notice of Appeal from the Entry of Amended Order of Appellee, State Medical Board of Ohio ("Board"), which suspended Dr. White's license to practice medicine and surgery indefinitely, but not less than one (1) year and assessed Dr. White a fine of six thousand dollars (\$6,000.00). The Amended Order, which is effective upon mailing, ordered Dr. White's license suspension to commence on the thirty-first day following the date on which the Amended Order is effective. The Board's Entry of Amended Order was mailed June 1, 2022. Thus, Dr. White's license will be suspended and his practice effectively terminated on July 1, 2022. The grounds for this appeal are that the Board's Entry of Amended Order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law.

A copy of the Board's Entry of Amended Order is attached as "Exhibit A."

Respectfully submitted,

/s/ Larry H. James

LARRY H. JAMES (0021773)

CHRISTOPHER R. GREEN (0096845)

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500 South Front Street, Suite 1200

Columbus, OH 43215

Telephone: (614) 229-4567

Facsimile: (614) 229-4559

ljames@cbjlawyers.com

cgreen@cbjlawyers.com

Counsel for Appellant Mark A. White, M.D.

CERTIFICATE OF SERVICE

The undersigned herein certifies that on this 6th day of June 2022, the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, a copy filed with the Franklin County Court of Common Pleas, and an additional copy has been forwarded to the undersigned via email:

Melinda Ryan Snyder (0077852)

Kyle C. Wilcox (0063219)

Assistant Attorneys General

Health and Human Services Section

30 East Broad Street, 26th Floor

Columbus, Ohio 43215-3400

Phone: (614) 466-8600

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Kyle.Wilcox@OhioAGO.gov

Counsel for State Medical Board of Ohio

/s/ Larry H. James

LARRY H. JAMES (0021773)

Counsel for Appellant Mark A. White, M.D.



May 11, 2022

Mark A. White, M.D.
3433 Agler Road, Suite 1000
Columbus, OH 43219-3387

RE: Case No. 20-CRF-0176

Dear Dr. White:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kimberly A. Lee, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 11, 2022, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, and adopting an Amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Any such appeal must be filed in accordance with all requirements specified in Section 119.12, Ohio Revised Code, and must be filed with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within (15) days after the date of mailing of this notice.

THE STATE MEDICAL BOARD OF OHIO

Kim G. Rothermel, M.D.
Secretary

KGR:jam
Enclosures

CERTIFIED MAIL NO. 9414 8149 0315 2968 0042 24
RETURN RECEIPT REQUESTED

Mailed 6-1-2022

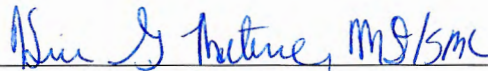
In the matter of Mark A. White, M.D.
Page 2

CC: Elizabeth Y. Collis, Esq.
Courtney M. White, Esq.
DINSMORE & SHOHL
191 W. Nationwide Blvd., Suite 300
Columbus, OH 43215

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Kimberly A. Lee, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 11, 2022, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mark A. White, M.D., Case No. 20-CRF-0176, as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Kim G. Rothermel, M.D.
Secretary

(SEAL)

May 11, 2022
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 20-CRF-0176

MARK A. WHITE, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio May 11, 2022.

Upon the Report and Recommendation of Kimberly A. Lee, State Medical Board Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval, and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **SUSPENSION OF LICENSE; NO NEW PATIENTS DURING THIRTY-DAY INTERIM PERIOD:** Commencing on the thirty-first day following the date on which this Order becomes effective, the license of Mark A. White, M.D., to practice) medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year. During the thirty-day interim, Dr. White shall not undertake the care of any patient not already under his care.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. White shall remit payment in full of a fine of six thousand dollars (\$6,000). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.
The failure of Dr. White to timely remit full payment shall constitute a violation of this Order. Should such a violation occur, the Board, after giving Dr. White notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his license.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. White's license to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. White shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Payment of Fine:** Dr. White shall have fully paid the fine as set forth in Paragraph B of this Order.
3. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. White shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. White submits the documentation of successful completion of the course(s) dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

4. **Acumen Institute Program:** Prior to submitting his application for reinstatement or restoration, Dr. White shall have successfully completed the three-phase longitudinal day treatment program at the Acumen Institute in Lawrence, Kansas. Dr. White's participation in the program shall be at his own expense.
 - a. Upon scheduling the dates of Phase I of the Acumen Institute longitudinal day treatment program, Dr. White shall furnish the Acumen Institute with copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to that program.
 - b. Should the Acumen Institute request patient records maintained by Dr. White, Dr. White shall furnish copies of the patient records at issue in this matter along with any other patient records he submits. Dr. White shall further ensure that the Acumen Institute maintains patient confidentiality in accordance with Section 4731.22(F)(5), Ohio Revised Code.
 - c. At the time he submits his application for reinstatement or restoration, Dr. White shall submit to the Board satisfactory documentation from the Acumen Institute indicating that he has successfully completed each

phase of the longitudinal treatment program, including copies of reports that indicate he is fit to return to work as well as a return to work plan and any amendments thereto.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. White has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice

D. **PROBATION:** Upon reinstatement or restoration, Dr. White's license shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

1. **Return to Work Plan:** The return to work plan from the Acumen Institute shall constitute terms of this Order, and Dr. White shall comply with the return to work plan unless otherwise determined by the Board.
2. **Third-Party Presence During Exam/Treatment:** Dr. White shall have a third party present while examining or treating patients. The particular qualifications of the chaperone and the specific conditions related to Dr. White's utilization of such chaperone must be acceptable to the Secretary and Supervising Member of the Board, who shall consider the "Guidelines for the Use of Medical Chaperones" utilized by the Board's Compliance section in making their determination.
3. **Obey the Law:** Dr. White shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
4. **Declarations of Compliance:** Dr. White shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. White's license is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
5. **Personal Appearances:** Dr. White shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. White's license is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur as directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

6. **Modification of Terms; Exception:** Dr. White shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations, except that Dr. White may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member.
 7. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. White is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
 8. **Required Reporting of Change of Address:** Dr. White shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. White's license will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. White violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his license.
- G. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. White shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. White provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

Further, within 30 days of the date of each such notification, Dr. White shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. White receives from the Board written notification of the successful completion of his probation.

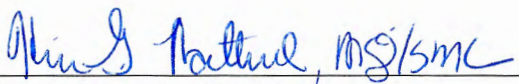
2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. White shall provide a copy of this Order by certified mail at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

Additionally, within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification.

Further, within 30 days of the date of each such notification, Dr. White shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. White receives from the Board written notification of the successful completion of his probation.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Kim G. Rothermel, M.D.
Secretary

(SEAL)

May 11, 2022
Date

STATE MEDICAL BOARD
OF OHIO

RECEIVED:
April 14, 2022

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 20-CRF-0176

Mark A. White, M.D.,

*

Respondent.

*

Hearing Examiner Lee

REPORT AND RECOMMENDATION

Basis for Hearing:

In a Notice of Opportunity for Hearing dated November 10, 2020 ("Notice"), the State Medical Board of Ohio ("Board") notified Mark A. White, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that, on or about September 3, 2020, Dr. White admitted to a Board investigator that he engaged in sexual conduct with a patient on two occasions, with the first occasion being on or about September 4 to 7, 2015 over Labor Day weekend and the second occasion being in or around January 2017. The Board further alleged that the patient record shows that Dr. White provided medical care to this patient from on or about June 29, 2015 to May 14, 2019 which was concurrent with the two times he acknowledged engaging in sexual conduct with the patient.

The Board further alleged that Dr. White's acts, conduct, and/or omissions, individually and/or collectively, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Ohio Revised Code Section ("R.C.") 4731.22(B)(20), to wit: Prohibition, Ohio Administrative Code Rule ("Rule") 4731-26-02. The Board also alleged that, pursuant to Rule 4731-26-03, as in effect between November 30, 2010 through June 29, 2016 and as in effect from June 30, 2016 to the present, a violation of Rule 4731-26-02 also violates R.C. 4731.22(B)(6), which is "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established." (State's Exhibit ("St. Ex.") 1a)

Accordingly, the Board advised Dr. White of his right to request a hearing and received his written request on November 20, 2020. (St. Ex. 1b)

Appearances:

Dave Yost, Attorney General of Ohio, and Melinda Snyder and Kyle Wilcox, Assistant Attorneys General, for the State of Ohio. Larry H. James, Esq., and Natalie P. Bryans, Esq., on behalf of Dr. White.

Hearing Date: July 29 and 30, 2021

PROCEDURAL MATTER

1. At the end of the hearing, the record was held open for the parties to provide briefs regarding the admissibility of State's Exhibit 2a and Respondent's Exhibit V. Prior to the deadline for the briefs, the State withdrew its motion to have Respondent's Exhibit V admitted. Briefs were timely received, and the hearing examiner ruled against admitting State's Exhibit 2a in full. The parties had previously agreed that pages 5 and 9 through 20 would be admitted to the record regardless of the ruling on the rest of the exhibit. As there had been no objection as to pages 6 through 8 of the exhibit, the hearing examiner admitted State's Exhibit 2a with pages 1 through 4 redacted. An unredacted version of State's Exhibit 2a was held as a proffer.
2. Upon review of the record, the hearing examiner sealed Respondent's Exhibits C through K. These exhibits are letters in support of Dr. White and are either from patients or identify a patient. While Respondent's counsel assured the hearing examiner at hearing that the writers knew that the letters would become public (and the hearing examiner does not doubt counsel's truthfulness), the hearing examiner is unsure if this qualifies as a sufficient waiver of the privilege of patient confidentiality and has sealed them out of an abundance of caution.
3. In addition to the letters discussed above, the hearing examiner has sealed pages 232-238 as the testimony on those pages identified the letter writers discussed above.
4. The hearing examiner redacted several small portions of Mr. Williams's testimony as it identified a family member who is also Dr. White's patient and who had not waived the privilege of patient confidentiality.

SUMMARY OF THE EVIDENCE

All exhibits and the transcript of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background

1. Mark A. White, M.D., graduated from the Ohio State University College of Medicine in 1992. Between 1993 and 1996, he completed a one-year internal medicine internship followed by two-year internal medicine residency, both at Mt. Carmel Medical Center. He worked as a physician at Mt. Carmel Health Stations from 1997 to 2002. He also worked as a hospitalist at Riverside Methodist Hospital from 2001 to 2003. In October 1999, he began working as a physician at Central Ohio Primary Care Physicians where he remained until 2008. He then worked at Capital City Medical Associates until he opened his own practice in 2014. He has been working at his own primary care practice, Gateway Medical Center ("Gateway") since 2014. Dr. White has been licensed to practice medicine and surgery in Ohio since 1997. He is not board certified. (Hearing Transcript ("Tr.") at 25-30; Respondent's Exhibit ("Resp. Ex.") M).
2. At Gateway, Dr. White sees approximately 35-40 patients a day, and has a patient base of roughly 3,000 people, over 90% of whom are African American, Nepali, or Somali. (Tr. at 31, 224; Resp. Ex. M) He described his practice:

We are -- it's multicultural. We have -- we service a number of patients that are underserved, on Medicaid, we service a lot of Nepalis patients, a number of Somalian patients, a number of African American patients, a number of white patients that are on Medicaid, that other doctors don't -- at least that's what they said, the patients said they can't get care from. So it's a very -- it's a very multicultural practice.

(Tr. at 30-31)

Dr. White testified that Gateway has grown over the years and that he currently employs two nurse practitioners. (Tr. at 32) He described the basic services offered at Gateway as treatment for medical conditions which disproportionally affect minorities as well as underserved populations. (Tr. at 33-34)

3. In addition to his medical practice, he has done a health and wellness radio show on 1580 WBKO for ten years. (Tr. at 37)

Dr. White's Initial Friendship with Patient 1

4. Dr. White testified that he first met Patient 1 in 2012 at an African American gay social gathering at a Short North bar in Columbus, Ohio. (Tr. at 38-39, 241-242) Patient 1 would have been 20 years old at that time, and Dr. White was about 35 years older than him. (Tr. at 45, 259) When asked how his relationship with Patient 1 evolved, Dr. White answered:

So Patient 1 had -- a very bright person, excellent writer, very creative, and had a lot of -- I don't know, had a lot of very -- opinionated about the gay -- African American gay men, and how we were looked at in the community. * * * I don't

know if you are aware, but, you know, gay -- being gay in an African American community is not well accepted, and so he really didn't like that, and we talked a lot about that.

And we talked about putting together programs that would enlighten the community, both the gay community and the heterosexual community.

He had a lot to say about the church, the standards of the church, not the church that we were -- because it was all gay, but he had a lot of ill feelings about the church. And I certainly could relate to that because I also did.

And a lot of the people that were African American who grew up in the standard African American church were not accepted, it wasn't talked about, and so we had a lot to talk about when it came to that.

So our relationship was really centered around that, and so that's how we became friends. And, you know, I introduced him to other people that were gay, that were older, that understood. He was a mature person, and I thought independent, and so he met other people. So that's how I would describe him.

(Tr. at 40-41)

5. Dr. White is also part of a gay African American men's church group which meets weekly. He testified that, after meeting at the bar, Patient 1 would participate in the church group approximately once a month over two or three years. (Tr. at 38-39, 45)
6. Dr. White further testified that he spends a lot of time at his office where sees patients seven days a week. (Tr. at 33) However, he spoke with Patient 1 on the phone on average about once every two weeks and that he would go out to dinner with Patient 1 and Wesley Williams, a friend of Dr. White. Dr. White also went with Patient 1 to a play and to a performance of Cirque Du Soleil. Dr. White testified that he went out with Patient 1 one-on-one fewer than ten times. (Tr. at 41-43)
7. Dr. White described his relationship with Patient 1 as "very good friends" and that he considered himself somewhat of a mentor to Patient 1. He believed that Patient 1 struggled with others accepting his sexuality and described some of their conversations:

So specifically some of the discussions we had about, you know, being gay, being black, and not being out or being out, politics, how white people looked at gay people, how black people looked at gay people.

So between myself and Wesley Williams, I think we talked to him a lot about it, so in that regard I would say it was a mentoring kind of thing.

(Tr. at 44)

8. Dr. White testified that Patient 1 told him that Patient 1's family did not understand his sexuality and that his mother accepted it but not his father. In addition, Dr. White believed that Patient 1 struggled with church in that he wanted to attend church services but not many churches are accepting. (Tr. at 46-47)
9. Dr. White also admitted to giving Patient 1 two driving lessons in approximately 2013 and 2014 after Patient 1 told him that he did not have anyone who would teach him. (Tr. at 100-101)
10. Dr. White testified that he had been sent a lengthy document by Wesley Williams, described as a book titled *Mante Means Courage*, that purportedly was written by Patient 1. While this document was not admitted to the hearing record, passages from it were read into the record without objection. At hearing, Dr. White stated he had only read the parts of the book that involved him. (Tr. at 19-20) Dr. White testified that it made him sad to read the book "[b]ecause of the things that he said about me that weren't true." (Tr. at 48-49)
11. It was written in the book that Patient 1 met Dr. White when he was 18 years old, but Dr. White disputed this at hearing. (Tr. at 49-50) The book also claimed that Patient 1 considered Dr. White to be a father figure to him. Dr. White testified that he was surprised to read that because he did not consider himself to be a father figure, and because he was not physically around Patient 1 very much. (Tr. at 51-53)

Dr. White's Medical Treatment of Patient 1

12. Dr. White's records show that Patient 1 had his first medical appointment with Dr. White on June 29, 2015. The record does not include the time of the appointment, but it does show that Dr. White electronically signed it at 5:36 P.M. on the same day. (St. Ex. 4 at 2-3) At hearing, Dr. White testified that he believed that Patient 1 would have called to make the appointment on a previous day, not the same day as the appointment. (Tr. at 71) Dr. White charted that Patient 1 was being seen for a cough as well as throat irritation and pain. Dr. White prescribed prednisone and a Z-pak. He also noted that this was a "99204 OFFICE VISIT, NEW – LEVEL 4." (St. Ex. 4 at 2-3) Earlier that same day, Patient 1 was seen at the Ohio State University Student Health Services for coughing and congestion and runny nose x 2 days." He was diagnosed with an upper respiratory infection, and the charted plan for Patient 1 was "Fluids/rest. Can use OTC meds (DayQuil/NyQuil type). RTC if no change in a few days, sooner if worsens." (St. Ex. 5 at 23-24)
13. Dr. White testified that he did not talk to Patient 1 about Patient 1 becoming a patient as Patient 1 was a student and had insurance on his campus. He thinks that Patient 1 may have been aware that Dr. White was Patient 2's, Patient 1's father's, physician. (Tr. at 53-54)
14. Dr. White testified that he was surprised to see Patient 1 when he walked into the exam room but that "it wasn't like a big deal." (Tr. at 54) When asked why he did not refer Patient 1 to another provider, Dr. White answered that "[i]t hadn't crossed my mind," and also testified, "I mean, I know him. I mean, you know. And now that I've gone through this thing, I've learned a

big lesson. I was talking to [Wesley Williams] last night. I said Wes, if you wanted to be a patient I would probably have to tell you I know a good doctor.” (Tr. at 247-248) When asked why he never ended the physician/patient relationship with Patient 1, Dr. White answered, “Well, because that had never happened -- that had never happened to me, and because of what has happened, I would never take on a friend because -- just because of this. I mean, I never -- before that I’ve been practicing medicine for 20 years, and nothing like this has ever happened.” (Tr. at 142-143)

15. Dr. White testified that he had received two separate subpoenas for Patient 1’s medical record and that he had provided the same records, which were marked as State’s Exhibit 4, for both subpoenas. He also testified that State’s Exhibit 4 was a complete copy of Patient 1’s medical record. (Tr. at 22-23) He explained that new patients are required to fill out “a lot of paperwork” including providing information on their health history, HIPAA privacy, and financial documents. (Tr. at 34-35) However, he admitted that Patient 1’s medical record did not include insurance forms, a new patient intake form, allergy information, or family history. (Tr. at 56-57, 62)
16. At hearing, Dr. White testified that his practice switched from handwritten records to electronic medical records in 2014. (Tr. at 66) Dr. White explained that it was possible that his staff did not print everything in the electronic medical record despite receiving two separate subpoenas for Patient 1’s record. (Tr. at 63-64) Dr. White also testified that it was not possible there were written records for Patient 1 that were not produced for the Board. (Tr. at 150) While the medical records for Patient 2 are more voluminous than those of Patient 1, Patient 2 began seeing Dr. White years earlier, and both patient records only include progress notes after Dr. White switched to a electronic medical records system in 2014. (St. Exs. 4 and 11a-c)
17. In April 2018, Dr. White examined Patient 1. (St. Ex. 4 at 8-13) In addition to the notes in the medical record, Dr. White also completed a physical form needed for Patient 1 to teach English in Thailand¹ which was not included in the documents he provided to the Board in response to its subpoena for Patient 1’s records. Dr. White explained that the physical form would have been under a form tab in his electronic medical record. (Tr. at 146-147; St. Ex. 2a at 5)
18. The instructions to the physician on the physical form include, “It is essential that your reply be based on a current and thorough physical examination and knowledge of the applicant’s medical history. Any additional comments relevant to the patient’s physical or psychological condition should be provided on a separate sheet signed and dated by you, the physician.” In response to a question asking how long he had known Patient 1, Dr. White answered five years. (St. Ex. 2a at 5) When asked if that answer told the program organizers that Dr. White had been treating Patient 1 for five years, Dr. White answered, “No, it says how long you have known the applicant.” (Tr. at 149) However, Dr. White did admit that the form was asking

¹ Throughout the hearing, there was testimony that Patient 1 taught English in Taiwan when other reliable evidence shows he was actually in Thailand. This correction has been noted through this Report and Recommendation for the sake of consistency and to eliminate confusion.

him for information as Patient 1's physician and stated that he misread the question. (Tr. at 149-150)

Q. [By Ms. Snyder] Okay. So you confused the relationships, the personal relationship with the patient relationship, is that -- is that why you filled this out incorrectly?

A. No, I didn't confuse it with that, I misread that first question when it said how long have you known him.

Q. You were talking about knowing him personally, right?

A. Yeah, all together, how long have I known the person.

Q. Right. So again, you confused the personal relationship with the patient relationship on this form, right?

A. Yeah, probably if they had said how long have you been his physician it would -- I would have answered that differently. So when I read it, I put it in there -- yeah.

(Tr. at 150-151)

19. In total, the records show that Dr. White saw Patient 1 for medical appointments on five occasions with the first being on June 29, 2015, and the last appointment being on May 14, 2019. (St. Ex. 4; Resp. Exs. Q-U)
20. Despite having a prior personal relationship with Patient 1, Dr. White denied treating Patient 1 any differently than his other patients. (Tr. at 268)

Labor Day Weekend 2015

21. Dr. White testified that the Gay Pride event in Atlanta, Georgia, is one of the largest for African Americans in the word and that "[i]t's like the Mecca of gay black men that come[.]" (Tr. at 248) He asked Patient 1 if he would like to go as Dr. White "thought it would be a good experience for him," and he did not consider the physician/patient relationship when asking. (Tr. at 249) Dr. White explained that he had not originally planned on going to the event that year but made the last minute decision to do so. Dr. White told Patient 1 that he wanted to go to Atlanta Gay Pride but did not want to go by himself. After Patient 1 agreed to go to Atlanta, Dr. White purchased the plane tickets for both of them. (Tr. at 272-273)
22. From September 4 to September 7, 2015, Dr. White and Patient 1 were in Atlanta, Georgia, together. Dr. White purchased the plane tickets for himself and Patient 1 several days before the trip and paid for the hotel room. (Tr. at 76-77, 250) Dr. White testified that he

was not planning on having sex with Patient 1 during the trip and that sex was not the purpose of the trip but admitted he “thought the possibility might occur[.]” (Tr. at 250)

23. Dr. White admitted to having sexual contact with Patient 1 during this time and that it was their second sexual encounter. (Tr. at 77) Dr. White testified, “[W]e were in the hotel, and it appeared that he wanted to do something, and one thing led to another.” (Tr. at 78) When asked to explain what exactly happened, he testified:

A. I don't remember exactly what happened because that was a long time ago, but I believe we were wrestling around on the bed, and when I say one thing led to another, we were, you know, just -- we were close when we were wrestling around, and then we -- that happened. We had intimate -- we got intimate.

Q. [By Ms. Snyder] Were you naked?

A. Not initially, we were not.

Q. Okay. But did you at some point become naked?

A. Yes.

Q. Did you give him a massage?

A. No, not then.

Q. Not then. Ever?

A. Yes, the first time.

Q. Okay. We'll get to that. Was there kissing involved?

A. No.

Q. Ever?

A. No. Not ever. Not ever.

(Tr. at 78-79)

24. While Dr. White admitted that he and Patient 1 touched each other's genitals and both ejaculated, he denied that there was any sort of sexual intercourse or oral sex. (Tr. at 78-80) When asked why this encounter did not result in sex, Dr. White answered:

Because it wasn't -- oh, man, how do you answer that. Because it really wasn't a big deal. It wasn't -- sex between two guys and sex between a woman and a

man are completely different, and that really wasn't a big -- it wasn't a big deal. I mean, you know, it wasn't -- so that was it, we masturbated and that was it.

(Tr. at 276)

25. Dr. White testified that his relationship with Patient 1 did not change after they returned to Columbus and that they did not later discuss this encounter. (Tr. at 251, 275)

Dr. White's Other Sexual Encounter with Patient 1

26. Dr. White's recollection of when his other sexual encounter with Patient 1 occurred has changed over time. He initially told the Board investigator that it occurred around December 2017 or January 2018 and was before the Atlanta trip. (Tr. at 67-68) His attorney later communicated to the Board investigator that it was early 2017 and occurred after the Atlanta trip. (St. Ex. 8) At hearing, Dr. White testified that this sexual encounter with Patient 1 occurred in November 2014 and was before the Atlanta trip. (Tr. at 88)
27. Prior to this encounter, he described his relationship with Patient as "a friend, advisor, mentor." (Tr. at 244) He testified that he had "not really in that way" been physically or sexually attracted to Patient 1 and that he did not believe Patient 1 was attracted to him "in a physical like I love this person" way. (Tr. at 245-246)

28. Dr. White testified:

Patient 1 and I were friends, okay? And Patient 1 called me up and essentially asked me for a back massage. Patient 1 came to my home, and I -- he got -- I gave him a back massage, and in the process of doing the back massage, again, two adults, one thing led to another, and that was the first time that we had sexual contact.

(Tr. at 89-90) Dr. White explained that he was surprised by Patient 1's request. (Tr. at 90) Dr. White later testified that he went and picked up Patient 1 as Patient 1 did not drive. (Tr. at 248)

29. Dr. White was asked to further explain what occurred:

A. Okay. So when he asked for the massage, he -- when we went upstairs, he took his clothes off, except his underwear, and then I did the same. I gave him a massage, and then in the course of the massage, after that we masturbated and that was it.

Q. [By Ms. Snyder] Okay. Did you kiss each other?

A. Absolutely not.

Q. Why do you say it like that, absolutely not?

A. Because it's not -- a lot of the things that he's describing are very -- I mean, it's going on and on as the things that didn't happen, so did we kiss? No, we didn't kiss.

Q. But that wouldn't be an unusual thing to do in a sexual encounter, right, kiss?

A. If you were intimately involved with a person. If I was intimately involved with a person, I would kiss them.

Q. Well, to me the things that you described are being intimately involved with someone. Do you disagree with that characterization?

A. Yeah, but it was -- as I described it, it was -- he was getting a massage, and then when I said one thing led to another, that one thing led to another was us mutual masturbating.

Q. You masturbating him and him masturbating you?

A. No, him masturbating him, and me masturbating myself.

(Tr. at 158-159)

30. Dr. White testified that, afterwards, he slept in his bed and Patient 1 slept downstairs on the couch. In the morning, they went out for breakfast, and then Dr. White drove Patient 1 home. (Tr. at 159-160)
31. Dr. White testified that his relationship with Patient 1 did not change after this sexual encounter though their conversations were infrequent. (Tr. at 247) He also stated that he never discussed the encounter with Patient 1 nor and never asked Patient 1 how he felt about it. (Tr. at 262)
32. In *Mante Means Courage*, Patient 1 wrote the following about the day after this encounter with Dr. White:

Q. [By Ms. Snyder] He writes, "I was I'm embarrassed at myself and at my body. I couldn't look at Dr. White in the eyes, or anyone. Aside from feeling dirty, I wanted to go to sleep -- for I had not slept, but had been up, throughout the night, staring at the night, and at the walls, and listening to it, the night, and the walls, as they settled, into the earth, which I tried to do, settle into the couch. When I arrived at my dorm, when it was, perhaps, for the first time that day, morning, and I'd stepped out of the truck and around it and onto the sidewalk, and looked at Dr. White, somehow, and he'd grinned, like a robber, whom I could not

take back my belongings from, and turned away from him, the robber, and swiped, and gone inside..." Did I read that correctly?

A. Yes.

Q. So do you agree with me that that accounting written by Patient 1 shows that that was a negative experience for him?

A. The way that he has written it, you could infer that that was a negative experience. I did not get any feeling of negativity from him the next morning, or the days to follow. I never got -- I never got any of this from Patient 1.

(Tr. at 264-265)

Dr. White's Relationship with Patient 1 After Patient 1 Returned to Columbus

33. At some point in 2018, Patient 1 traveled to Thailand to teach English. (Tr. at 148) He was there for approximately one year. (Tr. at 253) The record is not clear when exactly Patient 1 returned from Thailand, but Dr. White testified that he did not know that Patient 1 had returned to the United States until he saw him on May 14, 2019 for a medical appointment. (Tr. at 253)
34. Dr. White testified that Patient 1 seemed more frustrated after he returned from Thailand. (Tr. at 133) He later testified that he never had any indication that Patient 1 may have been suffering from depression or other mental health issue. (T. at 254)
35. Dr. White and Patient 1 continued to text message each other through May or June 2019, which was shortly before Patient 1 died by suicide. (Tr. at 132; St. Ex. 6) One of Dr. White's messages included, "I'll be up for a little longer Mr. Patient 1[.] I still cant believe you are back in Columbus. You know you mean a lot to me, always will. What is this, a ten year spell [emoji] Forever & a day." [sic] (St. Ex. 2a at 10) When asked what he meant by ten year spell and forever and a day, Dr. White explained:

You know, friends, people that are friends can be friends for a long time, and we had a friendship that had lasted -- that had lasted, I don't know if it was ten years, I just put ten years in there as figuratively speaking. I put ten years there, and yeah, I mean, this is good, this is a good relationship. You know, you mean a lot to me, always will.

(Tr. at 134-135)

36. Subsequent text messages from Dr. White include, "I woke up thinking about you. Are you ok one of my most dearest friends???" and "I will call you in the morn bf I start working [emoji], Sexy 60lbs [emoji]." (St. Ex. 2a at 11) At hearing, Dr. White could not remember or explain the meaning of "sexy 60lb" but implied that it was a saying within gay culture. (Tr. at 135-137) Dr. White further testified that many of his patients have his

cellphone number and that he would complement them if they lost weight or were recovering well from an injury. (Tr. at 137)

37. Also in the text messages, Dr. White sent Patient 1 a picture of Dr. White's son with the message "Your godson." (St. Ex. 2a at 15) At hearing, Dr. White testified that Patient 1 was "not really" a godparent to Dr. White's son, but that he and Patient 1 "were really good friends." (Tr. at 138) Later text messages from Dr. White state, "You should take a break & come skating with us..." and "We missed U [emoji]" (St. Ex. 2a at 17)
38. There are other text messages in which Dr. White and Patient 1 discussed some of Patient 1's health issues. (St. ex. 2a at 16-18) Dr. White testified that Patient 1 did not have health insurance at the time and that he was working with a pharmacist to get Patient 1 medication pro bono. Dr. White testified that he helps many of his uninsured patients in this way. (Tr. at 255)
39. Near the end of the text messages, Dr. White sent his address to Patient 1. (St. Ex. 2a at 19; Tr. at 140) Dr. White testified Patient 1 came to his home and "That's when he told me that he mentioned this whole thing about me raping him, and I said Patient 1, really? I said it's time for you to go, because I mean, really? That was the part that was unbelievable, the same thing -- and then I called Wesley and said you're not going to believe this." (Tr. at 140)

Interview with Board Investigator

40. Dr. White was interviewed by Jeff Bradford, a Board investigator on September 3, 2020. Dr. White was represented by Attorney Daniel Zinsmaster during the interview. At hearing, he testified that he could not recall everything that he told the investigator during that interview. While he admitted to telling the Board investigator that he engaged in sexual conduct with Patient 1 between September 4 and September 7, 2015, Dr. White could not recall at the hearing what he told the investigator about the alleged January 2017 sexual conduct but testified that the allegation in the Notice was an "inaccurate statement." (Tr. at 13-16, 281-282)
41. During the interview, Dr. White remembered telling Mr. Bradford that he first met Patient 1 in December 2014 or January 2015, and Mr. Bradford remembered approximately the same. (Tr. at 80, 282) At hearing Dr. White testified that he first met Patient 1 in 2012. (Tr. at 39) Dr. White explained why he was testifying at hearing that these events occurred on different dates:

Because I had time to go back and look at the record, and then also I had time to go back and look at an event that we had put on with Patient 1 through the churches, which was in 2013.

And so once -- I didn't go through the record and I didn't -- I wasn't prepared for that investigative questioning, but when I went back and looked at it, and

looked at my records and looked at when things happened, I saw that we had been -- we had put on a performance at the church in 2013.

(Tr. at 80-81) Dr. White also testified that, in preparation for the hearing, he had reviewed the medical records of Patient 1 and Patient 2 as well as personal journals. He also spoke with his friend, Wesley Williams. (Tr. at 16-17)

42. Dr. White also admitted that he originally told Mr. Bradford that he thought the two sexual encounters occurred in 2015 and 2017. (Tr. at 87, 131) At hearing, Dr. White testified:

Q. [By Ms. Snyder] So you originally thought that the Atlanta trip was in 2017, is that right, when you were talking to Mr. Bradford, and then during the course of the interview you realized it was 2015?

A. I don't remember. I told him that it was 2015, and we had the first encounter -- the first encounter was 2014, the second encounter was 2015.

(Tr. at 96-97)

43. Mr. Bradford testified at the hearing the September 2020 interview had been scheduled at least two weeks in advance and that a subpoena for Patient 1's medical record had been issued to Dr. White approximately one month before. (Tr. at 288-289) He further testified that Dr. White had not been clear on the exact month but had told him that the first sexual encounter occurred in December 2017 or January 2018. Dr. White also told him that the second encounter took place in Atlanta in 2018. (Tr. at 282-283) Mr. Bradford stated, "I would say that really throughout the course of the entire interview [Dr. White] appeared to be uncertain of the dates of the sexual encounters." (Tr. at 283) Mr. Bradford also testified that Dr. White changed the dates of the sexual encounters a couple of times during the interview. (Tr. at 286)
44. At the end of the interview, Dr. White told Mr. Bradford that he would look into his past credit card transactions to figure out when the Atlanta trip occurred but made no mention of checking journals. Two weeks later, Mr. Bradford received an email from Mr. Zinsmaster, Dr. White's attorney at the time. (Tr. at 284)

Email from Dan Zinsmaster

45. On September 17, 2020, Mr. Zinsmaster sent an email to Mr. Bradford which states:

Good evening Jeff. I want to follow-up about Dr. White's case and investigation. Immediately after the interview on Friday, 9/3, Dr. White voluntarily registered for the Case Western intensive seminar on professional boundaries and ethics. That course actually took place last Thursday and Friday (9/10-9/11), and Dr. White's certificate of completion is attached.

Dr. White and I have also gone over the dates regarding the treatment and the two intimate encounters with the individual in question. As you will recall, Dr. White indicated at the interview that one of the instances on intimate contact occurred in Atlanta over Labor Day weekend at the city's Pride Festival. Dr. White originally felt this was the second intimate encounter, and that it likely occurred in September 2017. Though he was unable to find any travel itinerary or receipts, after further contemplation Dr. White believes this instance was the first encounter, and that it occurred in September 2015. Dr. White still believes that the other encounter was in early 2017, during the substantial break in treatment while the individual attended OSU and was getting his treatment from OSU providers / student services, and that there were only two intimate encounters. Dr. White apologizes for the prior date misstatement, as it was an isolated matter and occurring many years ago. Regardless, Dr. White wanted me to make sure you have the most accurate information possible, and should he find any files or documentation that sheds further light on the matter, we will be in touch.

Lastly, he went through his storage files, spoke with staff, and even had several calls with his EMR provider and with CareSource (the patient's insurance provider), and there are no medical records or billing documentation to indicate the individual in question came to the practice for treatment with Dr. White in 2012 or 2013. One thing that I noticed in the patient's records produced to you and the Board, a copy of which is attached, is that on page 3 it identifies that CPT code "99204 /Office Visit, New – Level 4" was billed on June 29, 2015. This is a code used by medical practices for new patient visits, and could not have been used or billed had the person been to the practice for treatment prior to June 29, 2015.

Thank you for your time and consideration of the above. Please let me know of any questions and if I can be of further assistance in the meantime. Take care and best wishes, as always.

(St. Ex. 8 at 1-2)

46. At the hearing, Dr. White testified that he was not aware of, and did not discuss the sending of, an email from his then attorney, Daniel Zinsmaster, to Mr. Bradford approximately two weeks after the interview with Mr. Bradford. (Tr. at 84-85) He further testified, "I didn't tell Dan or anyone that I had looked at some documents and the first encounter was 2015 and the second encounter was 2017." (Tr. at 85) He also testified that Mr. Zinsmaster sent the email without his knowledge or consent. (Tr. at 86-87)

Patient 1's Records from Other Treatment Providers

47. Patient 1 was receiving treatment from the Ohio State University Student Health Center ("OSU"). He received medical, dental, and optometry care from 2013 through 2017.

However, it appears that Patient 1 was only seen for medical appointments on four occasions during that time period. (St. Ex. 5)

48. In January 2015, Patient 1 reported to his OSU physician that he had been coerced into receptive sexual intercourse about three months prior. (St. Ex. 5 at 38) In May 2015, Patient 1 again reported being coerced into receptive sexual intercourse which occurred approximately four months prior. (St. Ex. 5 at 27) The third appointment was June 29, 2015, the same date that Dr. White claims he first saw Patient 1 as a patient. (St. Ex. 5 at 23-25) Patient 1's final appointment at OSU was in February 2017. Patient 1 complained to OSU of "two episodes of possible 'mini stroke'" which included "his heart beating very hard" and one incident of "left sided facial paralysis." Emergency medical personnel were called but Patient 1 was not taken to a hospital. Patient 1 further stated that he had "been struggling dealing with sexual abuse from recent past." (St. Ex. 5 at 15) At this appointment, Patient 1 reported stress from sexual abuse that occurred both "in the recent and more remote past," and he was referred for counseling. (St. Ex. 5 at 16)
49. In February 2017, Patient 1 was referred to Nancy A. Little, M.S.Ed, LPCC. (St. Ex. 3) On his self-evaluation form, Patient 1 gave multiple reasons for seeking counseling including sexual abuse which occurred in 2011 or 2012 and then again from 2013 through 2015. (St. Ex. 3 at 13). Patient 1 also wrote that he was experiencing guilt "as a result of sexual abuse and feeling as if I should have known or done better, shouldn't have put myself in those situations and have somehow diminished myself, particularly before God, because I really wanted to save myself sexually for marriage, and wonder if my sexual history has ruined that which cannot, perhaps, be gotten back." (St. Ex. 3 at 14) Interestingly, Patient 1 also wrote that he had no family physician and that his last physical exam was in 2015. (St. Ex. 3 at 18)
50. The notes from Ms. Little are handwritten and often difficult to read. At his initial session with her, she noted that Patient 1 had a recent panic attack after revealing sexual molestation which occurred in high school and undergraduate school. She also noted that a police report had been filed. (St. Ex. 3 at 22) During sessions in March 2017, Patient 1 described instances of molestation perpetrated by a former teacher. This teacher is not named but is referred to using feminine pronouns. (St. Ex. 3 at 26)

Testimony of Wesley Williams

51. After obtaining his Master's degree at the University of Mississippi, Mr. Williams decided to pursue a Ph.D. While studying at the Ohio State University's multicultural and equity education program in 2008, Mr. Williams also worked as the first director of the office of educator equity for the Ohio Department of Education. Mr. Williams was recruited by a national social science research firm to expand his Ohio Department of Education job duties to a national scale. His new job required enough travel that he was unable to continue his studies. As of the hearing, he still works for the same firm as a senior project director and concentrates on areas of equity, racial equity, and culturally responsive teaching and leading. (Tr. at 104-105)

Dr. White

52. Mr. Williams met Dr. White at church in 2007. (Tr. at 107) He explained how their friendship developed:

So we were dating respective people at the time who was attending the church with us, and we met, and so we would have brunch together, the couples would have brunch together after service, and we just cultivated a great, great friendship.

The couples, my partner at that time, the person he was dating at that time, we did brunch, we went out dancing, we had wonderful conversations about all kinds of things about the world.

(Tr. at 107)

53. Mr. Williams described Dr. White as “a very loving human being”, “an active listener”, and someone “very devoted to his craft, his practice.” (Tr. at 107) He went on to describe how Dr. White helped one of his family members who continued to see Dr. White as her local doctor when she would visit. (Tr. at 107-108) Mr. Williams was also impressed with Dr. White’s treatment of his family member and testified, “I found him to be a very humanizing doctor in his communications, in his mannerisms and his energy, and the way he probed my [family member], it was just very humanizing and I really appreciated that.” (Tr. at 108-109)

Patient 1

54. Mr. Williams testified that he first came to know Patient 1 in the fall of 2013 and explained:

I travel extensively for my job all over the country, and I was in some state that evening, I got a call from Dr. White saying I really want you to meet someone, a very impressive young man who has a huge goal that he's trying to accomplish for humans who dwell in the GLBTQI communities.

So I said I think he might need -- he said I think he might need your expertise or advice or wisdom. I know you're very well versed in facilitation protocols based on your profession. I said of course I'd be willing to talk to him, no problem.

So I believe it was that same night I had a chance to engage in conversation with Patient 1 to really get a sense of what he was thinking about, and it was a very ambitious, wonderful task, effort, that he was trying to accomplish.

I thought it was great that he wanted to host sessions to engage in some really thought provoking issues that do affect the GLBTQI community, so I said well, first of all, I'm just impressed that this is something that you want to do, and I would be honored to provide my expertise, answer any questions, go over any ideas you might have, anything you're wrestling with around the content, I will be more than happy to, you know, answer any questions or give you advice.

So that really jump started our journey and cultivating what I would call more of a mentor relationship, because I was really an advisor to this long going project that he was endeavoring to pursue.

(Tr. at 109-110, 115)

Mr. Williams described Patient 1's project as to establish relationships with a welcoming, inclusive church and to hold film series events regarding the struggles of the GLTBQI communities and to hold discussions after the films to discuss the messages of the films. (Tr. at 111) Mr. Williams participated in these events and gave Patient 1 some of his knowledge in facilitation and teaching adult learners to help Patient 1 with the after-film discussions. (Tr. at 113)

Dr. White and Patient 1

55. When asked if he thought Patient 1 was a vulnerable individual, Mr. Williams testified:

What I do know about Patient 1 is Patient 1 was on this beautiful journey of self-discovery, so -- and in our conversations and our texts, and our face-to-face fellowships and dinners, that was what we centered our conversation on, just this beautiful journey of self-discovery.

And it was so wonderful to watch this young man who was so assured that he wanted to support the GLBTQI community in these beautiful ways, which was helping him further embrace who he was, accept who he was, own who he was, and really have a desire to make a commitment to the work that many of us do in the GLBTQI community.

(Tr. at 112)

56. After Mr. Williams relocated from Columbus to Washington D.C. for his job, his communications with Patient 1 became less consistent. When Mr. Williams visited Columbus, he and Patient 1 would spend time catching up. (Tr. at 116) After Patient 1 moved to Thailand to teach, Mr. Williams stopped receiving replies to his text messages. (Tr. at 116-117) Mr. Williams testified:

...[O]ne of the most alarming emails that I received was Patient 1's return from [Thailand], and mentioned specifically it was an email to several people, and it just basically stated I've not reached out to many of you who have been very supportive people in my life, something like that, and I'm reaching out, and so I immediately read the body of the email, I didn't really even notice there was attachments.

So I immediately hit reply all and I reached out, and I said I'm so glad to hear from you, I've been trying to reach you. I typed my cellphone number in the body of this email, and said please reach out to me, we are here for you, something to that effect.

(Tr. at 117) At some later time, Mr. Williams forwarded this email with the attachments to Dr. White. However, Mr. Williams was not sure whether Patient 1's book, *Mante Means Courage*, was one of those attachments. (Tr. at 124-125)

57. Despite his alarm at the email, Mr. Williams did not believe that Patient 1 would harm himself, "I did not think that he would harm himself in any way, that was not in my mind, it's just that I was concerned that he was sad, that he was not happy, that he was -- did not have a good experience in [Thailand], so I just wanted to reach out to be supportive." (Tr. at 118) Mr. Williams also expressed, "I did know that Patient 1 had had some struggles if you will, mentally, so I'm very familiar with illness." (Tr. at 121)

58. In regard to Dr. White's relationship with Patient 1, Mr. Williams testified, "[T]here was not a doubt in my mind that this was a very beautiful, healthy, plutonic, loving relationship." (Tr. at 112) He testified that he knew that Dr. White was Patient 1's physician but could not remember when he learned that information. (Tr. at 119) Mr. Williams further testified that he did not know that Dr. White and Patient 1 had a sexual relationship and that he only learned about the relationship in one of his last conversations with Patient 1 in the last weeks before Patient 1's passing. (Tr. at 119-121, 127) He stated:

And so in one of those last conversations that we had he did share that with me, and I was completely shocked, and I actually used the word shocked.

And I said I am just -- and of course, you know, this is someone that I dearly love and care about, and all I could say is just I'm sorry, I'm shocked, I can't believe this, and I have no other words, and he -- we did not talk about it ever again.

(Tr. at 121) Mr. Williams later testified that Patient 1 told him during that phone call that "Dr. White raped me, and those were the words that he used." (Tr. at 128)

59. Mr. Williams believed that Patient 1's accusation of rape was real to Patient 1. (Tr. at 122) He also testified, "I just couldn't believe that he was saying this about someone that we

both knew and that all three of us had cultivated this beautiful, supportive relationship over time.” (Tr. at 128)

60. Mr. Williams believed that Dr. White’s sexual relationship with Patient 1 negatively affected Patient 1. (Tr. at 123) Sometime after his conversation with Patient 1, Mr. Williams spoke with Dr. White:

So Patient 1, as I said, did communicate that with me via phone, and then later I had a conversation with Dr. White, and he was just very concerned about a conversation that he also had with Patient 1, and so he was able to share with me what was said, and I said I just -- I am just shocked. I'm completely shocked. I don't understand why this was said. And Dr. White felt the same way. It was just in a -- really in a state of shock that this was communicated.

(Tr. at 123-124)

61. When asked what Dr. White had told him about any sexual contact or sexual relationship with Patient 1, Mr. Williams answered:

A. So later as we talked, as we continued to engage in our conversation, Dr. White, multiple times -- he was gravely concerned about the accusation, and I believe that it was important for Dr. White to share with me relations that he did have with Patient 1, and he did share that with me.

I know that what I heard from his tone, from what he was describing to me, in my mind as I was actively listening, it sounded like there was a cultivation of something more than a friendship on both sides.

So I did not sense, based on the description, that no human involved was harmed in any way, so that is what I was hearing as he was describing that to me.

Q. [By Mr. Wilcox] Was he describing, though, an intimate or sexual relationship with Patient 1?

A. No -- so I wouldn't say details, but yeah, just sharing that things did happen, there was intimacy. And again, as I was actively listening, and sensed he felt a need to share with me, I did not sense that any other humans were harmed in that situation.

(Tr. at 125-126)

Testimony of Charles Postlewaite

62. Charles Postlewaite is an attorney. He met Dr. White in a support group for family members of people suffering from addiction in approximately 2010. (Tr. at 162) Mr. Postlewaite represented Dr. White regarding custody of Dr. White's son. After an extended trial, the court granted Dr. White full custodial rights. (Tr. at 165-166) Mr. Postlewaite testified that Dr. White's character was "essential" to the custody case. (Tr. at 167)

63. Mr. Postlewaite described Dr. White:

Dr. Mark White is a gentleman in the true essence of the word, the way it was used to be used when I was a kid, a man who was sure of himself, but humble, kind, sensitive, not brash, not tough, but firm.

He was Mark White, he was who he was. He wasn't pretending to be anybody but himself. So that takes a level of honesty and integrity right there, which fits into gentleman.

Another word or description might be a prince of a man. He's got those kind of qualities that would make you want -- in my case he was a great client, in other people's cases, a great friend, somebody good to know, somebody that's healthy, if you will.

(Tr. at 168-169)

Mr. Postlewaite also described Dr. White as "sensitive" and "vulnerable, open, honest, sharing, [and] caring." (Tr. at 164)

64. On cross-examination, Mr. Postlewaite admitted that the custody court did not know that Dr. White had engaged in sexual conduct with a patient but stated that the focus of the court is on the best interest of the child. (Tr. at 172)

Testimony of Ernest Sullivan

65. Ernest Sullivan is a previous senior vice-president of human resources for Bank One. After leaving that position due to bank mergers, he started several companies including an executive recruitment firm for banks and insurance companies and a publishing company that focused on successful African Americans. (Tr. at 175-177)

66. In 2004, Mr. Sullivan was referred to Dr. White for treatment of his high blood pressure.² They became friends, and Mr. Sullivan would invite Dr. White to networking events. (Tr. at 178) Later, the Mr. Sullivan began consulting Dr. White on human resource matters at

² Mr. Sullivan waived the privilege of patient confidentiality. (Tr. at 177)

Dr. White's practice. After Dr. White's office manager left in 2019, Mr. Sullivan's consulting services included human resources and business finances. (Tr. at 178-180) Mr. Sullivan is not an employee of Dr. White's practice but a consultant, and he receives a fee for the services he provides to Dr. White. He estimated his current income solely from consulting for Dr. White at approximately \$52,000 per year, which is only a small part of his overall business, and stated that this business relationship did not taint his testimony. (Tr. at 187-188, 190-191)

67. Mr. Sullivan described Dr. White's practice:

From the start, you know, Dr. White, you know -- we have a community saying that he's a community doctor.

He's always worked in with the harder to serve populations, you know, so he has a strong low income Medicaid African American market. He's also probably the most known doctor among the Somali and the Napoli population in Columbus, and that's one of the things I've always admired about Dr. White.

So many doctors have left practices and gone to work at hospitals. Dr. White has stayed in the community serving a difficult to serve population, quite honestly.

(Tr. at 180-181)

68. Mr. Sullivan explained that Dr. White is one of the founders of the African American Wellness Walk and that Dr. White's relationship with the African American churches in Columbus provided a pathway to expand COVID testing to the African American community (Tr. at 181-182) He also described the Saturday radio show that Dr. White hosts regarding medical issues in the African American community. (Tr. at 183)

69. Mr. Sullivan provided his opinion of Dr. White's character:

Well, what I would say about Dr. White from my own personal experience is that he's a very kind man, he's a great listener, and I say that -- I mean, active listener, you know.

Sometimes people will listen to you only thinking about what they want to say next. That's not Dr. White, he's really listening to you.

He's a very caring person. Again, I'd say, you know, he's kind, and the other thing about him is he's a servant. He's always doing something that serves somebody else, is the way I would describe him. I admire Dr. White.

(Tr. at 184)

70. Mr. Sullivan testified at hearing that he had read a book written by Patient 1 which contained allegations against Dr. White and emphatically testified that he did not recognize the man described in the book as the Dr. White he knew. (Tr. at 185)
71. Mr. Sullivan testified that he “understood that Dr. White has admitted to having a boundary issued with Patient 1,” and that the issue was a sexual relationship. (Tr. at 186-187)

Testimony of Bishop Melvin Leon Griffin

72. Bishop Melvin Leon Griffin is a bishop of Interdenominational Fellowship Ministries and a pastor with Resurrection Ministries For All People. (Resp. Ex. E) He has been in the ministry for over 50 years and a bishop for over 20 years. He is also a part-owner and business manager of radio station 1580. (Tr. at 192) When Bishop Griffin started the radio station, he planned on having a health show. He testified, “Dr. White's name was very popular in the community, and I went to one of his seminars to share time with him in his seminar, and I felt he would be the best candidate for that program. So he and I got to know each other very well through the program.” (Tr. at 193) Dr. White has been hosting the radio show since 2013. (Resp. Ex. E)
73. Bishop Griffin testified that he has known Dr. White for 15 years and described Dr. White as “very popular” and “well known” in the community. He explained that Dr. White’s program is the radio station’s number one weekday program and that it has increased Dr. White’s popularity. (Tr. at 194) Bishop Griffin explained that he had not known nor suspected that Dr. White is gay. (Tr. at 195) He also stated that he could not speak for the community when he was asked on cross-examination if Dr. White’s reputation in the community would change if his sexual relationship with Patient 1 were known. (Tr. at 197)
74. Bishop Griffin described Dr. White’s character, “I only know Dr. White one way and that’s to be a kind person. That’s the only way I can share with you.” (Tr. at 194) In addition to having him do a weekly program on his radio station, Bishop Griffin is also one of Dr. White’s patients.³ (Tr. at 194)
75. When asked if the knowledge that Dr. White had admitted to an inappropriate sexual relationship with Patient 1 and that Patient 1 had committed suicide changed his opinion of Dr. White, Bishop Griffin replied that it was not his position to judge and that the issue will be between Dr. White and God. (Tr. at 195-196) When asked if there was “anything Dr. White could do to anyone in the community that would cause you to think his character was poor,” Dr. White answered, “Not me. Perhaps maybe someone else, but not me.” (Tr. at 197)
76. Bishop Griffin opined that Dr. White losing his license to practice medicine would have a strong impact in the community. (Tr. at 196)

³ Bishop Griffin waived the privilege of patient confidentiality. (Tr. at 195)

77. In addition to his testimony, Bishop Griffin provided a letter in support of Dr. White. He wrote that Dr. White “has also provided health awareness classes for our church congregation and his outreach efforts on health issues facing the African American community has had a positive impact on many lives.” He also wrote that Dr. White is an “excellent and strong role model” for his son as well as other young people and that he would recommend Dr. White to friends and family. (Resp. Ex. E)

Letters in Support

78. Dr. White submitted a number of letters of support from his patients. (Resp. Exs. C-K) Several of the letters stated that Dr. White had informed the writer of a “matter currently being investigated by the Medical Board,” but it is not clear that any of the writers were aware of the nature of the allegations or Dr. White’s admissions. (Resp. Exs. C, F, G, K)
79. Multiple patients praised Dr. White’s professionalism or wrote that they had never heard of nor experienced any unprofessional or inappropriate conduct from Dr. White. (Resp. Exs. C, D, F, G, H, J, K) The letters repeatedly demonstrate Dr. White is a dedicated physician to the community. (Resp. Exs. C-K) In addition to his practice and radio program, the letters speak about Dr. White’s involvement in the African American Male Wellness Walk, free health fairs/seminars, YouTube programs about COVID-19, and appearances on a Somali weekly television program (Resp. Exs. C, D, E, F, H)
80. Many of the letters stated Dr. White would go to great lengths to ensure proper treatment of his patients. One example included traveling to patients’ homes with an interpreter. (Resp. Ex. H) The letters also expressed that the loss of Dr. White’s license would be a loss to the entire community. (Resp. Exs. C-K)

Additional Testimony of Dr. White

81. In September 2020, Dr. White participated in the Intensive Course in Medical Ethics, Boundaries and Professionalism held by the Case Western Reserve University School of Medicine. While the course certificate and agenda show that the seminar was two days, Dr. White testified that it was a one-day intensive course. (Tr. at 230-231; Resp. Exs. A, B) He testified as to what he learned in this course, “I learned about the boundaries, was the one main thing that I focused on. And I learned that having these relationships with patients, having more than one relationship with a patient could lead to a lot of different problems.” (Tr. at 258)
82. Dr. White was asked if his relationship with Patient 1 was appropriate:

Q. Do you think that your relationship with Patient 1 was an appropriate relationship given that he was your patient?

A. No, because I crossed the boundary in September, and that was -- that's where I made the mistake. That was -- taking him on as a patient is where I made the mistake. That's where I made a mistake at.

Q. And then having sex with him afterwards?

A. That's -- I mean, that's -- well, two things. Taking on a really close friend is a mistake.

Second thing -- and the second thing was having -- I wouldn't take -- after going through all this, and having to experience that, because I really feel terrible about what happened to Patient 1.

As you've seen even up until this day, my dearest friend, and I think about him every day and what happened, but if Wes said I want to be a patient I would say Wesley, I know a good doctor.

(Tr. at 140-141)

83. Dr. White was asked several times for his opinion of Patient 1's vulnerability and mental health. He testified:

Q. [By Ms. Snyder] Do you believe that Patient 1 was a vulnerable person?

A. Absolutely not.

Q. Not. Okay. Do you believe that he had any mental or emotional issues?

A. Never thought he had any mental, emotional problems, whatsoever.

Q. Do you still believe that as you sit here today?

A. I think, yeah.

Q. Do you still believe that -- as we sit here today, that he didn't have any mental or emotional problems?

A. I definitely believe that he had -- now, I mean, you know, looking at what happened, I mean, you know, I never picked that up.

(Tr. at 95-96)

84. In his practice, Dr. White screens his patients for mental health issues, utilizes the PHQ-9 and provides referrals as appropriate. He stated at hearing recognizing depression in patients is "absolutely" part of being an internal medicine physician and that he wants to recognize it in patients. (Tr. at 97-98) He further testified that, if he had had any idea that

Patient 1 was struggling with his mental health, then he would have spoken to someone, perhaps a family member, and gotten Patient 1 some help. (Tr. at 99)

85. Dr. White testified that he did not take advantage of or abuse Patient 1. He was shocked to learn of Patient 1's death. He expressed his sorrow about Patient 1's passing and stated that he saw Patient 1 as "a dearest friend, a godson." (Tr. at 254-255)

86. When asked if he now saw any power imbalance in his relationship with Patient 1, Dr. White answered:

A. No, I don't. I don't see any imbalance in the relationship. As it went -- as it went through -- as we went through the relationship and as I've explained things to you today, there was no imbalance there, just as there was no imbalance between him and Wesley, there was no over -- we weren't --

Q. [By Ms. Snyder] Okay. But you understand that his relationship with Wesley is not the same as your relationship with him, right?

A. In -- yeah, in terms of us being intimate those couple times.

Q. I don't know what you mean by that.

A. So our relationship -- Wesley's relationship and my relationship with Patient 1 was pretty much the same, we were mentoring him and giving him advice, and he came over to my house and the situation with the intimacy happened. And then again in September 2015.

Q. But, Doctor, don't you see -- don't you see that -- and didn't you learn from the boundaries course there is an inherent balance of power between a physician and a patient? Do you agree with that?

A. I do.

Q. Okay. I mean, just from the very nature of the fact that you are a physician, right? Right? I mean, that right there starts that imbalance of power, right?

A. Yes.

(Tr. at 260-261)

87. He also testified that he did not believe that he harmed Patient 1 by engaging in a simultaneous physician/patient relationship and a sexual relationship. (Tr. at 145)

FINDINGS OF FACT

1. In the course of his practice, Dr. White undertook the treatment, provided care and/or prescribed medications to Patient 1. Dr. White provided such care and treatment to Patient 1 between June 29, 2015 and May 14, 2019.
2. On September 3, 2020, Dr. White admitted to a Board investigator that he engaged in sexual conduct with Patient 1 on two occasions.
3. Between September 4 and September 7, 2015, Dr. White engaged in a sexual interaction with Patient 1 which included the touching of genitals and masturbation.
4. In 2017, Dr. White engaged in a sexual interaction with Patient 1 which included masturbation.

CONCLUSIONS OF LAW

Dr. White's acts, conduct, and/or omissions as described in Findings of Fact 1 through 4, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in R.C. 4731.22(B)(20), to wit: Prohibition, Rule 4731-26-02, as in effect between November 30, 2010 through September 29, 2021.

Pursuant to Rule 4731-26-03(A), as in effect between November 30, 2010 through June 29, 2016 and as in effect from June 30, 2016 to September 29, 2021, a violation of Rule 4731-26-02 also violation R.C. 4731.22(B)(6), which is "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

Pursuant to R.C. 4731.225, the Board is authorized to impose a fine for the sexual misconduct which occurred in 2017. The Board's fining guidelines provide as follows:

Minimum fine: \$ 6,000
Maximum fine: \$20,000

RATIONALE FOR THE PROPOSED ORDER

Dr. White has admitted to two sexual encounters with a young man in college, 35 years his junior; a young man who he befriended and whom he knew was struggling with his sexuality and his religion. Dr. White befriended Patient 1, mentored Patient 1, and treated Patient 1. He

exploited those relationships with Patient 1 for his own sexual gratification. In no event should Dr. White have allowed one thing to lead to another, as was oft repeated during testimony.

Patient 1 was vulnerable. He was approximately 20 when he met Dr. White who was 35 years old. Testimony shows that Patient 1 struggled with his sexuality and reconciling it with his religion and community. By Dr. White's own words, he had a mentoring relationship with Patient 1. However, at times during the hearing, Dr. White seemed to attempt to put distance between himself and Patient 1. He admitted to a friendship but tried to show that it was not a close friendship. He claimed that they spoke only on occasion. Nevertheless, Dr. White helped with the film series event, he took Patient 1 to shows and meals, and he gave Patient 1 a couple of driving lessons. He introduced Patient 1 to his son and referred to the son in text message as Patient 1's godson. Though he downplayed it at hearing, the few text messages in the record paint the picture of a closer relationship that Dr. White seemed willing to admit.

During an interview, Dr. White told the Board's investigator that the massage encounter took place in 2017. This timeframe was confirmed by Mr. Zinsmaster's email to the investigator two weeks later. Dr. White's claim that Mr. Zinsmaster essentially fabricated the information in the September 2020 email and sent it to the Board without his knowledge or permission is simply not credible. While the hearing examiner believes that Dr. White may not recall the exact time of the event, a person's memory of an event is usually clearer closer in time to the event. Further, Dr. White had time to review his documents prior to Mr. Zinsmaster's email. Instead, Dr. White first informed the Board of this new recollection at the hearing. There is no evidence that he, or his attorney, contacted the Board to inform it that Dr. White had inadvertently given incorrect information on two occasions. This November 2014 time would conveniently put the time before the beginning of the physician/patient relationship.

Interestingly, the OSU records show that Patient 1 reported that coercive sexual encounters occurred in late 2014 and early 2015 and also reported more recent sexual abuse in February 2017. The OSU medical records do not include the name of the perpetrator(s). While the counseling records mention a female abuser, those references seem to be about sexual abuse from high school. The notes are handwritten and very hard to read, but perhaps the Board members will be able to glean more information from them than the hearing examiner could.

While it is clear that Dr. White is a valuable and respected physician in the community and his loss will impact care, it is also clear to the hearing examiner that Dr. White still does not understand how wrong his behavior with Patient 1 was, even after taking a boundaries seminar. It is also uncertain how Dr. White's reputation in the community will change once word of this action is spread. Further, his value to the community does not exonerate him from his misconduct. The hearing examiner also wants to make it clear that she does not consider Dr. White to be responsible for Patient 1's untimely passing, but anytime there is a sexual boundary violation between a patient and a physician, there is harm to the patient. It is an exploitation of the position and the trust inherent therein.

The proposed order would suspend Dr. White's license for a minimum of one year but also allow for a thirty-day wind down period. While suspended, he will be required to take courses on

personal ethics, professional ethics, and physician/patient boundaries before applying for reinstatement. The hearing examiner believes these courses are necessary given Dr. White's concerning lack of understanding about the gravity of his conduct. After reinstatement, Dr. White would be subject to probation for two years which would include the requirement of a chaperone when seeing patients. The proposed order would also impose the minimum fine.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF LICENSE; NO NEW PATIENTS DURING THIRTY-DAY INTERIM PERIOD:** Commencing on the thirty-first day following the date on which this Order becomes effective, the license of Mark A. White, M.D., to practice) medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year. During the thirty-day interim, Dr. White shall not undertake the care of any patient not already under his care.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. White shall remit payment in full of a fine of six thousand dollars (\$6,000). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.

The failure of Dr. White to timely remit full payment shall constitute a violation of this Order. Should such a violation occur, the Board, after giving Dr. White notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his license.

- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. White's license to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. White shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Payment of Fine:** Dr. White shall have fully paid the fine as set forth in Paragraph B of this Order.
 3. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. White shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition

to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. White submits the documentation of successful completion of the course(s) dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

4. **Personal Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. White shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. White submits the documentation of successful completion of the course(s) dealing with personal ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. **Course(s) Concerning Physician/Patient Boundaries**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. White shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. White submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

6. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. White has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice

D. **PROBATION:** Upon reinstatement or restoration, Dr. White's license shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

1. **Third-Party Presence During Exam/Treatment:** Dr. White shall have a third party present while examining or treating patients. The particular qualifications of the chaperone and the specific conditions related to Dr. White's utilization of such chaperone must be acceptable to the Secretary and Supervising Member of the Board, who shall consider the "Guidelines for the Use of Medical Chaperones" utilized by the Board's Compliance section in making their determination.
2. **Obey the Law:** Dr. White shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
3. **Declarations of Compliance:** Dr. White shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. White's license is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Personal Appearances:** Dr. White shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. White's license is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur as directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. **Modification of Terms; Exception:** Dr. White shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations, except that Dr. White may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member.
6. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. White is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
7. **Required Reporting of Change of Address:** Dr. White shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. White's license will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. White violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his license.
- G. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. White shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. White provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

Further, within 30 days of the date of each such notification, Dr. White shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.


This requirement shall continue until Dr. White receives from the Board written notification of the successful completion of his probation.
 2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. White shall provide a copy of this Order by certified mail at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

Additionally, within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification.

Further, within 30 days of the date of each such notification, Dr. White shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. White receives from the Board written notification of the successful completion of his probation.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Kimberly A. Lee
Hearing Examiner



EXCERPT FROM THE DRAFT MINUTES OF MAY 11, 2022 IN THE MATTER OF MARK A. WHITE, M.D.

REPORTS AND RECOMMENDATIONS

Dr. Johnson asked the Board to consider the Reports and Recommendations appearing on the agenda: Dillon Williams; David Wulff, P.A.; Dominick D. Crescenzo; and Mark A. White, M.D.

Dr. Johnson asked all Board members the following questions:

- 1.) Has each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in each of the Reports and Recommendations?
- 2.) Does each member of the Board understand that the Board's disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from Dismissal to Permanent Revocation or Permanent Denial?
- 3.) Does each member of the Board understand that in each matter eligible for a fine, the Board's fining guidelines allow for imposition of the range of civil penalties, from no fine to the statutory maximum amount of \$20,000?

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Dr. Schottenstein	- aye
Mr. Gonidakis	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Dr. Johnson	- aye

Dr. Johnson stated that in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the disciplinary matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matter of Dr. White.

During these proceedings, no oral motions were allowed by either party.

.....
Mark A. White, M.D.
.....

Dr. Schottenstein moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. White. Dr. Kakarala seconded the motion.

Dr. Johnson stated that she will now entertain discussion in the above matter.

Dr. Schottenstein noted that at his hearing, Dr. White had described his sexual interactions with Patient 1 as not being a “big deal,” stating that sex between two men is completely different from sex between a woman and a man. Dr. Schottenstein opined that Dr. White had been projecting and stereotyping when he said that, and that what Dr. White was really saying is that sex with another man is not a big deal for him and so he presumes that that is universally true for other men. As the Board has seen, Dr. White was certainly wrong to apply that characterization of sexual activity to Patient 1.

Dr. Schottenstein continued that Patient 1 spoke to a therapist in 2017 and the notes reflect that he felt, in his words, “diminished” before God because he had wanted to save himself sexually for marriage, and he wondered if this sexual history had “ruined” him. Clearly, for Patient 1 sex was a very big deal. Dr. Schottenstein observed that Dr. White’s view of sexual activity as essentially a physical indulgence and Patient 1’s view of sexual activity as sacred are incompatible. When Dr. White and Patient 1 engaged in sexual activity it was not in the context of a romantic relationship, and as a result it left patient 1 feeling used. Dr. Schottenstein stated that, contrary to Dr. White’s testimony, that arguably caused Patient 1 harm.

Dr. Schottenstein agreed with the Assistant Attorney General that, based on his testimony, Dr. White never put himself into Patient 1’s shoes. Dr. Schottenstein therefore asked those at the meeting to put themselves into Patient 1’s shoes. Patient 1 was a young man with many gifts who felt rejected by his family, his community, and his church because of his sexual orientation. Patient 1 had been trying to process that rejection by reaching out to other gay, Black men for support. Dr. White, who is well-respected in the community, took Patient 1 under his wing. Patient 1 perceived that this was because Dr. White saw his potential and his worth, and he was gratified by that. However, Patient 1 realized in the aftermath of the sexual encounters that the real reason Dr. White took an interest in him was because he wanted something from Patient 1. Patient 1 came to feel like he had been groomed and that Dr. White’s interest in him had been subterfuge. This was a devastating realization for Patient 1; it caused him to feel diminished and it reinforced all the negative feelings he had about himself that he had been trying to overcome.

Patient 1 went to Dr. White’s house to confront him because the sexual activity they had engaged in had been eating at him and he wanted to process it. Patient 1 had wanted to let Dr. White know how it had made him feel, but Dr. White did not give him that opportunity. Rather than hear him out, Dr. White testified that he told Patient 1 to get out of his house. Dr. Schottenstein stated that even if Dr. White disagreed with Patient 1’s characterization, he could

have let Patient 1 vent and then express remorse that Patient 1 is suffering and for having played a role in that suffering.

Dr. Schottenstein stated that this case gets to the heart of why it is unethical for physicians to have sex with their patients. Dr. Schottenstein agreed that the imbalance of power makes such activity inherently unacceptable, but opined that the most compelling reason is because it is psychologically damaging to patients, and physicians harm their patients when they engage in this activity. Patients walk away from such encounters feeling diminished, small, and used, even when the patient shows an interest in the physician. When such interest is shown, the physician has an opportunity to inform the patient that they have value and worth that is inherent and not a function of their sexuality. Even when patients seem to desire sexual activity with a physician, Dr. Schottenstein promised that they do not desire it, and even when patients seem gratified by it, he promised that they are not gratified. Rather, these patients come to feel the same way Patient 1 characterized himself: "dirty."

Dr. White's counsel made the point in closing arguments that the Board has seen more egregious cases of sexual misconduct. Dr. Schottenstein argued that this case is its own kind of egregious. The State has recommended revocation of Dr. White's medical license. Dr. Schottenstein appreciated the State's recommendation, but stated that there is some mitigation that gives him pause in that regard. Dr. Schottenstein was also respectful of the Proposed Order, but questioned whether it was adequate in addressing the Board's concerns about Dr. White's boundaries. Dr. Schottenstein observed the fact that Dr. White engaged in remediation in the form of a physician/patient boundaries course, but his testimony shows that he did not internalize the core concepts of the course in a satisfactory way.

Dr. Schottenstein considered the possibility of referring Dr. White to the Acumen Institute in Lawrence, Kansas, noting that licensees have sought treatment there in the past. The Acumen Institute offers a longitudinal day treatment program for physicians, and their specialties include professional boundary problems and sexual misconduct. Dr. Schottenstein briefly described the Acumen Institute's three-phase process: The first phase is three weeks long; the second phase includes a one-week follow-up at three months and another one-week follow-up at six months; the third phase occurs at the end of one year and is three days long. This is a total of five-and-a-half weeks over a one-year period and the treatment is in person. At the end of each phase, the Acumen Institute will render an opinion regarding the physician's fitness to practice and work with the physician to construct a return-to-work plan which would be submitted to the Medical Board for approval.

Dr. Schottenstein wished to amend the Proposed Order to remove the requirement for a personal ethics course and a boundaries course and replace it with a referral to the Acumen Institute. Other aspects of the Proposed Order, including the suspension of Dr. White's medical license for a minimum of one year, a \$6,000 fine, the professional ethics course, and a chaperone as a condition of probation, would remain. Mr. Giacalone stated that he will second the motion to amend for purposes of discussion.

Dr. Schottenstein moved to amend the Proposed Order to read as follows:

It is hereby ORDERED that:

- A. **SUSPENSION OF LICENSE; NO NEW PATIENTS DURING THIRTY-DAY INTERIM PERIOD:** Commencing on the thirty-first day following the date on which this Order becomes effective, the license of Mark A. White, M.D., to practice) medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year. During the thirty-day interim, Dr. White shall not undertake the care of any patient not already under his care.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. White shall remit payment in full of a fine of six thousand dollars (\$6,000). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.

The failure of Dr. White to timely remit full payment shall constitute a violation of this Order. Should such a violation occur, the Board, after giving Dr. White notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his license.

- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. White's license to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. White shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Payment of Fine:** Dr. White shall have fully paid the fine as set forth in Paragraph B of this Order.
 3. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. White shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. White submits the documentation of successful completion of the course(s) dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.
 4. **Acumen Institute Program:** Prior to submitting his application for reinstatement or restoration, Dr. White shall have successfully completed the three-phase longitudinal day treatment program at the Acumen Institute in Lawrence, Kansas. Dr. White's participation in the program shall be at his own expense.

- a. Upon scheduling the dates of Phase I of the Acumen Institute longitudinal day treatment program, Dr. White shall furnish the Acumen Institute with copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to that program.
 - b. Should the Acumen Institute request patient records maintained by Dr. White, Dr. White shall furnish copies of the patient records at issue in this matter along with any other patient records he submits. Dr. White shall further ensure that the Acumen Institute maintains patient confidentiality in accordance with Section 4731.22(F)(5), Ohio Revised Code.
 - c. At the time he submits his application for reinstatement or restoration, Dr. White shall submit to the Board satisfactory documentation from the Acumen Institute indicating that he has successfully completed each phase of the longitudinal treatment program, including copies of reports that indicate he is fit to return to work as well as a return to work plan and any amendments thereto.
5. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. White has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- D. **PROBATION**: Upon reinstatement or restoration, Dr. White's license shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Return to Work Plan**: The return to work plan from the Acumen Institute shall constitute terms of this Order, and Dr. White shall comply with the return to work plan unless otherwise determined by the Board.
 2. **Third-Party Presence During Exam/Treatment**: Dr. White shall have a third party present while examining or treating patients. The particular qualifications of the chaperone and the specific conditions related to Dr. White's utilization of such chaperone must be acceptable to the Secretary and Supervising Member of the Board, who shall consider the "Guidelines for the Use of Medical Chaperones" utilized by the Board's Compliance section in making their determination.
 3. **Obey the Law**: Dr. White shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 4. **Declarations of Compliance**: Dr. White shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. White's license is restored or reinstated.

Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

5. **Personal Appearances**: Dr. White shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. White's license is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur as directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 6. **Modification of Terms; Exception**: Dr. White shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations, except that Dr. White may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member.
 7. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. White is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
 8. **Required Reporting of Change of Address**: Dr. White shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. White's license will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. White violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his license.
- G. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION**:
1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. White shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. White provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

Further, within 30 days of the date of each such notification, Dr. White shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. White receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. White shall provide a copy of this Order by certified mail at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

Additionally, within 30 days of the effective date of this Order, Dr. White shall provide a copy of this Order to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification.

Further, within 30 days of the date of each such notification, Dr. White shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. White receives from the Board written notification of the successful completion of his probation.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

Mr. Giacalone seconded the motion.

Dr. Soin noted the request from Dr. White's attorney that the 30-day winddown period before the suspension of Dr. White's license be extended to one year so that Dr. White has adequate time to properly refer his patients to other providers. Dr. Soin recalled similar circumstances when the Board dealt with a number of physicians who operated pain management clinics. These physicians often requested longer winddown periods for various reasons, including having many patients or practicing in an underserved area. Dr. Soin noted that although continuity of care that involves narcotics and opioids can be critical due to the risk of patients going through withdrawal, maintaining a 30-day winddown standard proved to be a non-factor in that situation.

Dr. Soin stated that if Dr. White acts properly and keeps his patient's best interests in mind, 30 days should be sufficient to allow for transfer of care.

Mr. Giacalone stated that he was disturbed by this situation and more disturbed by Dr. White's statement today, which Mr. Giacalone found to be robotic and included no mention of Patient 1. Mr. Giacalone reiterated that Patient 1 had been a vulnerable young man and that he and Dr. White referred to each other as mentor and mentee, yet Patient 1 ultimately felt abused. Mr. Giacalone quoted from a portion of the hearing transcript:

Q (by Ms. Snyder): No, let me make sure you understand my question. My question to you is do you think you harmed him by having a concurrent sexual relationship with a physician/patient relationship, do you think you harmed him, not did you cause him to commit suicide?

A (by Dr. White): Okay. No. No, I don't.

Mr. Giacalone stated that Patient 1 was a troubled young man and Dr. White still cannot seem to see that this was an issue. Mr. Giacalone expressed concern about any future troubled patients who may be treated by Dr. White if there is no remorse for, or even acknowledgement of, the situation with Patient 1.

A vote was taken on Dr. Schottenstein's motion to amend:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- abstain
	Dr. Reddy	- aye
	Dr. Bechtel	- abstain
	Dr. Johnson	- aye

The motion to amend carried.

Dr. Schottenstein moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Dr. White. Dr. Reddy seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye

Dr. Feibel	- abstain
Dr. Reddy	- aye
Dr. Bechtel	- abstain
Dr. Johnson	- aye

The motion to approve carried.



November 10, 2020

Case number: 20-CRF-0176

Mark A. White, M.D.
3433 Agler Road, Suite 1100
Columbus, Ohio 43219-3387

Dear Doctor White:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to grant or register or renew or reinstate your license or certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) In the course of your practice, you undertook the treatment, provided care and/or prescribed medications to Patient 1, as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)

On or about September 3, 2020, you admitted to a Board Investigator that you engaged in sexual conduct with Patient 1 on two occasions. You further stated that you first engaged in sexual conduct with Patient 1 on or about September 4 to 7, 2015, Labor Day weekend. You further stated that you again engaged in sexual conduct with Patient 1 in or around January 2017. The patient record documents that you provided medical care from on or about June 29, 2015 to May 14, 2019, to Patient 1 which was concurrent with the two times you acknowledged engaging in sexual conduct with the patient.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code, as effective on November 30, 2010 to the present. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, as in effect between November 30, 2010, through June 29, 2016, and as in effect from June 30, 2016 to the present, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

Furthermore, for any violations that occurred on or after September 29, 2015, the board may impose a civil penalty in an amount that shall not exceed twenty thousand dollars, pursuant to Section 4731.225, Ohio Revised Code. The civil penalty may be in addition to any other action the board may take under section 4731.22, Ohio Revised Code.

Mailed 11-12-2020

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to grant or register or renew or reinstate your certificate or license to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or certificate to practice, or refuses to reinstate an individual's license or certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Kim G. Rothermel MD/Ket per authorization
Kim G. Rothermel, M.D.
Secretary

KGR/MAP
Enclosures

CERTIFIED MAIL # 91 7199 9991 7039 7802 6941
RETURN RECEIPT REQUESTED

CC: Mr. Larry James
Crabbe, Brown & James, LLP
500 S Front Street, Suite 1200
Columbus, Ohio 43215

CERTIFIED MAIL # 91 7199 9991 7039 7802 6958
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
MARK ANTHONY
WHITE, MD**

20-CRF-0176

**NOVEMBER 10, 2020, NOTICE OF
OPPORTUNITY FOR HEARING -
PATIENT KEY**

**SEALED TO
PROTECT PATIENT
CONFIDENTIALITY AND
MAINTAINED IN CASE
RECORD FILE.**