



**State Medical  
Board of Ohio**

30 E. Broad St., 3<sup>rd</sup> Floor  
Columbus, Ohio 43215  
(614) 466-3934  
www.med.ohio.gov

August 14, 2024

**VIA EMAIL ONLY**

Joseph Badie Abdelmalak, M.D.  
361 Countryside Drive  
Broadview Heights, OH 44147  
abdelmj@gmail.com

RE: Case No. 23-CRF-0065

Dear Dr. Abdelmalak:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Ronda Shamansky, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 14, 2024, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Any party desiring to appeal this order shall file a notice of appeal with the State Medical Board of Ohio, located at 30 E. Broad St., 3<sup>rd</sup> Floor, Columbus, Ohio 43215, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

The notice of appeal shall also be filed by the appellant with the court of common pleas of Franklin County or the court of common pleas in the county in which the place of business of the licensee is located or the county in which the licensee is a resident. If the party appealing is not a resident of and has no place of business in this state, the party shall appeal to the court of common pleas of Franklin County. In filing a notice of appeal with both the Medical Board and the court, the notice that is filed may be either the original notice or a copy of the original notice.

The party filing the appeal shall comply with all requirements of Ohio Revised Code section 119.12 (R.C. 119.12). The notice of appeal shall be filed within fifteen days after the service of the notice of the Medical Board order as provided in section 119.05 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Kim G. Rothermel, M.D.  
Secretary

KGR:jam  
Enclosures

### CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Ronda Shamansky, Esq., State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 14, 2024, 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; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Joseph Badie Abdelmalak, M.D., Case No. 23-CRF-0065 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.  
Kim G. Rothermel, M.D.

August 14, 2024  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NO. 23-CRF-0065

JOSEPH BADIE ABDELMALAK, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 14, 2024.

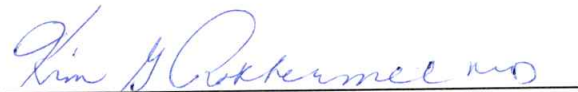
Upon the Report and Recommendation of Ronda Shamansky, Esq., State Medical Board Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board 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. **PERMANENT REVOCATION:** The license of Joseph Badie Abdelmalak, M.D. to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. Abdelmalak shall remit payment in full of a fine of twenty thousand dollars (\$20,000.00). 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.

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





Kim G. Rothermel, M.D.  
Secretary

August 14, 2024  
Date

RECEIVED:  
JULY 19, 2024

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**In the Matter of**

\*

**Case No. 23-CRF-0065**

**Joseph Badie Abdelmalak, M.D.,**

\*

**Respondent.**

\*

**Hearing Examiner Shamansky**

**REPORT AND RECOMMENDATION**

Appearances:

Dave Yost, Attorney General of Ohio, and Melinda Snyder, Kyle Wilcox, and Andrew Fraser, Assistant Attorneys General, for the State of Ohio. Eric Plinke, Esq., and LaTawnda Moore, Esq., on behalf of Dr. Abdelmalak.

Hearing Dates: February 26, 2024 through March 1, 2024

**I. PROCEDURAL HISTORY**

On April 12, 2023, the State Medical Board of Ohio ("Board"). issued a Notice of Opportunity for Hearing ("Notice") to Joseph Badie Abdelmalak, M.D., the Respondent in this matter, notifying him of its proposal to take disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board alleged inappropriate conduct by Dr. Abdelmalak in his treatment of Patients 1 through 7 that took place from on or about November 23, 2012 through in or about August 2021, including inappropriate touching of the patients' breasts or vaginal areas for other than a legitimate health care purpose; inappropriate comments made to the patients and, in one case, failure to wear gloves for the examination.

The Board alleged that this conduct constituted a violation of Ohio Revised Code Section ("R.C.") 4731.22(B)(20), "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," and cited several administrative rules that it alleged Dr. Abdelmalak's conduct violated, including Ohio Administrative Code Rule ("OAC"). 4731-26-03, as it was in effect between November 30, 2010 and June 29, 2016. The Board also alleged a violation of that same Rule, as it was in effect from June 30, 2016 through September 29, 2021. The Board further alleged that a violation of OAC 4731-26-03 also constitutes a violation of R.C. 4731.22(B)(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." The Board notified Dr. Abdelmalak that, for any violations that occurred on or after September 29, 2015, the Board may impose a civil penalty not to exceed twenty thousand dollars, pursuant to R.C. 4731.225. (Exhibit ("Ex.") 1.



In response, Dr. Abdelmalak requested a hearing by letter received by the Board on April 20, 2023, and by agreement of the parties, the hearing was held February 26, 2024 through March 1, 2024 at the Board's offices.

Shortly before the hearing, the Hearing Examiner made a ruling that, under OAC Rule 4731-13-20.1, two witnesses would be permitted to appear and give real-time video testimony. One witness, Mariam Sliman, called by the Respondent, had recently had a baby and did not have transportation to Columbus. The Board's counsel represented that the other witness, Patient 4, had a worsened health condition shortly before the hearing. Due to those factors, those two witnesses were deemed to be material witnesses who were unavailable to attend the hearing in person.

## **II. SUMMARY OF THE EVIDENCE<sup>1</sup>**

### **Dr. Abdelmalak's Medical Education and Practice**

Dr. Abdelmalak was born and raised in Egypt, where he was inspired to become a physician by his own childhood doctor, who had a very welcoming manner and treated him like family. He earned a medical degree at Assiut University in Assiut, Egypt in 1983 and then did a residency in urology, earning a diploma in that field in 1990, which he explained was similar to board certification in the United States. However, he has never been board-certified in urology in the United States. (Tr. at 369-370, 748-749, 754-755; Ex. A). Dr. Abdelmalak explained that urology is a "top subspecialty" in Egypt because many people swim in the Nile and irrigate their land with its water. (Tr. at 749). He explained that this can cause infections from the bilharzia parasite, which can wreak havoc on the lower ureters and the bladder, leading to problems such as stricture, hydronephrosis, cancer, and liver failure. (Tr. at 749-750).

Dr. Abdelmalak testified that, during his practice of urology in Egypt, he became primarily interested in female urology because he testified, "I see a lot of female coming to my practice complaining of incontinence, burning syndrome, we don't have anything to offer. We give them regular medication. That doesn't work. \* \* \* I keep searching. I didn't find anything." (Tr. at 750). One such woman was Dr. Abdelmalak's own mother, who suffered with urological pain without a diagnosis for an extended time. She was eventually put on dialysis, but died of renal failure after the fourth treatment when she was only 47 or 48 years old. Dr. Abdelmalak testified that he chose to go into urology because he wanted to help women with various types of pelvic pain. (Tr. at 750-751).

After practicing for a short time as a general practitioner in rural Egypt where he saw patients of all ages, Dr. Abdelmalak worked as a staff urologist at Elkosya Central Hospital in his hometown for nine or ten years. Then, in May 2000, Dr. Abdelmalak moved his young family to the United

---

<sup>1</sup> 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.

States and began a clinical research fellowship at the Cleveland Clinic's Glickman Urology Institute. He related that when he came to the U.S., it was primarily to study female urology because it was a new subspecialty in Egypt with very few practitioners, and he wanted to learn how those patients could be treated and eventually return to his home country. Dr. Abdelmalak testified that, even after women undergo surgery to correct anatomical problems such as incontinence, some still have ongoing pelvic pain, and those patients are sometimes referred to psychiatry or to pain management specialists. At the Cleveland Clinic, Dr. Abdelmalak was involved in research about the causes of pelvic pain after surgery, some of which focused on the nerves that supply the pelvis, and how those nerves could be blocked to relieve pain. (Tr. at 371-372, 751-757, 780).

Although Dr. Abdelmalak came to the U.S. with the intention of returning to Egypt after his training, he testified that the Cleveland Clinic assisted him with applying for a green card, and later in obtaining an "extraordinary research" visa, so that he could stay even after the events of 9/11, when he said that it became difficult for Middle Easterners to get visas. Dr. Abdelmalak later became a U.S. citizen. (Tr. at 758-762).

Upon deciding to remain in the United States, Dr. Abdelmalak took the USMLE and the ECFMG for foreign medical graduates. Although he had to re-take Step 1 of the USMLE, by 2005 he had passed the tests, and he obtained a training certificate in Ohio in February 2006.<sup>2</sup> He then began a residency in anesthesiology at the Clinic, which he completed in 2011, followed by a residency in pain management, which he completed in 2012. Dr. Abdelmalak related that at the end of his residency, his Chair, Dr. David Brown, offered him a staff position in anesthesiology, but he declined it even though it was a high-paying position, because his passion was in pain management. (Tr. at 763-766).

#### **Opening of The Cleveland Clinic's Pelvic Pain Center in 2014**

Dr. Abdelmalak related that he was awarded a grant after his Department Chair, Dr. Brown, reviewed his C.V. and asked him to create the Pelvic Pain Center at the Cleveland Clinic. He testified that this was a relatively new concept in the U.S., and that he was asked to sign a contract agreeing to stay with the Clinic for three years. He then worked with other professionals that he knew in the fields of gynecology, urology, colorectal surgery, interventional radiology, psychology, and physical therapy, to create a multi-disciplinary team to collaborate on patient cases, and he also had input into the type of staffing that would be needed. Dr. Abdelmalak testified that the planning for the Pelvic Pain Center was done in 2012 and 2013, after which it opened to patients in 2014, with brochures and videos made by the Clinic to promote it. (Tr. at 392, 771-772, 784; Ex. 16).

---

<sup>2</sup> [elicense.ohio.gov](https://elicense.ohio.gov), accessed April 22, 2024.

Dr. Abdelmalak testified that patients came from all over the country to be seen at the Pelvic Pain Center. He said that the various doctors there mostly worked in their own departments, but they met for an hour twice a month to discuss challenging cases. (Tr. at 784-785).

When the Pelvic Pain Center first opened, Dr. Abdelmalak worked full-time on the Clinic's main campus. However, he said that his Department Chair at that time, Dr. Rosenquist, soon asked him to see patients at Fairview Hospital, and later asked him to split his time between Fairview Hospital and the Clinic's Twinsburg facility. He then settled into a schedule of seeing patients three days a week at Fairview and two days a week at Twinsburg, treating all kinds of chronic pain, including pelvic pain as well as neck pain, abdominal pain, back pain and myofascial pain. Dr. Abdelmalak said that although he saw both men and women for the treatment of chronic pain, women tend to be more prone to pelvic pain disorders because of the strain of pregnancy and delivery. (Tr. at 785-788).

### **Dr. Abdelmalak's Attempts at Board Certification**

Despite completing residencies in anesthesiology and in pain management at the Cleveland Clinic, it took a long time and multiple exam attempts for Dr. Abdelmalak to obtain his board certification in those fields. At his performance review in 2013, the Department chair, Dr. Rosenquist, noted that Dr. Abdelmalak was told he would no longer be a part of the Clinic staff if he did not pass his fourth attempt at the exam in August or the following qualifying exam to sit for the examination again. (Ex. H at 4). The Institute chair, Dr. David Brown, likewise noted that Dr. Abdelmalak had "significantly low" scores on the exam, but Dr. Abdelmalak explained that there were "challenges and nursing personalities" at the hospital that contributed to his problems with the exam:

#### **Institute Chair Comments**

Dr. Abdelmalak met with Dr. Rosenquist and I today for his APR, supplemental APR and PSIS review. Joseph spends most of his time at Fairview. He has a rather large professional challenge at this point is that he has not been able to pass the written board exams. He has taken the written exam three times and shared with him that it's more likely than not, that he will not be renewed if he cannot pass the different boards within 1 to 2% of the pass rate for this exam come July 2013. Last year he was in the first percentile which is significantly low. He did say that there are some challenges and nursing personalities at the hospital. This should not be as hard to solve as it appears to have been over the last number of years. He is below the mid-point of work RVU's per adjusted day, it's because he has a young practice and focusing primarily on pelvic and urologic pain stays or whatever works toward growing that practice at this point.

David L. Brown, MD  
March 27, 2013  
by David Brown, MD (Inst. Chair) on 03/27/2013

(Ex. H at 4).

By the time of Dr. Abdelmalak's 2014 performance review, Dr. Rosenquist noted that Dr. Abdelmalak had been successful in establishing a multi-disciplinary pelvic pain center with specialists in urology, gynecology, gastroenterology, interventional radiology, and psychiatry, but he still had not passed his board exam. Dr. Rosenquist wrote that he again "reiterated the importance of completing the board certification process as a condition of continued membership in this department." (Ex. H at 7). Dr. Brown, his supervisor, wrote that Dr. Abdelmalak would focus on two goals in the upcoming year: passing his written board certification exam in anesthesiology, and continuing to grow the pelvic pain center:

**Institute Chair Comments**

Dr. Abdelmalak met with Dr. Rosenquist and I for his APR, supplemental and PSIS review. Joseph has two major items to focus on this year. The first is to pass his written board exam in the specialty of anesthesiology and the second is to continue to grow his multidisciplinary chronic pelvic pain center. He seems to understand this, he has a positive attitude, he is buying back some of his time to study for his board exam and his attitude is on target.  
David L. Brown, MD  
March 4, 2014 by David Brown, MD (Inst. Chair) on 03/06/2014

(Ex. H at 8).

Even though both his performance reviews and his C.V. indicate that Dr. Abdelmalak had published articles and had served as a manuscript reviewer for several journals, he continued to fail his attempts at the board certification exam in anesthesiology. (Ex. A at 2). In the 2015 Performance Review, the Institute Chair noted that the Clinic would “help” Dr. Abdelmalak on the oral exam, but that he would have to get through the written exam:

**Institute Chair Comments**

Dr. Abdelmalak met with Dr. Rosenquist and I today for his APR, supplemental APR and PSIS review. Joseph is our prime staff physician for pelvic pain and is developing a robust and well-integrated program with both NI, ob/gyn, as well as interventional radiology. This appears to be a real center of excellence. He is going to retake his written ABA examination in late July this year and we encouraged him that we will be able to help him with the oral exam, but he will have to get through the written exam. He is spending his time between Twinsburg, Fairview and once a month he is a day here for the pelvic pain master meeting at Walker. He extended his thanks to us for the scholarship program for his fellowship and we wished him well.  
David L. Brown, M.D.  
March 20, 2015 by David Brown, MD (Inst. Chair) on 03/20/2015

(Ex. H at 12).

By 2016, Dr. Abdelmalak still had not passed his board certification exam in anesthesiology. The Institute chair at that time was Dr. Christopher Troianos, who noted that in his most recent attempt, Dr. Abdelmalak scored in the second percentile on the exam, but that he would re-take the exam in July, after working with exam preparation coaches:

**Institute Chair Comments**

Dr. Rosenquist and I met with Dr. Abdelmalak for his APR. Dr. Abdelmalak works at Fairview Hospital and Twinsburg and one day a month in Pelvic Pain Program. He noted the office situation at Fairview has improved dramatically over the past two years. Twinsburg has great potential given location geographically. Total RVU's were down in 2015 and total procedures were also down despite the availability of time at Twinsburg, so access is not an issue. Dr. Abdelmalak is near the bottom of clinical productivity, only seeing 13 patients and 1 procedures per day, down 11% from 2014. He attributes this to the type of patient (pelvic pain) which takes more office time, but charges are down too despite these higher level patients. Another issue is board certification status. He has taken the written board exam for anesthesiology board certification multiple times and has not passed. His most recent performance was 2nd percentile despite multiple attempts. He is meeting with board exam preparation coaches and is scheduled to re-take the exam this July. We clearly stated with no uncertainty that it is our expectation that Dr. Abdelmalak becomes board certified. He voiced understanding that his needs to be accomplished soon. I conveyed that certain hospitals require a five year window post training to become board certified.  
Chris Troianos, M.D.  
3.25.2016  
by Christopher Troianos, MD (Inst. Chair) on 04/28/2016

(Ex. H at 15).

In April 2017, Dr. Abdelmalak again met with Dr. Rosenquist, who noted that he had passed the written exam for board certification in anesthesiology, and was preparing to take the oral exam at the end of June, with a plan to attempt the pain medicine board certification exam in September 2017:

I met with Dr. Abdelmalak on Tuesday, March 7, 2017. We are approaching the end of Dr. Abdelmalak's fifth year. This has been a notable year for Dr. Abdelmalak. He completed his written board examination for specialty certification in anesthesiology and is scheduled to take his oral board examination at the end of June 2017. He has been diligently practicing to prepare for his oral board examination and has been taking courses and doing almost daily oral board practice examinations. He feels that he is preparing well and is looking forward to getting this hurdle over and getting his primary board certification in anesthesiology. His plan is to register and take the pain medicine board certification examination in September 2017 if he completes the primary board certification in anesthesiology in June of 2017.



(Ex. H at 16).

By the time of his performance review in 2018, Dr. Abdelmalak was board certified in anesthesiology, but was planning to retake his board exam in pain management after failing on his first attempt, and was provided with additional materials to help him with the exam in September 2018:

During the past year he completed his board certification in anesthesiology, but did not successfully complete the examination for his pain medicine board certification. He is working hard on studying and preparing to retake the examination. I provided him with additional textbooks to help him in this regard and he is focused on passing the examination when he takes it again for the second time in September 2018.

(Ex. H at 21).

In his May 2019 performance review, Dr. Rosenquist noted that Dr. Abdelmalak had failed the pain management board exam twice, and was being offered personal tutoring and a test-taking psychologist:

He has completed his board certification in anesthesiology, however, has failed his first two attempts at taking the pain medicine board certification examination. I have begun a process of working with him and have offered to meet with him on a regular basis to discuss new approaches to studying for this examination. In addition, I have asked him to work with a psychologist with expertise in test taking at Cleveland Clinic to help him improve his test taking abilities. He is appreciative of this support and looks forward to taking the examination again in September 2019.

(Ex. H at 25).

By the time of his performance review in 2020, Dr. Rosenquist noted that Dr. Abdelmalak was “continuing the work on his Pain Medicine Board Certification,” but also noted that he had begun having health problems. (Ex. H at 28).

A year later, at the March 2021 review, Dr. Rosenquist wrote that Dr. Abdelmalak “has continued to work on obtaining his final board certification in pain medicine and passed his ASPEX-PM exam and is waiting further instructions and guidance from the American Board of Anesthesiology regarding next steps.” (Ex. H at 31).

At the hearing, Dr. Abdelmalak testified that he has been board-certified in anesthesiology since 2017, and in pain management since 2023, after failing both exams multiple times. He agreed that he has no formal training in gynecology, nor in psychology or relationship counseling, aside from a one-month rotation in psychology during his fellowship. (Tr. at 373-375, 379).

Dr. Abdelmalak continued seeing pain management patients at the Cleveland Clinic’s Twinsburg and Fairview facilities until September 16, 2021 when he went on medical leave to receive a kidney transplant. He briefly returned to work for three weeks in March 2022, but then he related that his department chair told him he was being placed on administrative leave until the issues with this Board were resolved. He was later told in December 2022 that his contract was not being renewed because the matter had not yet been resolved. Dr. Abdelmalak has not practiced medicine since March 2022. (Tr. at 388-389).

### **Dr. Abdelmalak's Approach to Pain Management**

Dr. Abdelmalak testified that he tries to build a trusting relationship with patients at the first visit because recognizes that they see him as “a foreigner \* \* \* a male, \* \* \* and somebody with [a] heavy accent.” (Tr. at 791-792). He stated that he prefers patients to come with referrals because that gives him information about any history of sexual abuse or psychiatric treatment, so that he does not have to ask those questions but can be aware of it from their records, and it also gives him access to any prior imaging, labs, or diagnostic tests that can save time and money in the patient's treatment. (Tr. at 789-790).

At a new patient's first visit, Dr. Abdelmalak said that he discusses with the patient any prior information he has from their chart and tries to remove barriers and build comfort with them, so that they will work with him. He then conducts a general exam of the patient, who is always in a gown for the first visit. In the general exam, he listens to several different areas of the patient's heart and lungs, to make sure there is no underlying medical problem that would require referral to a different specialist, and he looks at their extremities, to check for any signs of prior surgeries or anything unusual. After the general exam, Dr. Abdelmalak conducts an exam that focuses on the area of the patient's complaint, such as the back, knee, or pelvis. He testified that he presses on the vertebrae from the neck all the way down to the sacroiliac joint (“SI joint”), checking for pain, and he also checks the fibromyalgia tender points, which he demonstrated using a diagram. In addition, he examines the nine quadrants of the patient's abdomen, looking for bulging, swelling, pain, or scars from previous surgeries. (Tr. at 788, 792-801; Ex. B at 4, 6).

About 50% of patients who complain of pelvic pain have a pelvic exam during their first visit with Dr. Abdelmalak. He testified that pelvic pain has “hundred[s of] causes,” and can come from general disease states such as fibromyalgia or MS, or from nerve pain, which he can treat. (Tr. at 802). He said that this is always a gownned procedure, and there is always a chaperone present in the room. (Tr. at 810-811). Dr. Abdelmalak testified that in a pelvic exam, he examines all components of the pelvis, including the bones that make up the pubic symphysis<sup>3</sup> where the pelvic bones are fused in the front; the sacrum where the bones of the pelvis meet in the back, and the SI joints on both sides. He also examines the ligaments, skin, and muscles in the pelvis to look for anything that could be causing the patient's pain. (Tr. at 803-805, 810-811; Ex. B at 3).

Dr. Abdelmalak testified that he explains to patients that the exam he conducts is different than the exams they may have had with a gynecologist, urologist, or colorectal specialist, because pain management is concerned with the nerves that are under the skin or mucous membranes of the vagina. He does not use a speculum to hold open the vaginal walls, as a gynecologist would, and he does not examine the patient's ovaries or uterus. Instead, he checks to see if the various nerves that supply the pelvis are inflamed or entrapped by scar tissue or ligaments. In particular, he examines the pudendal nerve, which he said runs very close to the ischial spine and supplies the dorsal nerve of the penis in males and the clitoral nerve in females; as well as the perineal nerve

---

<sup>3</sup> The terms “symphysis pubis,” “pubis symphysis,” and “pubic symphysis” were used interchangeably during the testimony.

that supplies the muscles of the perineum; and the inferior rectal nerve, which supplies the anal area. At the hearing, Dr. Abdelmalak offered a diagram to show the locations of those nerves. (Tr. at 774-775, 805-808; Ex. B at 7). He explained that by the time a patient sees him for pain management, the patient has usually exhausted their treatment options with other specialists, concluding, "I am the last one to see the patient." (Tr. at 777).

Dr. Abdelmalak said that he accesses the pudendal nerve through the rectum in males, and through the vagina in females. He testified that when he does a pelvic exam of a female patient, he puts lubricating gel on his hand, and then puts two fingers in the vagina. (Tr. at 808-810). He then pushes up, down, and to both sides to try to determine the source of the patient's pain, without removing his hand between checking those four points. Dr. Abdelmalak testified that if the patient has pain when he pushes up toward the "roof" of the vagina, it indicates bladder pain; if she has pain when he pushes down, it indicates a problem in the rectal area, possibly from constipation or from a rectocele that bulges into the vagina. If the patient has pain when he presses laterally on either side, it can indicate a problem with the pudendal nerve. He explained that he has to push very deep into the sides of the vagina because the pudendal nerve runs along the ischial spine. He added that when that nerve is affected, the patient might "jump from the bed" when he pushes on it. (Tr. at 809-810, 815-816).

Dr. Abdelmalak testified that he asks the patient, "Do you understand I'm going to do a pelvic exam?" and gets her consent before performing the exam. If she does not consent, however, he said that he cannot know the source of the pain, and must resort to a course of medication or physical therapy to see if her pain improves; he cannot proceed with any injections without knowing which nerves are causing her pain. (Tr. at 815-817).

Dr. Abdelmalak emphasized that a female chaperone is always present during a pelvic exam and sometimes during other exams, depending on staffing at the particular facility. He explained that the Twinsburg facility is a multi-specialty office, in which the nurses and medical assistants ("MAs") work with all of the practitioners, so there is only sufficient staffing for chaperones to be used during pelvic exams. Dr. Abdelmalak testified that during other kinds of exams at Twinsburg, the chaperone is present only if he or the patient requests one:

[T]he nurses and MAs work with all the other specialty in this day. I ask for somebody to be designated to me. They said we can't. This is what we have. But what we can offer you is you can have chaperone for the pelvic exam. Other than this, no.

So we agree on this protocol because there is shortage of staff and for the clinic to go. So every patient coming for pelvic exam at Fairview or Twinsburg has a chaperone. But every patient has physician -- somebody with me in the room for interview and exam. This is only in Fairview, not in Twinsburg unless there is some request from the patient or from me.

(Tr. at 811-812).

Dr. Abdelmalak testified that when the MA or other assistant is doing intake with the patient, she sits at the computer, and she may be typing information into the record while he is talking with the patient. However, he said that the assistant then stands beside him while he is performing the exam, explaining that this is for his protection, as well as the patient's. (Tr. at 813-815). Dr. Abdelmalak testified, "Once we go to exam, she has to cover the patient, she has to bring the sterile gloves, and KY gel. She has to be with me in case if I need assistance." (Tr. at 813).

As will be discussed in more detail in the case of Patient 5, Dr. Abdelmalak testified that he now wears gloves for any kind of pelvic exam and when he touches the patient's pubic symphysis. However, there has been some evolution in his practices. Although he previously did not wear gloves to touch the pubic symphysis, ever since he had a confrontation about this issue with Patient 5, he said that he now wears them not just for pelvic exams, but anytime he touches the patient's lower abdomen or pubic area. (Tr. at 469-470). In addition, he explained that after a different patient reported getting an infection that could have resulted from gloves taken out of a box, he made a practice of wearing only sterile gloves, recalling: "[F]irst they bring regular gloves like blue gloves or silver. You buy it from grocery store. But after this incident, I change my practice. I need sterile gloves for all patients." (Tr. at 814-815).

Dr. Abdelmalak testified that he tries to treat pain by starting with conservative measures and moving up to more invasive modalities if the patient does not get relief. He related that in some cases, lifestyle changes like smoking cessation or getting support from friends and family can improve a patient's condition. There are also oral medications, as well as physical therapy, that can be prescribed to treat pain. If those are not effective, he can give nerve block injections into the neck, back, and abdomen, which can offer good relief, but must be given at certain minimal intervals and cannot be done every week, for example. If the injections are not effective enough, Dr. Abdelmalak can treat patients with radiofrequency ablation, applying minimal heat to the sensory nerve that is carrying the pain signal; however, he explained that the ablation procedure cannot be done on motor nerves because it can cause paralysis. One of the more advanced nerve block treatments that Dr. Abdelmalak offers involves a spinal cord stimulator that is implanted in the patient's spine and allows for reprogramming to increase or decrease the stimulus emitted. Finally, the most invasive treatment is surgery or other types of implants. (Tr. at 768-770).

Dr. Abdelmalak testified that treating pain is his passion, because everyone has pain at one time or another, and pain accounts for why a large number of patients are admitted to the hospital. He believes that if their pain can be treated effectively, at least 50% of hospital admissions could be avoided. (Tr. at 766-767). He also explained that, in his experience, when patients have pain, they feel miserable, and cannot work or take care of their families, and depression often sets in, which results in even more pain. He said that if patients get relief from their pain for even a short time, it changes their attitude so that they are willing to try physical therapy or other modalities that can bring more lasting relief. He related, "I put the needle for 5 minute, and the patient the second day he feel good, even if temporary, even they say two to three days, but I find two to three days it changes a patient's life 100 percent." (Tr. at 767).



The Notice in this case concerns Dr. Abdelmalak's care of seven different women. The hearing was closed to the public pursuant to OAC 4731-13-03(B) during each witness's testimony.

The patient cases are described in detail below, in chronological order of the date of the conduct that constitutes the alleged violation, so that Patient 6 – not Patient 7 – is the last patient case described.

### **Patient 1**

Patient 1 is a stay-home mom of three children, who traveled from the Cleveland area to testify at the hearing. Patient 1 said that she first saw Dr. Abdelmalak in September 2012 for "severe back problems." (Tr. at 19-20). The patient related that she had been diagnosed with a herniated disk in her lower back that caused a sharp, immobilizing pain that traveled down into her legs and was having a very debilitating effect on her life. She was about 33 years old at the time, and she recalled that her children back then were one- and two-years old and required a lot of physical help, such as lifting them up to put them in and out of the crib. (Tr. at 20-21). The patient testified, "I would sometimes be flat out for days." (Tr. at 21).

Patient 1 had her first consultation with Dr. Abdelmalak at Fairview Hospital to see if there was any treatment that might help with her intense back pain. (Tr. at 21-22). She related that she had been seen in the Emergency Department and had been prescribed pain medication, which she said "doesn't really touch that kind of pain," but she was also aware that surgery was considered the last option for back pain. (Tr. at 22). She testified that the longest she had ever taken the prescription pain medications that were prescribed for her was about one week, because she explained, "My children were very small at the time, and I couldn't safely take care of them taking prescription pain medication." (Tr. at 48). Patient 1 recalled that when she met Dr. Abdelmalak, he had a very pleasant demeanor, and she recalled from her experience, "[Y]ou are in so much pain you are just happy that someone is listening and wants to help." (Tr. at 22).

Patient 1 agreed to have a series of three epidural block injections, as recommended by Dr. Abdelmalak at the consultation. Her only previous experience with pain-blocking injections was an epidural during childbirth, but she explained that that was a different placement than the injection recommended for her in this case for her intense back pain. (Tr. at 22-23, 44). Patient 1 explained that a series of three injections was recommended because she said, "It's a hit or miss. Like you don't always get relief from one injection." (Tr. at 22).

The first two injections that Patient 1 had in or about September and October 2012 were similar to each other. The patient testified that she arrived at the hospital before her surgery time, having fasted the night before, and she was taken to a pre-surgery cubicle with curtains around it. (Tr. at 23). There, she changed into a gown, taking off "every stitch of clothing," and giving her clothes and her other belongings to the person who accompanied her. (Tr. at 23). After being given medication to help relax her in the pre-op area and having an IV started, Patient 1 was wheeled into the operating room and given anesthesia while she had her injection procedure. After the injection, she said that she was wheeled into a post-operative cubicle that had curtains around it,

and she was given time to wake up from the sedation. She estimated that she was at the hospital for a total of about four hours on each day when she had an injection. (Tr. at 24-25, 27-28, 35).

Patient 1 was able to recall the experience of waking up in the curtained post-op cubicle each time she had an injection. She related that she was aware of other cubicles around her, which were separated by either a curtain or a wall. She testified that the nurses would come in to ask her questions intended to gauge her orientation, and to offer her something to eat and drink. Then, Dr. Abdelmalak would come into the cubicle to check on her. Patient 1 recalled that he would greet her and would "check her feet" by touching them in different places and moving both ankle joints. When he determined that she was able to walk safely, she was allowed to get up and get dressed. The person who accompanied her to the hospital would be brought back from the waiting area, and someone would give the patient her belongings before she went home. Patient 1 said that this was her recollection of the post-op experience after her first two procedures. (Tr. at 25-26).

Patient 1 had her third epidural injection with Dr. Abdelmalak at Fairview Hospital on or about November 23, 2012, and since she had been through the process two times before, she felt as though she knew what to expect. However, she testified that this time, her experience in the post-op cubicle was very different than the previous two times. At the hearing, Patient 1 testified that Dr. Abdelmalak came into the curtained cubicle by himself to check on her, and that she was alone with him during the exam the followed. (Tr. at 27-28). She described the interaction that took place with Dr. Abdelmalak that day:

He came in. He said hello. And because of the room, he was to the right side of the gurney. He was -- so if I was in the laying position, he was where he would normally be which to where my feet are. He stepped closer and he asked me to raise my gown and I remember it distinctly because it's an awkward position to be in to raise your gown. I struggled a little bit, and I brought it up probably to my knees or -- again, I was expecting him to check my feet.

And when I got it to there, he indicated to bring it higher so I'm laying on my back where I had just had my injection so it's uncomfortable. And I kind of struggled to get my gown over my waist and then he stepped forward again to the right side of me and he reached down and he touched my right labia, my pubic area, and my left labia.

**Q. [By Mr. Wilcox:] What was going through your mind when that happened?**

A. I think I froze. I wasn't expecting -- again, having been through the procedure twice already, I was expecting him to check my feet, so I was, I think, just shocked.

(Tr. at 29).

Patient 1 said that Dr. Abdelmalak kept silent while he was touching her this way, and she related, "I think I was waiting for him to say something or explain something, but he didn't." (Tr. at 30). She testified that Dr. Abdelmalak was not wearing gloves when he touched her labia, and although she said that he did not wear gloves during the other post-op checks, she maintained that his

examination of her after the first and second procedures was focused on her feet. (Tr. at 26, 47). When Patient 1 was asked if Dr. Abdelmalak had ever touched her labia or vaginal area before, she replied, “Absolutely not.” (Tr. at 30-31). The patient also testified that Dr. Abdelmalak had a different demeanor when he touched her this time, recalling: “I felt his – his demeanor changed. \* \* \* [I]t felt like he had an excited energy. \* \* \* He seemed giddy. It didn’t feel medical.” (Tr. at 30). On cross-examination, however, she denied seeing any visible signs such as an erection. (Tr. at 43). Patient 1 could not estimate how long that interaction lasted, but instead offered, “It was like time stood still. My viewpoint of it is as if I was watching it happen to me, and I honestly don’t recall how long it happened.” (Tr. at 30).

Patient 1 testified that after she left the hospital, she “had that gut feeling something was not right about what happened.” (Tr. at 31). She related that, later that day or possibly the next day, she told her husband about the incident because she stated, “[I]t just wouldn’t leave me, the sense that something was wrong.” (Tr. at 31). Patient 1 testified that she was not sure how to go about reporting this incident, so she called a friend who was a nurse. That friend told her that the hospital had an ombudsman’s office that patients can contact to report any kind of complaint. Patient 1 testified that she then telephoned the ombudsman’s office “probably within a week or the week after,” and left a message on the answering machine. (Tr. at 31-32). The patient testified that she waited “a very long time” for someone to return her call, but when they did, she recalled, “[T]hey told me that they would do a thorough investigation.” (Tr. at 32). She clarified that she never met with anyone from the ombudsman’s office in person, but spoke to them only one time by telephone. She maintained that she told the ombudsman during that call that Dr. Abdelmalak touched her labia on the “right side, upper pubic area, and left side.” (Tr. at 46).

The Cleveland Clinic’s ombudsman’s office did investigate the case, and at the hearing, Dr. Abdelmalak offered into evidence a report showing that the ombudsman took a report from Patient 1 and then interviewed him about her allegations. That report gives a similar account of the allegations that Patient 1 made about Dr. Abdelmalak’s behavior in the post-op area, although the written summary is a secondhand account that was not written by the patient. It states that the patient was alone with Dr. Abdelmalak in the recovery area, and that he pulled down her blanket and “touched her in her pubic area and groin, and upper inner thighs,” and later says that he touched her “on hairline and R and the tops of thighs.” (Ex. D at 4-5). The report states that the patient was naked under her gown, and that Dr. Abdelmalak did not say why he was touching her, but then left the room after doing this. Patient 1 reported to the ombudsman that neither her husband nor Dr. Abdelmalak’s assistant was present at that time. (Ex. D at 4-5).

The ombudsman’s report indicates that Dr. Abdelmalak received a call asking him to set up a “face to face interview.” (Ex. D at 6). At that interview, he told the investigator that he touches the patient’s legs and feet after such a procedure, checking the sensory nerves in both legs up to the groin. According to the ombudsman’s report, he also told the investigator that patients wear their undergarments under their gowns, and that there is always a nurse in the corner of the room:

I notified Dr. Joseph Abdelmalak, Pain Management of this patient's concerns. He reported that they evaluate all patients before they leave and complete a neurological exam. The[y]

check for bleeding, swelling, and the site. He checks both legs for tingling and 4 sensation. He pushes on feet and pulls on feet and checks both legs to the groin. They proceed to provide discharge instructions. He does 25 of these procedures a day and therefore these exams are done quite quickly. He does the preop and tree in the computer refused the H&P, marks the site, consent forms signed. Then they go to the OR and do the procedure and then right the postop note and then go to examine the patient. He remembers this patient she has had 3 shots and is doing very well. She is a very nice lady recalls that she has two children. Dr. reported that patient sleeps their undergarments on so usually this is a nonissue. He reported that she should anticipate this exam because all 3 of her procedures were done the exact same way. There is always a nurse at the corner of the room because she is doing the documentation for the physician. \* \* \* Physician reported that his exam was not inappropriate it must be done and he apologizes that there was miscommunication. Physician reported that there is always a nurse in the room with him because he needs someone to type his notes, he needs assistance to move patient's, and someone to provide prescriptions and x-rays for the patient.

(Ex. D at 6-7).(Reprinted as in original).

The report states that Patient 1 had canceled her follow-up appointment with Dr. Abdelmalak, and further notes that a grievance letter had been sent to her from the ombudsman's office. (Ex. D at 3).

At the hearing, Patient 1 described the letter she received from the ombudsman's office as a "form letter," recalling, "They indicated that they were satisfied on their end with whatever information Dr. Abdelmalak provided them about the procedure and what happened." (Tr. at 32). However, Patient 1 said that she was not satisfied with that response, explaining, "[T]hey were still unable to provide an explanation as to why on my third procedure he would not touch my feet but touch my vagina." (Tr. at 33).

When Patient 1 was asked how this incident had affected her, she testified:

I feel something was taken away from me that day. I feel it gave me a new fear that I didn't have before. It has caused problems in my life in terms of needing medical care or needing to seek medical care which is difficult when you suffer from a chronic pain condition.

(Tr. at 33).

On cross-examination, Patient 1 agreed that when she was first waking up from anesthesia in the post-op area, she was sleepy from having been under sedation. She said that different nurses came in and out of the cubicle to check on her and take her vital signs, but she did not remember if it was the same nurse each time. Although Patient 1 did not recall someone being present with Dr. Abdelmalak to help him record notes, she said that someone could have been on the other side of the curtain, just outside the cubicle, because she could hear other nurses and patients outside of her cubicle. (Tr. at 36-40, 45).



On cross-examination, Patient 1 could not recall if anyone checked the injection site on her back after her third injection procedure in November 2012, and could not recall if she told the ombudsman that Dr. Abdelmalak checked her injection site that day. (Tr. at 40-42, 49). She agreed that the ombudsman's report states, "He checked the injection site on her back, rolled her to check the site." (Ex. D at 2). However, when she was asked if she thought Dr. Abdelmalak, who is very slight in stature, could have possibly rolled her over to check the injection site by himself, she immediately replied, "I don't think they roll you over." (Tr. at 42). She later clarified:

[I]t's difficult to recall, but if they did, they would have had me sit up. I was in a lying position, and they would have had me sit up and undone my gown from the back.

**Q. [By the Hearing Examiner:] They wouldn't have rolled you over?**

A. They would not have rolled me over.

(Tr. at 49).

Patient 1 said that in her prior procedures, someone would help her sit up from her position on the gurney so that they could look at the injection site on her back, recalling, "[T]hey would sit you up and your gown, it's got ties, and they would untie the middle or lower tie and just gape the gown to where the injection site would be." (Tr. at 50).

Patient 1 testified that she did not know of any other patients who had ever made a similar complaint against Dr. Abdelmalak. (Tr. at 47-48). When she was pressed on whether she might have misperceived what occurred because she was still groggy from anesthesia, Patient 1 was firm in her conviction that her account of the incident was accurate, insisting, "I did not imagine this incident." (Tr. at 50).

#### Dr. Abdelmalak's Testimony in Response to Patient 1's Allegations

Dr. Abdelmalak testified that Patient 1 presented to him in 2012 from her neurosurgeon for steroid injections at disc L5-S1, that he determined she had lumbar radiculopathy that could be treated with a series of three epidural steroid injections at 3-4 week intervals. He agreed that he did not do a pelvic exam of this patient, as there would be no reason to do that if her complaint was spinal pain, and he had digital imaging that supported her prior diagnosis. (Tr. at 397-398, 819-820).

Dr. Abdelmalak explained that a patient would be prepared for an epidural steroid injection by means of conscious sedation, using "Versed, which is diazepam, and fentanyl, which is narcotics for pain." (Tr. at 822). Dr. Abdelmalak testified that after the procedure with conscious sedation, the patient is taken to the recovery area for at least 30 minutes to wake up from the anesthesia. While there, he examines the patient to make sure that she has no nausea or vomiting, that she can breathe normally, and that any pain is within acceptable limits. (Tr. at 824-825).

Dr. Abdelmalak testified that during the post-op period for this type of injection, he checks the patient's sensory levels below the site of the injection, by touching the lateral sides of the patient's legs to assess her motor function, and by asking the patient to wiggle her toes and to move her feet as though she is pushing on the gas pedal of a car. He said that he also checks the injection site to make sure there is no oozing or bleeding, nor any signs of allergy or inflammation. (Tr. at 824-826).

At several points in his testimony about this patient's care, Dr. Abdelmalak stated that a nurse is always with him while he is doing the "leg check." (Tr. at 825-827). He also asserted that, at 5'3 1/2" tall, he would not be physically able roll a patient over to check the injection site:

**Q. [By Ms. Moore:] Okay. Are you physically able to like roll someone over, a patient over on the bed?**

A. No, especially after anesthesia. They are heavy.

(Tr. at 835).

However, at another point in his testimony, when he testified that he could not access the injection site without help from the nurse, Dr. Abdelmalak used words that suggested that the nurse would likely be helping the patient to sit up -- not roll over -- for him to check the injection site:

The patient cannot move themselves. They are to sit up, somebody help her to sit up, to look at the back or to -- if it's easier for her to move on one side and the nurse can help her to move on one side to look at the back.

(Tr. at 825).

Dr. Abdelmalak then explained that, after he looked at the injection site, the patient would "lay back," which again suggested that Patient 1 was accurate in her recollection that someone helped her to sit up to have the injection site examined, and that she was not rolled over, as he testified:

[T]hen the last one is [s]ite of the injection, or if the patient is awake, talking with us, interactive, so check the si[t]e and have them lay back.

(Tr. at 827).

Dr. Abdelmalak maintained that he was not alone with Patient 1, explaining, "I do the examination, but the nurse was standing there, and they give her the final result, intact sensory, intact motor, site is dry and clean, patient can discharge room with somebody relative to her." (Tr. at 825).

After listening to Patient 1 testify against him, Dr. Abdelmalak pointed out areas in which he believed her testimony was inconsistent from the complaint that the ombudsman relayed to him. He also contended that a nurse was always with him, and suggested that the patient did not remember accurately because she was groggy from sedation:

I have two messages I received from the first investigation with me. She said like I touch the hairline and groin area. This her testimony. She said I touch the -- both sides of the labia and the symphysis pubic part, pelvic area. So it is -- both of them like I can say is not true. Patient under sedation. Patient has this procedure before. We did the same for the three procedures, and the nurse is standing in the area.

(Tr. at 828).

Dr. Abdelmalak testified that Patient 1 had reportedly told the ombudsman that he touched her [pubic]<sup>4</sup> hairline and groin, but that in her testimony, she said that he touched her labia. While the ombudsman's report was a secondhand account apparently written after a telephone call with the patient, Dr. Abdelmalak nonetheless contended that this was an inconsistency:

**Q. [By Ms. Moore:] So you said that you heard her say at the hearing that you touched her labia. Is that the first time that you heard or understood that to be Patient 1's complaint?**

A. Yes. The first time I hear like she said she touch -- he touches right and the left labia. I don't know why I touch the right and left labia but this is what she said. But in the complaint I was investigated for she said he touched the hairline and the groin.<sup>5</sup>

**Q. Is the hairline the same thing as the labia?**

A. No. The hairline is lower abdomen. The labia is in her side by side.

**Q. And you said it was an investigation. Who investigated you and told you that was the complaint?**

A. I believe the ombudsman and police investigator from Cleveland Clinic.

(Tr. at 828).

On cross-examination, Dr. Abdelmalak agreed that it would be inappropriate for him to stroke the patient's labia after this procedure. He further agreed that he had done the exact same injections

---

<sup>4</sup> It was clear from even Dr. Abdelmalak's testimony that the "hairline" being referred to was the pubic hairline, and not a hairline around the patient's face, since he referred to the hairline being "in the lower abdomen." (Tr. at 828).

<sup>5</sup> The Ombudsman's report indicates that Patient 1 alleged in her telephone interview that Dr. Abdelmalak touched "[e]ither side of groin," which could be the investigator's way of saying the labia. (Ex. D at 4-5).

twice before, and yet this was the only time Patient 1 thought he was stroking her labia. (Tr. at 401, 414). He also agreed that a patient would know if her labia were stroked:

**Q. [By Ms. Snyder:] Okay. Do you think, Doctor, that a woman knows when her labia is being stroked?**

A. Yes.

(Tr. at 403-404).

Dr. Abdelmalak also suggested that Patient 1 gave inconsistent testimony about whether her husband was with her in the post-op period, offering, “She said like the first two procedures, my husband was with me. Yesterday in testimony she said he is in the waiting area so this is discrepancy.” (Tr. at 830). However, Patient 1 actually gave consistent testimony that her husband was not with her in the recovery room after any of the three procedures:

**Q. [By Mr. Wilcox:] The first two times with these injections that you had, was your husband in the recovery room with you, or was he someplace else?**

A. [Patient 1:] He was in a waiting room.

**Q. Okay. And then this third time, was he in the same waiting room or?**

A. I don't know if it was the same waiting area but wherever they are allowed to be.

(Tr. at 44-45).

Dr. Abdelmalak testified that the nurse documented his sensory examination in the patient's record, but while there are other assistants listed in the operative procedure notes, the Hearing Examiner cannot find a nurse's signature in his Discharge Note of this procedure; that note is signed only by Dr. Abdelmalak. (Ex. 1 at 37-38). Dr. Abdelmalak also pointed out that the patient said someone would have helped her to sit up when the injection site was examined, which he suggested meant that he was never alone with the patient: “[S]he said somebody helping me to sit up, so if anyone was – which means who is helping her?” (Tr. at 832). He added, “I know like she is under sedation. I am not commenting on it,” suggesting again that he believed Patient 1 was too groggy after her procedure to be an accurate reporter of events at that time. (Tr. at 832).

On cross-examination, however, when Dr. Abdelmalak was referred to Patient 1's anesthesia record, he agreed that she was under anesthesia for a total of only 14 minutes, from 9:18 a.m. until 9:32 a.m. (Ex. 1 at 65). He further agreed, as an anesthesiologist, that how long anesthesia remains in a patient's system is related to how long they were under the anesthesia, so that a patient who was under anesthesia for several hours would take longer to “shake off” the effects of it than a patient who had anesthesia for a shorter period of time. (Tr. at 404-406). Dr. Abdelmalak also



acknowledged that the anesthesiologist on Patient 1's case signed off on her post-surgical evaluation at 9:33 a.m., indicating that all of the criteria for discharge were acceptable at that time and there were no complications. (Tr. at 410; Ex. 1 at 85).

Dr. Abdelmalak asserted that he spoke to the ombudsman and the Cleveland Clinic police about this case voluntarily, and that he truthfully told them that he merely checked the outside of this patient's legs to gauge her motor and sensory level. (Tr. at 829-830). He maintained, "I didn't touch her private area at all." (Tr. at 835). When he was asked on direct exam if he was ever alone with Patient 1 on November 23, 2021, Dr. Abdelmalak replied, "No, sir. There is always nurse with me." (Tr. at 837). He did not name a particular nurse who was with him that day, but instead said that it would be one of the recovery nurses at Fairview, as he explained that different nurses are there on different days, and there is no nurse who is specifically assigned to him. (Tr. at 836).

On cross-examination, Dr. Abdelmalak first asserted that patients are never alone in post-op when he sees them, stating, "When I came to see her, they never be alone." (Tr. at 969). However, when he was pressed, he admitted he did not know if there was a time when patients are alone in post-op:

**Q: [By Ms. Snyder:] \* \* \* There is a period of time after the procedure where a patient is alone in the postop, right?**

A. I don't know.

(Tr. at 970).

Although Dr. Abdelmalak agreed that there was no hospital requirement for a chaperone to be present during the post-op period, he said that this is his own requirement, offering, "For me I need her to be there." (Tr. at 971). When Dr. Abdelmalak was asked to identify in the patient's record where the chaperone was identified, he pointed to vital signs and level of consciousness checks documented by someone with the initials "PZ," as well as another person with the initials, "JK." (Ex. 1 at 71-73). He stated that he does not put his own initials in the record, even though he assesses the patient post-operatively.<sup>6</sup> (Tr. at 972-973). He asserted that it looked to him as if someone was always with the patient when he was evaluating this patient:

**Q. [By Ms. Snyder:] But there is nowhere that indicates she was present with you when you were evaluating the patient, right?**

A. How she document -- how she document she is present with me if she document like she did the pulse, she did the stuff, she did everything. It looks to me like she is present.

(Tr. at 975-976).

---

<sup>6</sup> The record identifies "PZ" and "JK" as Patricia Zabala, RN, and Jeanine Kurz, RN, respectively. (St. Ex. 1 at 73).

## **Patient 2**

Patient 2 traveled from Youngstown to testify at the hearing. (Tr. at 222). She described herself as “an old lady” who was 73 years old at the time of the hearing and had been a housewife for “many, many years.” (Tr. at 222-224).

Patient 2 recounted that several years ago, she began taking a compounded hormone that was prescribed for her at a women’s clinic, and after that, she began having pain that started in her pubic bone area and went up towards her stomach. She described the pain as one that shoots and aches and could come on suddenly. Patient 2 said that she saw two different gynecologists to try to address the pain, one of which was her regular ob-gyn, and another who checked for deterioration of her vaginal wall, which she understood could cause that type of pain. She was also having urinary tract infections, and she was told that the dryness of her vagina could cause bacteria to collect in her pelvic area. (Tr. at 224-225, 245-246). When her condition did not resolve, Patient 2 found Dr. Abdelmalak’s name on the internet as a physician who specialized in pelvic pain, and she called and made an appointment. It is undisputed that this patient saw Dr. Abdelmalak only one time, on or about December 13, 2016. (Tr. at 224-225; Ex. 2).

Patient 2 had difficulty remembering the date she saw Dr. Abdelmalak. She initially testified that she believed she saw him “[t]hree, four years ago,” but then she agreed that 2016 sounded right. (Tr. at 225). When she was asked again on cross-examination when she believed she saw Dr. Abdelmalak, Patient 2 began by testifying, “1917—16 —” but when counsel pointed out that that would place her visit sometime during World War I, Patient 2 quickly corrected, “You’re right — this is ’24.” (Tr. at 239). Later in her testimony, she laughed and agreed that she simply misspoke, and that she meant sometime around 2017, not 1917, explaining that it was quite some time ago and she could not remember the date without looking at her records. (Tr. at 239-240, 269-270).

Patient 2 said that she was escorted to the exam room at Dr. Abdelmalak’s office by an “intern,” who offered her a paper covering and told her to undress, and then left.<sup>7</sup> The patient said that Dr. Abdelmalak came back in with that person, and she then described her pain to the doctor. Patient 2 explained that she was expecting a pelvic exam at this visit, but that Dr. Abdelmalak’s exam included rubbing her clitoris, while the chaperone in the room was typing on the computer with her back turned to her. (Tr. at 240-242, 229, 270).

Patient 2 described her experience during her first and only visit with Dr. Abdelmalak:

---

<sup>7</sup> Patient 2 later testified that she assumed the person with Dr. Abdelmalak was an intern because the Cleveland Clinic is a teaching hospital, and she said that she did not know why anyone other than an intern would be in the room with the doctor. (Tr. at 240-241).

Well, I put my feet up on the table because there was no straps<sup>8</sup>, and I told him, I made a comment there's no straps. And that is normal when you go get a gynecological exam; and, of course, I spread my legs like a lady is supposed to do having this exam. He lifted the paper somewhat so that he could see what he had to see. And then I have to get this straight in my mind. He inserted -- he turned to get gel, lots and lots of gel. I mean, I saw it squirt out. And -- oh, I'm sorry. Then he rubbed it on his fingers and partial hands, if I am not mistaken. And excuse me, please.

And then he inserted I believe would be his fingers, which is normal, into my vaginal area, and I guess he was feeling first up near my womb -- he was checking me. And then all of a sudden he pulled this way hard.

**Q. So you are pulling your fingers to the right.**

A. Yes.

**Q. Okay.**

A. Pulled this way first and it was painful and he asked me does that hurt. And I was shocked, and I said no. And then he did the other side hard. And he said does that hurt? I said no.

**Q. And why were you saying no?**

A. I was shocked because this is not normal.

**Q. Okay.**

A. And in my mind I said you need to get up and get out of here, but I had to find out about the pubic pain. And then he held onto my vagina, and he rubbed my clitoris a few times. Does that hurt? I said no. And then he rammed me straight up into my vagina. I actually believed he hit my womb because I buckled back and screamed. She was at the computer, the intern. Her back -- I know the interns have to watch to learn, but she had her back to me on the computer typing the whole time.

When I screamed for one second, she turned and looked at me and then she looked at the doctor. And for only a few seconds longer she turned back around and started this. And then he said okay. You can sit up. If I'm not mistaken about that, that's what they usually say, you can sit up.

---

<sup>8</sup> Patient 2 later testified that she meant there were no "stirrups" instead of "straps" on the table. (Tr. at 247, 270)

So once I sat up, I'm still really in shock. I couldn't believe what -- what just happened. It's not normal. I know this, but my mind is just shut down, starting to shut down. And then he sat down, and once she looked at him, he popped off the gloves, threw them in the garbage, and he sat down and then explained the different alternatives I had to take care of the pain and medication or some type of laser treatment to numb the nerve.

And I -- and then he made some other comments and I said, well, I have to think about it and then he said okay. And he said I am going to prescribe you something for the pain, garbadine<sup>9</sup> [*sic*]. So I said okay. And then they both got up and left the room.

(Tr. at 227-230).

Patient 2 confirmed that Dr. Abdelmalak used his fingers rather than a speculum to examine her vagina. She said that this was not particularly unusual to her, because she had had many pelvic exams over her life in which gynecologists had used only their hands, but she described Dr. Abdelmalak's motions as "ramming" and "shoving up into me." (Tr. at 229-231, 247). The patient testified that she thought Dr. Abdelmalak was a gynecologist who was going to examine her for pain, but she stated, "I never had a gynecologist do that to me before to cause that kind of pain. You don't cause that kind of pain giving an exam." (Tr. at 232).

Patient 2 said that Dr. Abdelmalak did not explain what he was going to do in the exam, and that he said nothing and looked straight ahead while he was touching her clitoris. (Tr. at 233). She testified about her recollection of getting dressed after that exam, and of finding blood on the paper table covering:

I was still in shock, and I was trying to get that gel off of me. I mean, this big covering that was over me, the whole thing, I had to use it to get the gel. It was all down my legs going towards my anus, upward, and it took me a long time to get the gel off of me. And then as I was putting the paper back, I saw the blood on the -- the paper that they put over the table. And that -- wow, you know. I said he must have torn me in order for that to happen. So -- and it didn't have to be a big tear, just a little is enough to give you that kind of blood.

So I hurried up, and I got out of there. I left it and I threw the paper away and I hurried up and got out of there. I stopped at the desk and said I won't be making an

---

<sup>9</sup> Although Patient 2 referred to a medication that Dr. Abdelmalak prescribed as "garbadine," she agreed that it could have been gabapentin or Gabarone, the drug that her medical record shows was prescribed for her. (Tr. at 269; St. Ex. 2 at 11)

appointment at this time. Went out, caught the elevator, got in my car and went to the police station.

(Tr. at 234-235).

Patient 2 described the blood on the paper as a light stain about a half inch across, that she said was “very mild.” (Tr. at 235). She nonetheless felt so sure that she had been sexually assaulted that she asked the person driving her home to Google the nearest police station so that she could make a report that same day. (Tr. at 232). She testified that she was taken to a police station in downtown Cleveland, and she recounted making her report:

I immediately went to the police and wanted to talk to somebody in sex crimes. There was nobody there and they said we will report this and I just said I was molested. That's all I said just about. We will report this the officer said, and they will immediately be in touch with you.

(Tr. at 231-232).

Patient 2 recalled that after she got home, she “started shutting down.” (Tr. at 234). She took one of the pills that Dr. Abdelmalak had prescribed for her, and she stated, “[T]hat pill plus the trauma made me sleep for 14 hours.” (Tr. at 234). She testified that the police came to her home the next day and took her statement. (Tr. at 234). The statement that Patient 2 gave to the police is not in the record, but the videorecording of Dr. Abdelmalak’s interview with the police about Patient 2’s complaint is in the record. (Ex. P).

When Patient 2 was asked if she had ever before made allegations against a healthcare professional, she stated that she thought she had written to the ombudsman a long time ago to complain of “some cold treatment” from a doctor whose name she did not recall, but she was sure that she never made an allegation of sexual misconduct before. (Tr. at 233).

On cross-examination, Patient 2 testified that every pelvic exam she had before this one was done by a gynecologist, and although the other doctors also used gel, she said that this was more gel than the others had used. (Tr. at 247, 251-252). She said that Dr. Abdelmalak did not explain to her what kind of doctor he was or what he was looking for, nor did he ask about her pain levels during different parts of the exam, such as asking “Does this hurt?” (Tr. at 247). When she was asked why she did not *tell* Dr. Abdelmalak that his exam hurt, she offered, “I was in shock.” (Tr. at 249).

Much of Patient 2’s cross-examination focused on her involvement in other legal proceedings. Although the patient initially testified that she had not been involved in any other lawsuits, she then acknowledged that she had filed claims in two suits, after those specific actions were brought to her attention. In the first action, Patient 2 related that she got a letter in the mail saying that Care Source had been the target of a cyberattack, and that all of her personal information - such as her medical records, Social Security number, address and phone number - was involved in the data

breach. She said that she contacted an attorney and filed suit in October 2023, seeking money damages. (Tr. at 252-254).

Patient 2 testified that the other lawsuit she was involved in was a class action lawsuit that she joined with other plaintiffs who had received pelvic mesh implants, after she was contacted by a lawyer offering her the opportunity to join the litigation against the manufacturer of that device. She said that she had undergone a pelvic mesh surgery for incontinence in about 2010, roughly six years before she saw Dr. Abdelmalak, and that she had pain after that surgery, but she did not attribute the pain she was having at that time to the pelvic mesh. She related that she consulted her gynecologist or urologist, Dr. Courtenay Moore, about whether she should have the mesh removed, but that Dr. Moore gave her reasons not to, so she left it alone. (Tr. at 237-238, 242-244, 268; Ex. 2 at 4).

When Patient 2 was asked why she joined the pelvic mesh litigation, she bluntly agreed that she did so for money:

**Q. [By Ms. Moore:] So if the mesh wasn't causing you pain, why join a class action lawsuit related to it?**

A. Because anybody who got a mesh was permitted to get into the lawsuit. Money, sorry, that's what lawsuits are about.

**Q. So you joined a lawsuit for money –**

A. Yes.

**Q. -- even though you didn't have pain –**

A. No.

(Tr. at 243).

Patient 2 added that she could have sued the gynecologist who recommended or placed the pelvic mesh implant in her, but she stated, “I didn’t because I liked him, a wonderful person.” (Tr. at 242-245). Patient 2 testified that she did not discuss the pelvic mesh litigation with Dr. Abdelmalak, and she did not ask him to write a letter attributing her pain to the pelvic mesh. (Tr. at 242).

During her cross-examination, Patient 2 was also asked if she had ever been convicted of a crime involving dishonesty or fraud, and, over the State’s objection, she promptly answered, “Yes.” (Tr. at 254). After a lengthy discussion between counsel and the Hearing Examiner about whether a police report from an offense that ultimately resulted in a 2009 conviction for Disorderly Conduct could be used, it was ruled that the witness could be asked about the circumstances of her conviction; if she gave any information that the defense counsel believed was false, the police

report could be used to impeach her testimony. (Tr. at 254-266). The witness was then brought back into the room, and was asked about the circumstances of that conviction. She initially testified that she “tried to steal somebody’s money” over 40 years ago. (Tr. at 267). However, when she was prompted about an offense involving the use of an EBT (food stamp) card, she remembered that incident, and gave the following explanation:

**Q. [By Ms. Moore:] So the issue that I was specifically asking about was that in 2009, did you use somebody's EBT card?**

A. No. Oh, my son's. I went to the store and -- I went to the store. He wanted some food, and he was really under the weather. So I went to the store and that's when I had my hat on and the officer saw my card and his card laying on the seat and -- excuse me. Oh, boy. And he said it was -- I wasn't supposed to have the card. I wasn't supposed to use it. They didn't take me to jail. They just -- he gave me a ticket, and then I had to go to court.

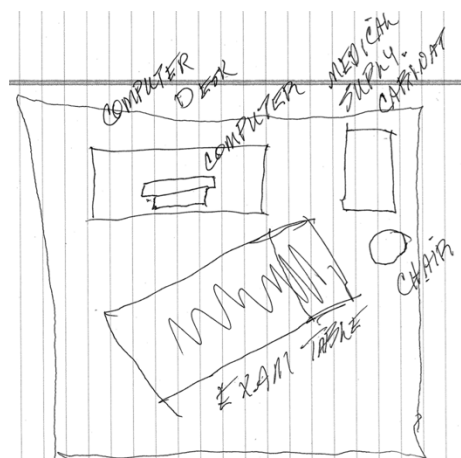
**Q. And to be clear, that's a different event than the one where you said that you tried to steal someone's money?**

A. Yes.

(Tr. at 267).

No police report was introduced to discredit Patient 2’s testimony about the circumstances of that 2009 conviction for Disorderly Conduct. (Tr. at 267).

Also on cross-examination, Patient 2 was asked to draw a diagram of the room where Dr. Abdelmalak examined her at Fairview Hospital. (Tr. at 271). She drew the following picture, showing the seat at the computer desk facing the wall:



(Resp Ex. N).

Patient 2 could not remember if the seat at the computer desk was a chair or a stool, but she agreed on cross-examination that if it was a stool, the person using the computer could have swiveled around to look over her shoulder. (Tr. at 272-273).

Dr. Abdelmalak's Testimony in Response to Patient 2's Allegations

Dr. Abdelmalak testified that Patient 2 was referred to him by Dr. Courtenay Moore for pelvic pain after a sling operation that she had in 2010 for incontinence. He said that when he saw her for one visit in 2016, he asked her questions about her pain and explained that he would do a general exam, followed by a pelvic exam, and that she gave her consent. (Tr. at 837-839).

The patient's record indicates that Barb Maline, P.A. was present during the exam, and Dr. Abdelmalak maintained that Ms. Maline chaperoned the entire examination. He said that the patient was gowned, and that his PA was on his right side where she had a view of the patient's pelvis. (Tr. at 839-840; Ex. 2 at 10).

Dr. Abdelmalak testified that he used gel for Patient 2's exam, as he does for every pelvic exam, but he said that he is very gentle with older women, and never "shoved" his fingers into her vagina. Although he said that he did not see any blood after this patient's exam, he said that it is possible that a patient could have some bleeding even when the pudendal exam is done correctly. He testified that he diagnosed Patient 2 with pudendal neuralgia and planned to treat the condition with medication and water therapy, and possibly with a pudendal injection in the future. (Tr. at 841-842, 844-845).

Dr. Abdelmalak acknowledged that Patient 2 had filed a police report claiming that he had touched her clitoris, but he maintained that he did not do that. (Tr. at 840-841). To the contrary, he contended that Patient 2 told him she was very happy with his care when he finished the exam:

She said you are very thorough, Doctor. I never see somebody -- somebody examine me in details like what you did, and she is very happy. So I start to give her the what is the finding, the positive and negative. And during the exam for vaginal exam, I said there is no tenderness in the bladder or in the rectum or in the right side, but the one you feel is in the left side. This is an indicator of pudendal \* \* \* neuro[path]y<sup>10</sup> in the left side.

(Tr. at 844).

---

<sup>10</sup> The transcript indicates that Dr. Abdelmalak testified that Patient 2's diagnosis was "pudendal neurology," but the Hearing Examiner's notes indicate that he said he said he diagnosed her with "pudendal neuropathy." (Tr. at 844).



Dr. Abdelmalak testified that after Patient 2's exam, as he was going into the room to see his next patient, Patient 2 approached him out in the hallway and pressed him about whether her pain could have resulted from the pelvic mesh surgery that she had several years ago. (Tr. at 844-845). He asserted that she became very angry with him during this hallway confrontation because he refused to write a letter attributing her pain to the pelvic mesh implant, and he implied that this was the reason she made false allegations against him:

While I am going to the next room, she said, Doctor, I have a question. I said not in the hall. Go inside the room. I am coming to you. \* \* \*

Then she asked okay. So what's -- probably this pain come after surgery. I said may be. Can you give me letters, document say this happened after the surgery? I said I can't. She said why? I said because I'm not doing the surgery, so if you need this, you have to go to somebody doing the surgery. I didn't see you before the surgery, after surgery to confirm this happened from the surgery. I am here to diagnose and to treat. Then she said this is what I expect. You are doctors covering each other. I know. You are not going to give me this. And she left the house very angry -- left the office very angry.

(Tr. at 844-846).

Dr. Abdelmalak agreed that even though he said that Patient 2 left his office very angry with him when he would not agree to write the letter, he did not record any of that angry interaction in the patient's record. (Tr. at 978-979; Ex. 2).

On cross-examination, Dr. Abdelmalak agreed that Patient 2 filed a complaint with the Cleveland Police about this incident the same day, and that a police officer later came to his office at Fairview and spoke to him about her complaint. (Tr. at 415-416). The Assistant Attorney General presented the police report, which indicates that the police first conducted a telephone interview with Ms. Maline, the PA who was in the room during the pelvic exam, and it notes, "Ms. Maline's description of the incident was consistent with that of the victim's." (Ex. 17 at 2; Tr. at 416-417). However, it also notes that Ms. Maline said that she remained in the room for the entire exam and witnessed no inappropriate behavior by Dr. Abdelmalak. The officer then went to speak with Dr. Abdelmalak at his office about three weeks later, on March 8, 2017. (Ex. 17 at 2; Ex. P).

The report from the police interview of Dr. Abdelmalak indicates that he told the police that Patient 2 complained of pelvic pain, and that he had to examine the walls of her vagina to try to determine the source of her pain. It notes, "Dr. ABDELMALAK is the leading specialist in this field." (Ex. 17 at 3).

On cross-examination, Dr. Abdelmalak denied telling the officer that he was the "leading specialist" in this field, but he offered, "Maybe he got the impression from my talk." (Tr. at 419). He agreed, however, that he considered himself the leading specialist in his department and possibly in Ohio, because he knew of no other physician who practiced in this specialty:

**Q. [By Ms. Snyder:] \* \* \* So do you consider or did you consider yourself at this time to be the leading specialist in the field of pelvic pain?**

A. Of the department, yes.

**Q. Pardon me?**

A. For our department, yes.

**Q. Okay. So what about in Ohio?**

A. I do not know any other physician doing pelvic pain.

(Tr. at 419-420).

Dr. Abdelmalak agreed, however, that at this time in March 2017, he had not yet passed his anesthesia board exam, nor his pain management exam. (Tr. at 420-421). Since he testified that he first passed the anesthesia exam in 2021, he was still four years and several exam attempts away from board certification at the time of the March 2017 interview. When he was asked if he thought his portrayal of himself as the leading specialist in the field might have caused the police officer to give his account of events more credibility than the patient's account, Dr. Abdelmalak stated, "I don't think it affected him." (Tr. at 423).

Dr. Abdelmalak also suggested that Patient 2 may have misunderstood where he touched her during his exam of her:

**Q. [By Ms. Snyder:] \* \* \* [I]t is your belief that you touched this patient appropriately, and she misunderstood the touch and thought you touched her clitoris?**

\* \* \*

A. Yeah. So I examined the symphysis pubis part of the abdomen exam, not part of the clitoris.

**Q. Okay. You heard her testimony you touched her clitoris.**

A. No. I didn't touch her clitoris.

**Q. Correct. So is it your testimony she misunderstood and thought you touched her clitoris?**

A. Maybe.

(Tr. at 423-424).

Dr. Abdelmalak agreed that a patient would know when her clitoris was touched, and further agreed that it would be inappropriate for him to touch a patient's clitoris during this type of exam. (Tr at 426, 428, 430). When the Assistant Attorney General asked Dr. Abdelmalak, "So you think this patient is lying?" he responded, "I don't think she is lying. \* \* \* She has misinterpretation." (Tr. at 426-427).

As he did at several other points in his testimony, Dr. Abdelmalak suggested that patients who thought he was touching their clitoris during the exam could have been experiencing "referred" sensation of touch from other areas, explaining, for example, that a patient with ulnar nerve neuropathy in their arm might feel an "electric shock" in the fingers when the nerve in the elbow was pressed. (Tr. at 431). He offered the following testimony:

**Q. [By Ms. Snyder:] \* \* \* [B]ut we agree that it would have been inappropriate for you to touch her clitoris on this occasion, right?**

A. Yes.

**Q. And it's your testimony that you did not.**

A. Yes.

**Q. Thank you. Okay.**

A. But if I press on the nerve which is irritated nerve and this nerve supplying the clitoris, she can feel it without my touch.

**Q. So again, she misunderstood.**

A. Yes.

**Q. She just thought you were touching her clitoris.**

A. Yes.

(Tr. at 430).

The videorecording of Dr. Abdelmalak's March 8, 2017 interview by the Cleveland Police was introduced into evidence as a Respondent's exhibit. (Ex. P). In it, Dr. Abdelmalak told the police that he would not need to touch a patient's clitoris to conduct his exam of the pudendal nerves. (Ex. P at 18:40-18:48). He also gave information that conflicts with his testimony at the hearing. At the hearing, Dr. Abdelmalak described an angry confrontation in the hall, in which Patient 2 asked him to write a letter to support her claim in her pelvic mesh litigation and became irate with him when he refused to supply the letter. (Tr. at 844-846, 978-979). However, in the videorecording of his March 2017 interview just a few months after the incident, Dr. Abdelmalak

related that he merely got an *impression* that she was not there to be treated, but just to get documentation about the source of her pain, because she reported that she did not have this pain before her vaginal mesh surgery. (Ex. P at 22:20 -27:00). During the police interview, when he was asked if Patient 2 was trying to “use him” to help her lawsuit, Dr. Abdelmalak interrupted, correcting the interviewer, “I didn’t say this. I said this is my gut feeling.” (Ex. P at 26:51-27:00). This conflicts with Dr. Abdelmalak’s testimony at the hearing that he had an angry interaction with Patient 2 in which she pressured him to write a letter to support her claim in the class action suit.

Testimony of Barbara Maline, P.A., Chaperone at Patient 2’s Office Visit

Barbara Maline is a physician assistant in The Cleveland Clinic’s pain management department who worked at the Fairview campus for 11 years and served as the chaperone for Patient 2’s visit. She said that she worked with Dr. Abdelmalak at Fairview for 12 or 13 years and estimated that she chaperoned “probably hundreds” of pelvic exams for him. (Tr. at 613-615).

Ms. Maline agreed that she was the chaperone for Patient 2’s exam with Dr. Abdelmalak, as the medical record indicates that she was present during the physical exam, and she recalled that she was contacted by the Clinic’s legal department and was asked to speak to a police officer in response to the patient’s complaint that he had touched the patient inappropriately. (Tr. at 616-617; Ex. 2 at 6).

Ms. Maline testified that the exam that Dr. Abdelmalak performs is not like a pelvic exam that a gynecologist performs, so for such an exam, she said it is “normal not to be normal.” (Tr. at 618). She explained:

[W]e are looking at sensory changes, pain with palpation over the muscles, the pelvic muscles, the pelvic floor muscles, any like sensory changes along the labia or into the clitoral area because of, you know, where some of the nerve innervation comes from. And, you know, internally the exam is different because, again, we are not palpating ovaries and uterus and things like that. We are looking for nerve innervation and muscle response.

(Tr. at 618-619).

Ms. Maline testified that the internal exam is usually done with two fingers, unless the patient has significant atrophy that would prevent it. (Tr. at 619-620). She explained that the doctor presses hard to the right, and then to the left, to compress the nerve that runs along the ischial spine, and that sometimes patients “kind of jump” when the pudendal nerve is pressed, if they have pudendal neuralgia. Although she did not remember Patient 2 having the jumping response when the pudendal nerve was pressed, Ms. Maline testified that the patient’s record indicates that there was pain with palpation over the left ischial spine, which indicates that she had left pudendal neuralgia. (Tr. at 619-621).

Ms. Maline said that she witnessed nothing out of the ordinary at Patient 2’s exam:

**Q. [By Mr. Plinke:] Okay. So what did you witness in this exam?**

A. The same physical exam that we do every time, same physical exam I was taught to do for pelvic pain patients.

**Q. Okay.**

A. I don't see anything out of the ordinary for the note or from what I remember.

**Q. Okay. So you don't recall anything out of the ordinary.**

A. I don't recall anything out of the ord[inary].

(Tr. at 617-618).

When she was specifically asked if she had witnessed any shoving of a hand into the patient's vagina, Ms. Maline responded, "Not that I recall. Not that I remember." (Tr. at 620). She also did not remember Patient 2 asking for a letter about a pelvic mesh implant, although she pointed out that the record indicates that the patient had undergone a sling surgery for incontinence, and she said that a pelvic mesh is part of that implant. (Tr. at 621-622).

Ms. Maline testified that she recalled the police speaking to her in February 2017 shortly after Patient 2 made her complaint, and that she understood the patient reported that Dr. Abdelmalak had touched her clitoris. (Tr. at 623-624). Ms. Maline suggested that touching the clitoris during the pudendal exam *would* be appropriate, in order to check for sensory deficits:

We palpate -- palpation along the buttock muscles, of the perianal area, along the labia, and then along the lateral to the clitoris. So when you press in when the clitoris is small, you are pressing into a very small area on either side of the clitoris to check for sensory deficits or any changes or hyper -- you know, in pain or anything like that. So, yes, the clitoris could have been touched during the physical exam.

(Tr. at 625).

Information provided by Dr. Abdelmalak himself, however, contradicts Ms. Maline's testimony that touching a patient's clitoris could be a necessary part of this type of exam. In the videorecording of his March 2017 interview by the Cleveland Police Department at Fairview Hospital, Dr. Abdelmalak said that it would not be necessary for him to touch a patient's clitoris in order to perform his exam, and he demonstrated on a 3D skeletal pelvis showing how he would check pressure points inside the vagina instead. (Ex. P at 18:40-18:48).

Moreover, in an interview with Board investigators in January 2022, Dr. Abdelmalak was asked if there would be any reason he would touch a patient any farther down than the symphysis pubis,

and he said no. (Ex. Q at 37:50-38:00). When Investigator Jason Alameda pressed him, asking, “So at no point do you do any examination on a female that would involve you touching her clitoris at all?” Dr. Abdelmalak first says “No,” and briefly laughs. (Ex. Q at 38:00-38:10). He then adds:

The only time I -- I like to be clear with you. The only time I touch the clitoris is when the patient come with clitoral pain and especially in old ladies there is a syndrome is called “sexual arousal syndrome.” He continues, “The patient has arousal 24/7. She cannot sleep. She cannot wake up. She cannot work. And this is very, very serious syndrome.

(Ex. Q at 38:10-38:48).

Nothing in Patient 2’s record or in any of the testimony suggests that she was being evaluated for that condition.

Ms. Maline also testified about whether she ever types notes into the computer with her back to the patient during an exam. She explained, “Sometimes during the regular physical exam I do that. But during a pelvic exam, I was always at the head like visible.” (Tr. at 626). On cross-examination, Ms. Maline acknowledged that the bottom of Patient 2’s office visit note indicates that it was “Scribed by Barbara L. Maline, PA,” and she conceded, “[S]ometimes the chaperone is also the person that was assisting with typing the note during the visit.” (Tr. at 634; Ex. 2 at 11). She further agreed that when she was sitting at the computer scribing notes, she was facing the wall. (Tr. at 645). Ms. Maline also agreed that “scribing” meant sitting at the computer typing notes into the record:

**Q. [By Ms. Snyder:] Okay. So as scribe, you sit at the computer and type down what he says?**

**A.** During, yes, during parts of the exam.

(Tr. at 635).

On redirect exam, Ms. Maline maintained that it was possible to scribe the office visit note and also serve as the chaperone for a patient’s exam. (Tr. at 641-642).

Ms. Maline was also asked whether Patient 2 was draped during the exam, and she testified that patients would usually have a bedsheet over their knees, describing the sheet as a cloth sheet that would be sent out to be washed with the linens. (Tr. at 636). When she was asked the purpose of the drape, she offered, “To tell you the truth, I don’t know but that’s what we’ve always done, so.” (Tr. at 635-636). Ms. Maline’s testimony suggested that the positioning of the cloth sheet could obstruct the chaperone’s view of the patient’s vulva as the doctor was conducting the exam:

**Q. [By Ms. Snyder:] Okay. Thank you. But does it go over the patient's bent knees?**

A. Yes. Goes over the knees and kind of around the side of the legs.

(Tr. at 637).

On redirect exam, Ms. Maline said that she could still see what was happening during the exam from that position, maintaining, "I can still see, yes, because I am standing off to the side \* \* \* Behind and to the side of where Dr. Abdelmalak would be standing." (Tr. at 643).

Ms. Maline was also asked about which part of the notes were scribed during the exam, and which parts might have been scribed after the office visit ended. She agreed that the patient's record shows that Kathy Meyer, MA, took the patient's history, and she said that the MA probably typed the notes into the record as the patient was giving her history. Ms. Maline said that either she or Dr. Abdelmalak would have completed the rest of the notes of that visit. (Tr. at 638-640; Ex. 2 at 9). Ms. Maline testified that she would have done part of the scribing during the exam, and part of it after the exam was finished:

**Q. [By Ms. Snyder:] Okay. And would you do that just like Ms. Meyer did in the room as it's happening?**

A. Part of it, yes, and, you know, finishing afterwards once the physical exam and, you know, office visit was completed.

(Tr. at 640).

Ms. Maline admitted that she had no recollection of which part of the notes she typed during the patient's visit, and which parts she typed after the visit ended. (Tr. at 640, 642). When she was asked if she would have likely recorded the patient's responses to pain stimuli during the exam, Ms. Maline said that she would have waited to do that until after the exam:

**Q. [By the Hearing Examiner:] During some of that type of exam, would this be a time where you might be describing the patient's responses to whether there was pain there or not?**

A. No, I usually did that after the pelvic exam.

(Tr. at 646).

Finally, Ms. Maline agreed on cross-examination that she was testifying voluntarily, without a subpoena, because she had been asked to come to the hearing to testify about this patient's exam. She said that she had seen Dr. Abdelmalak only once outside of the office after he left the practice, when she attended an Egyptian festival at Dr. Abdelmalak's church. She explained that it is not a church that she attends, but that she went to the festival to support her Egyptian friends. (Tr. at 631, 637-638).

### **Patient 3**

Patient 3 injured her shoulder in July 2018 when she was helping to move a heavy cooler full of ice and cold drinks at a picnic. She testified that after seeing three or four other doctors about her shoulder pain, she was referred to Dr. Abdelmalak through the Cleveland Clinic and had a single visit with him at the Twinsburg facility in January 2019. The medical record indicates that she would have been 41 years old at the time of that visit. (Tr. at 152-154; Ex. 3).

Patient 3 recalled that her shoulder pain was excruciating on the day she had her consultation with Dr. Abdelmalak, and that her husband accompanied her to the appointment and stayed with her during the entire exam. She remembered that she was shown to an exam room by a nurse or medical assistant, and was told to take off only her shirt, but to leave her bra on, as well as her other clothing from the waist down. She put on a gown that she thought had snaps on the shoulders and ties in the back. (Tr. at 153-154, 163).

Patient 3 testified that when Dr. Abdelmalak came into the exam room, she told him how the injury occurred and described her pain to him, telling him that the pain was located up in her right shoulder. She emphasized that she never told him she had any pain in her breasts. She said that in the exam room, she was seated on a table that had a back on it, which allowed her to sit in a reclining position. Her husband was sitting in a chair to her left, with the back of the chair against the wall. Patient 3 said that she believed her husband's vantage point was obstructed by the way the reclining exam table was positioned, since she could not see his face when she looked to her left. Therefore, she believed that he was not able to see what occurred during the exam. Patient 3 further testified that the medical assistant or nurse who had roomed her did not stay in the room during the exam, and that only she and her husband were in the room during Dr. Abdelmalak's physical exam. (Tr. at 153-157, 165, 167, 177).

Patient 3 testified that Dr. Abdelmalak sanitized his hands but did not put on gloves. (Tr. at 155, 171-172). She related that he then tore off a piece of the paper lining the exam table, and tucked it into her bra:

[H]e took a piece of the paper from the table, the kind that -- for protection that gets thrown away after each patient and he tore it off and he came over to me and slipped it up my gown and tucked it into my bra.

(Tr. at 155).

She clarified that he did not pull the gown up, but that he "just kind of slid the paper up under the gown and he tucked it into [her] bra." (Tr. at 166).

At the hearing, Patient 3 held up her hands to estimate the size of the piece of paper, indicating a fairly large piece about 18" to 24" long. (Tr. at 166). She said that Dr. Abdelmalak "kind of reached down under" to get the paper, and she believed he "ripped it off the roll" that was by her feet. (Tr. at 167). After putting the paper inside her bra, Patient 2 said that Dr. Abdelmalak started



examining her right shoulder with his left hand, while he slipped his right hand inside her gown and into her bra:

He started to examine my shoulder, you know, finding where the sore spots were. He did that mostly with his left hand. Then with his right hand he slipped it up under my gown and proceeded to push down like kind of on my chest. And I told him it's not that far down, and his hand kept going and then slipped into my bra where he felt my breast.

(Tr. at 155).

Patient 3 testified that she was wearing a “regular bra” with light padding, as opposed to a sports bra with more coverage that might have made an exam of her shoulder more difficult. (Tr. at 156). She said that after Dr. Abdelmalak put his right hand into her bra, he squeezed her breast, while she protested, telling him the pain was not that far down, and then began to cry while he was doing this:

**Q. [By Mr. Fraser:] Could you describe for us how exactly he was touching your breast during the examination?**

A. Yes. His hand, he put it into my bra and then just kind of squeezed a little bit.

**Q. Okay. And was his palm open?**

A. Yes.

**Q. Okay. How did you react to that?**

A. I was in a state of shock because before he did that and as his hand was heading in that direction, I kept telling him the pain is not that far down, and he just kept telling me shh. It's okay.

**Q. Okay. How did Dr. Abdelmalak react when he had his hand in your bra?**

A. He didn't really react. I started to cry, and he still had his left hand up on my shoulder. When I started to cry, it caught my husband's attention, and so he kind of pushed into where most of my pain was.

(Tr. at 157-158).

Patient 3 elaborated that she knew that her husband had noticed her crying because he leaned forward in his chair and looked over, but that Dr. Abdelmalak did not interact with him while he was touching her breast. (Tr. at 159). Later, during cross-examination, Patient 3 confirmed that he touched her breast “just once during the exam,” and said that when she began to cry, he pushed

on the painful area in her shoulder again. (Tr. at 168). She recalled, "When his right hand was under my gown on my breast and I started crying, with his left hand he pushed down right where it hurt the most," a spot that she estimated was two inches down from the top of her shoulder. (Tr. at 168-169). Patient 3 later explained that her tears were not the result of the pain stimulus, but because of the violation that she felt during that exam, explaining, "I cried because I knew that that should not be happening and it was just wrong and I felt very uncomfortable. It was just so shocking to be in that position." (Tr. at 160).

Patient 3 estimated that the entire exam took about 10 minutes, and that Dr. Abdelmalak's hand was in her bra for about one minute of that time. (Tr. at 158-159). When Patient 3 was asked if Dr. Abdelmalak explained what he was doing during the exam, she replied, "No, not really, no." (Tr. at 155). After finishing the exam, she said that Dr. Abdelmalak went over to the desk that was in the room and began discussing a treatment plan with her. (Tr. at 158-159, 180). However, she recalled, "I was in a state of disbelief. I just said okay, and then I left." (Tr. at 170).

Patient 3 testified that after Dr. Abdelmalak left the room, she texted a friend about the incident while she was waiting for the medical assistant to come back into the room. She acknowledged that she did not talk to any other staff who worked there as she was on her way out of the office. (Tr. at 170-171). The patient said that she did not tell her husband that Dr. Abdelmalak had put his hand in her bra until they got home, explaining, "My husband was retired from the military and has PTSD, and I was afraid with his temper that if I had said something, something bad would happen." (Tr. at 159).

Patient 3 never returned to Dr. Abdelmalak. She clarified that she did not receive a nerve block for costochondritis from him, but that she instead had that procedure in an operating room with a different doctor, and it helped alleviate the pain in her shoulder. The patient added that when the other doctor examined her for the shoulder pain, her breasts were not touched. (Tr. at 161, 177, 181).

About a day after her appointment, Patient 3 called the Cleveland Clinic and made a complaint about the incident, speaking with someone who told her that one of the Clinic's police officers would call her so that she could file a report. (Tr. at 160-161). She testified that that was "pretty much the extent" of her involvement in the investigation, until she received a bill for Dr. Abdelmalak's services, when she related, "I called them and told them I was not paying to be assaulted, and whomever I spoke with said if the hospital had believed me, I would not have received a bill." (Tr. at 161). However, Patient 3 said that she later called back and was told that her bill had been deleted. (Tr. at 162).

Patient 3's complaint was investigated by both the Clinic's ombudsman's office and by the Cleveland Clinic Police, who interviewed the patient and her husband by telephone, and also interviewed Dr. Abdelmalak. (Tr. at 173-174). The reports of those investigations show that Patient 3 complained that Dr. Abdelmalak had touched her breasts, although the accounts -- which were written by the ombudsman and not by Patient 3 herself -- suggest that this was during an examination of her heart. (Exs. E, F). At the hearing, Patient 3 clarified that Dr. Abdelmalak

checked her heart with the stethoscope earlier in the exam, and that it was at a different point later in the exam when he put his hand inside her bra:

When he had the stethoscope, his hand kind of went down, but it was like over my gown, and I didn't really think a whole lot about that. It wasn't until further in the exam when he slipped his hand into my bra after I told him repeatedly that it did not hurt that far down, and he still continued to do that.

(Tr. at 175).

The reports from the ombudsman and the Cleveland Clinic police have some minor discrepancies from the account that Patient 3 gave in her testimony. For example, the reports indicate that Dr. Abdelmalak removed her right breast from her bra and squeezed it, while Patient 3 testified, "I told them that as he was examining me, he slipped his hand into my bra." (Tr. at 171). The reports also indicate that he lifted her gown, while Patient 3 testified, "I said he slid the paper up under my gown. I don't know if they misunderstood me." (Tr. at 174). The other details in those reports, which were related to the investigators by the patient and her husband, were consistent with her testimony – including that he put a piece of paper in her bra, and that she began to cry and told him the pain was not that far down when he touched her breast. The reports offered by Dr. Abdelmalak are heavily redacted, and are secondhand accounts of witness interviews; they do not include any statements written by Patient 3. (Ex. E, F). Patient 3 testified that she spoke to both interviewers over the phone and not in person, recalling, "They told me multiple times that I did not need to come in person." (Tr. at 176). She said that she relied on the interviewers to accurately document what she told them, and that she did not get to read over the summaries they wrote to check them for accuracy. (Tr. at 176).

The reports indicate that the ombudsman and the Cleveland Clinic Police also spoke to Dr. Abdelmalak, who denied touching Patient 3's breast. (Ex. E, F). However, he told the police that he unbuttoned the shoulder area of her gown and pulled the neck of the gown down to touch her shoulder and collarbone area. The report notes, "He told us all the areas he touched were able to be seen by pulling down her gown slightly from her neck with the one shoulder of her gown unsnapped." (Ex. F at 7). The police report indicates that the investigating officer also spoke with Caryl Trinetti, one of Dr. Abdelmalak's medical assistants, who told them about his usual procedures, but that there is no indication that Ms. Trinetti was in the room during Patient 3's exam on January 11, 2019. (Ex. F at 6-7).

The ombudsman's report includes what appears to be a copy of a March 12, 2019 letter sent to Patient 3 by the Clinic, apologizing for what had happened and informing her that a formal grievance had been filed against Dr. Abdelmalak on her behalf, which was escalated to Executive Administration, the highest level of hospital leadership:

[Patient 3], I appreciate your willingness to share your experience with me. I cannot imagine how stressful and uneasy this has been for you. I know that my apologies do not take away what this has done to you. [Patient 3], the Cleveland Clinic takes

concerns such as these very seriously. Your concerns have been listened to and will continue to be listened to by the Cleveland Clinic. A formal grievance against Dr. Abdelmalak has been filed on your behalf and it has been escalated to Executive Administration. Executive Administration is the highest level of hospital leadership.

(Ex. E at 27).

Although Patient 3 was not shown the Patient Key except to identify her own name on it, she testified, "I have never spoken to any other patient in this situation." (Tr. at 178).

Patient 3 said that her shoulder is "a lot better" today, but she testified that her experience with Dr. Abdelmalak still affected her. (Tr. at 160-161). She offered:

It's made me very apprehensive towards hospitals and even doctors in general. You know, you are supposed to be able to trust your doctor. We have one body and we are supposed to trust hospitals and I did not feel like I was protected from anything.

(Tr. at 160).

#### Dr. Abdelmalak's Testimony in Response to Patient 3's Allegations

Dr. Abdelmalak testified that Patient 3 was referred to him by her primary care doctor for a possible shoulder and collarbone injection to treat her shoulder injury. He recalled that her husband was with her, but he stated that her husband's chair was not abutting the wall; instead, he said that the patient's husband was watching him during the exam. (Tr. at 848-852). Dr. Abdelmalak testified that he had some discord with the patient's husband when he entered the room, relating the following interaction:

I introduce myself and ask him are you related to her, and he get nervous. What do you think I am? I am coming with her. I am her husband. I apologize to him. Yes, but I have to document who you are, her husband, her brother, her friend, whatever, so I have to document it. He said understand.

(Tr. at 852).

Dr. Abdelmalak testified that Patient 3 was wearing a gown that was open in the back, with snaps on the shoulders that he was able to unsnap to examine both of her shoulders, in order to compare the injured shoulder to the uninjured one. He presented a medical diagram of the shoulder, as well as the actual stethoscope that he uses, and he explained that he listened to the left and right second intercostal areas, and he also listened to her heartbeat to check for any murmurs or gallops. He testified that he examined both of her shoulders in four points, and then examined different aspects of her movement of her shoulder. Dr. Abdelmalak recalled that the patient's left shoulder was normal, but that on the right side, he found her biceps tendon very tender and she complained of pain when he pressed into her sternum. (Tr. at 433-434, 853-858; Ex. B at 5).

Dr. Abdelmalak agreed that when he pressed just to the right of the patient's sternum, she called out in pain and "kind of jumped," and that when her husband asked what was wrong, he reproduced the pain by pressing on the painful point in her sternum again. (Tr. at 859-861). He recalled, "I said okay, sir. I do it again. Here on the [left]<sup>11</sup> there is no pain. This is normal so I convert right -- left to right. But when I press here, it is abnormal." (Tr. at 859-860). Dr. Abdelmalak testified that he recommended injections into Patient 3's shoulder and her sternum. He testified that after the exam, he sat at the computer and showed the patient some pictures of the anatomy of the shoulder. He offered a similar diagram into evidence. (Tr. at 859-861; Ex. B at 1).

Dr. Abdelmalak said that his plan of treatment included the use of medication and Voltaren gel for pain, with a plan for future injections in the shoulder and in the costochondral joint. He testified that although Patient 3 went outside to schedule the procedure at the end of her office visit, he later learned that she had complained to the ombudsman or the Cleveland Clinic police that he had touched her breast. (Tr. at 860-862). Dr. Abdelmalak represented that he answered all of the ombudsman's concerns:

I start answer one by one. I said, yes, I didn't wash my hand because I put sanitizer gel foam outside the door. I didn't touch her breast because I did the examination of the collarbone by asking her to pull the top of the gown down like pulling the T-shirt down. It was this area only which up to the second intercostal space, and she didn't cry because if she cry, I have tons of tissue. It's really -- or I can talk to her. She went outside to talk to the MA Caryl, and she was not crying. She doesn't have any symptoms of crying.

(Tr. at 862).

Dr. Abdelmalak testified that it was "not possible with her description" that he could have cupped the patient's breast while doing the part of the exam with the stethoscope. (Tr. at 863). He further testified that it was not possible for the paper on the exam table to be torn if the patient was sitting on it, and he explained that he demonstrated this to the ombudsman and the police when they came to his office to interview him, recounting, "I took them to the room and they sat on the piece of paper and asked all of them to pull any piece of paper they can. It's impossible." (Tr. at 864). He maintained that he did not touch Patient 3's breast and did not touch her in any way that she did not consent to. (Tr. at 865).

On cross-examination, when Dr. Abdelmalak was asked about whether he ever tucked paper into Patient 3's bra, he gave a circuitous answer, but eventually returned to his theory that it was not possible to rip off a piece of the exam table paper if the patient was sitting on the table:

---

<sup>11</sup> Although the transcript indicates that Dr. Abdelmalak said "Here on the breast, there is no pain" the Hearing Examiner believes he said, "Here on the *left*, there is no pain," from the context of his statement. (Tr. at 859)

**Q. [By Ms. Snyder:] Okay. So that is a very specific detail for a patient to say. Had you ever done that to her, put the paper in her, tucked it into her bra?**

A. When the investigator came to the Twinsburg office, it was like two other people, police, investigator, Cleveland Clinic. There are three people there. So when they came to the office, I explained everything to them, but I asked them let me check if the room is available so we can go to the room and took them to the room. The room is very tiny. We are four people -- we are four people. We cannot -- we feel like crowded. Then I said I am the patient, and I am going to sit in the table.

**Q. Are you answering my question about ripping off the paper?**

A. Yes.

**Q. Okay. I just want to make sure we are staying on track.**

A. I said I am the patient. I am going to sit on the table. Table has a paper on it to make it clean for the next patient. After, the nurse cut this piece and pull another one. I sitting in the table, and I ask three of you to pull the table [*sic*] from underneath me and put it -- and cover me with it.

(Tr. at 434-435).

After a lengthy explanation about the layout of the Twinsburg office, the patient being gowned, and the steps that he goes through when he comes into an exam room, Dr. Abdelmalak was redirected to the question at hand:

**Q. [By Ms. Snyder:] Doctor, I think my question for you was is it your testimony it didn't happen. And is that a yes? Is your testimony it did not happen?**

A. Impossible to happen.

(Tr. at 436).

Also on cross-examination, Dr. Abdelmalak was pressed on why his exam of Patient 3's sternum was not recorded in the patient's record, and at that point, he backtracked on whether he had done a sternum exam:

**Q. [By Ms. Snyder:] Okay. I did not see the word sternum in the patient record. \* \* \* But do you recollect recording in the patient record that you examined her sternum?**

A. Sternum is in the middle. She has pain in the junction between the sternum and the rib, so this costochondral junction. So I examined the costochondral junction. I didn't examine the sternum because this is the cartilage in the middle. It is not affecting. It's not -- it will not be affected by her trauma.

(Tr. at 981).

He also agreed that he did not record the discussion with Patient 3 and her husband in which he showed them the anatomy of the shoulder that he pulled up on the internet. (Tr. at 982).

Finally, Dr. Abdelmalak conceded that he chose to hurt the patient again when her husband asked why she was crying, rather than just using words to explain where he found her pain to be located. (Tr. at 981-982). He explained, "Not the same quality or the same pressure, but when I touch, I like to show this is the source of the pain because if you touch in the left side, there is no pain; but when I touch here, she will like express pain." (Tr. at 981).

The State submitted in its Closing Statement that hurting the patient again was a pretext to detract from the fact that Patient 3 was crying because she felt violated, and to provide an ostensible explanation to her husband for why she was crying.

Testimony of Caryl Abramowski, MA (formerly Caryl Trinetti).

Caryl Abramowski is a medical assistant who worked with Dr. Abdelmalak for almost 10 years at his Twinsburg office, and who stated that she was testifying voluntarily because she wanted to support him. (Tr. at 648-649, 667).

Ms. Abramowski conceded several times during her testimony that she was not present when Dr. Abdelmalak examined Patient 3. (Tr. at 657, 661-662, 679). However, according to the patient's records, she was the MA who roomed Patient 3 and asked the intake questions, and she offered testimony that some of the things Patient 3 claimed had occurred were simply not possible. (Tr. at 652, 658; Ex. 3 at 10).

Ms. Abramowski said that she recalled Patient 3 and her husband coming to the office, and she also recalled giving Patient 3 a gown and telling her to leave her undergarments on under it. She testified that the gowns have snaps on the shoulders that providers can unsnap if they need to give a vaccine or place monitors on the patient's chest, for example, and she said this was for the patient's privacy so that the gown did not have to be pulled down. (Tr. at 652-653).

Ms. Abramowski maintained throughout her testimony that it was not possible to tear off a piece of the paper that covers the exam table while a patient was sitting on it, as in the following exchange:

**Q. [By Mr. Plinke:] And so given that, if the patient is sitting on the exam table, is it possible to tear off a chunk of the paper?**

A. No, not -- no, not with the patient sitting there, no.

**Q. Okay. So in that situation, the patient is sitting on the paper, right?**

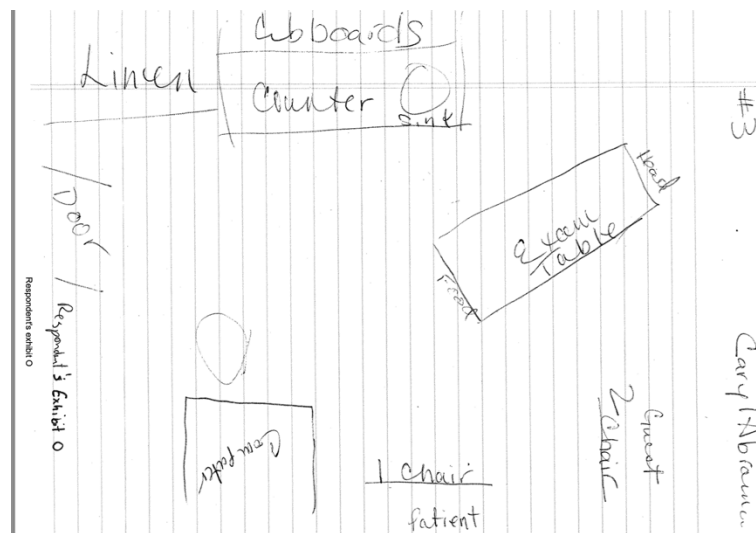
A. Uh-huh, yes, that is correct.

**Q. And then additionally there is a plastic strap across it.**

A. Yes, and it's just a thin, probably half an inch, just to keep it in place across the table.

(Tr. at 660).

In describing the exam table paper, Ms. Abramowski said that when she gets an exam room ready, she pulls the paper down from the roll located near the head of the table, extending it over the entire table and tucking it into a plastic strap on the table that keeps the paper “from flying around.” (Tr. at 659-660). She later testified that with the loose end of the paper, “[W]e take the end of that and tuck it underneath the table,” later stating that this end of the table is near the patient’s feet. (Tr. at 678-679). Ms. Abramowski drew a diagram of the exam room at Twinsburg that is similar to the one drawn by Patient 2 of the facility at Fairview. (Ex. N). Even though they are diagrams of exam rooms in two different facilities, both drawings show that the person sitting at the computer would be facing the wall, with their back to the patient:



(Ex. O).

In addition to her testimony that it would not be possible to tear the exam table paper while a patient is sitting on it, Ms. Abramowski insisted that she would have remembered if she saw that the paper had been torn when she came back to the room to get it ready for the next patient. She



said that it would be very unusual to see “a big chunk of paper” torn off from the table covering, and that she would “[a]bsolutely” remember that. (Tr. at 670-671).

On cross-examination, Ms. Abramowski agreed that she was not in the room during Patient 3’s exam, so she had no knowledge of what happened in the room that day, conceding, “That’s correct.” (Tr. at 669). Ms. Abramowski estimated that in January 2019, about 400 patients per month were seen in the Twinsburg office, which she agreed meant that she had changed rooms over after roughly 24,000 patient visits since Patient 3 was seen in Dr. Abdelmalak’s office. (Tr. at 672-673). She also agreed that she did not remember with absolute clarity what the room looked like that day after Patient 3’s exam, as she said that changing over a room is a very common task that she does every day. (Tr. at 672-673).

Ms. Abramowski nonetheless maintained on redirect exam that it would have been so unusual for the tissue paper covering the exam table to be torn that she would have remembered seeing it, when she came back into the room to get it ready for the next patient:

**Q. [By Mr. Plinke:] Whether it's a chunk or sliver, whatever, a piece of paper big enough to do that had been torn off of the table paper, is that an event you would remember?**

A. I would remember that, yes.

**Q. Would you remember that if it was out of 100,000 visits?**

A. I would remember that from any provider from any number of patients, absolutely.

(Tr. at 675).

When she was cross-examined about the possibility that the paper could have been torn off the loose end of the roll that hangs under the table by the patient’s feet, Ms. Abramowski still maintained that she would have noticed if the end of the paper was untucked from the strap on the table that holds it in place:

**Q. [By Mr. Fraser:] What if the bottom end of the paper was missing a foot, would you remember that?**

A. Given that the table paper cover is tucked in under the table at the end, I – would I notice if it was out from being tucked? I would have noticed that.

\* \* \*

Q. And would you remember that after five years after 24,000 changing rooms over?

A. Yes.

(Tr. at 675-676).

Ms. Abramowski also testified that it would not be possible to pull a patient's gown up to their collarbone, because the patient would be sitting on the gown. However, she had earlier testified that the gown has snaps on the shoulders that can be unsnapped, even for something like putting leads on a patient's chest, and Dr. Abdelmalak also testified that the gown has shoulder snaps. (Tr. at 652-653, 661, 853). Moreover, Patient 3 did not say that Dr. Abdelmalak pulled her gown up to slip the paper into her bra, and instead suggested that if the ombudsman wrote that, they may have misunderstood her. She said that he reached up under it to tuck the paper into her bra. (Tr. at 166, 174).

On cross-examination, Ms. Abramowski testified that she had seen Dr. Abdelmalak a couple of times since he left his practice, at retirement parties or going-away parties for office staff that were held outside of the clinic. (Tr. at 667-668). She explained that she felt strongly enough about the allegations that she wanted to come to the hearing to testify in support of Dr. Abdelmalak:

**Q. [By Mr. Fraser:] Why did you want to come testify?**

A. Because I feel very strongly about the allegations brought -- brought towards Dr. Abdelmalak, and I had the utmost respect for him, so I need to support that.

**Q. Would you consider Dr. Abdelmalak to be a friend?**

A. Professionally after nine and a half years, yes.

(Tr. at 667).

Ms. Abramowski testified that she never witnessed Dr. Abdelmalak say or do anything inappropriate with a patient. (Tr. at 664). She offered the following observations of Dr. Abdelmalak's mannerisms and interactions with patients:

Dr. Abdelmalak is a very compassionate and soft spoken, very caring, empathetic physician. He respects every patient that he sees. I mean, he is very professional. He does not get -- he does not get overly friendly with his patients. He is always very professional and very thorough. He always gives the patient an ample amount of time to discuss, ask questions, things of that nature.

(Tr. at 664).

#### **Patient 4**

Patient 4 lives in the Cleveland area and was permitted to testify virtually pursuant to OAC 4731-13-20.1 because her fibromyalgia was causing widespread pain shortly before the hearing, making it difficult for her to travel. She testified that she saw Dr. Abdelmalak about six or seven times at Fairview Hospital in 2019 for a concern about widespread pain throughout her body, as well as

tingling and numbness in her hands and feet. She recalled that she was about 43 or 44 years old at that time, and that she had office visits as well as injections with Dr. Abdelmalak. (Tr. at 276-280).

Patient 4 testified that Dr. Abdelmalak examined the “fibromyalgia touch points,” at an office visit and recommended water therapy, and he also did some trigger point injections in his office. She said that Dr. Abdelmalak prescribed tramadol for her, but that she found out she was allergic to it, and her pharmacist advised her to stop taking it. Patient 4 said that her last visit with Dr. Abdelmalak was in August 2019. (Tr. at 280).

Patient 4 said that up until her last visit, Dr. Abdelmalak had checked her heart and lungs in a way that she found “very odd,” and had never experienced with any other doctor. (Tr. at 282-283). She explained that he would put the stethoscope in her bra and run it over her nipple, and that he would put his hand on her breast when directing her to lean back on the exam table:

“Whenever I went there, I found it odd that -- that when he was -- when they take the stethoscope to check like your breathing and they put it, you know, on your -- normally they would put it on like your chest and have you breathe in and out and often your back and have you breathe in and out.

He would like take the stethoscope, lift up my shirt and my bra and -- sorry, and then like take the stethoscope, run it like -- lift up my shirt and my bra and run it over -- up past my nipple like up and down like listening for my heartbeat, and I thought that was really weird. And like when he would have me lay down back on the table you sit on when you are getting examined, like the bed table thing. \* \* \* When he would have me lean back, he would always -- he would put his hand on my breast and like push -- not like shove but like push me back with his hand on my breast.

(Tr. at 281).

Patient 4 testified that she was not offered a gown to wear at her office visits, and she said that she had never complained of pain in her chest or breasts. (Tr. at 282, 284). When she was asked if he touched her breasts that way at all of her office visits, or just some of them, she replied, “As far as I can recall, all of them. And I thought it was very odd.” (Tr. at 282). However, she related that she once asked her gynecologist if it was normal for a doctor to touch her in that way, and the gynecologist “blew [her] off,” saying that doctors are used to touching people all day long. (Tr. at 283).

Patient 4 also testified that there was always a chaperone in the room during her office visits, but she said that the chaperone stayed focused on the computer and did not watch her exam:

There was always a woman in the room but where the bed was set, it was like on the left side of the room, and then the woman was on the right side where there was like a computer space facing the wall on the right side. And to my knowledge, that

woman never looked over in the direction. She was always staring at the wall the entire time like at the computer -- like never looking over as to what was going on in the room at all.

(Tr. at 282).

Patient 4 testified that Dr. Abdelmalak wanted to give her more trigger point injections for her fibromyalgia, but she said that she shots were painful and gave her only a day or two of relief from her pain. (Tr. at 284).

Finally, Patient 4 related that at her last visit on August 19, 2019, Dr. Abdelmalak put his hands down her pants to her "clitoris area."

I remember he was pushing more trigger point injections even though I, you know, told him that they weren't helping at all. Like if anything, they lasted like a day or two. And I know they were really painful because I would be in tears when I got them and that he had me laying down in the bed and for some reason, I have no idea why, he had no gloves on or anything and he put his hands down my shorts and, you know, under my underwear and then put his hands like with his hand flat like not -- not moving anything, just flat, and went down like too far down like to where your like clitoris area is. And like it felt like an eternity like that his hand was there. I mean, I don't know how long exactly it was. I was like completely in shock, that I wanted to get out of there, and I have no idea why he even did that.

And he was -- after he did it, I just wanted to get out of there. He was saying I had to get more trigger point injections. And I wouldn't get any more medicine which I didn't even care about, and I just wanted to get out of there. I just agreed with whatever he said so I could leave.

(Tr. at 284-285).

Patient 4 testified that she had never complained of pubic or pelvic pain, and that Dr. Abdelmalak did not explain what he was going to do at that visit, but instead she said, "He just did it." (Tr. at 284, 286). The patient related that she did not say anything when Dr. Abdelmalak touched her there, because she was in shock:

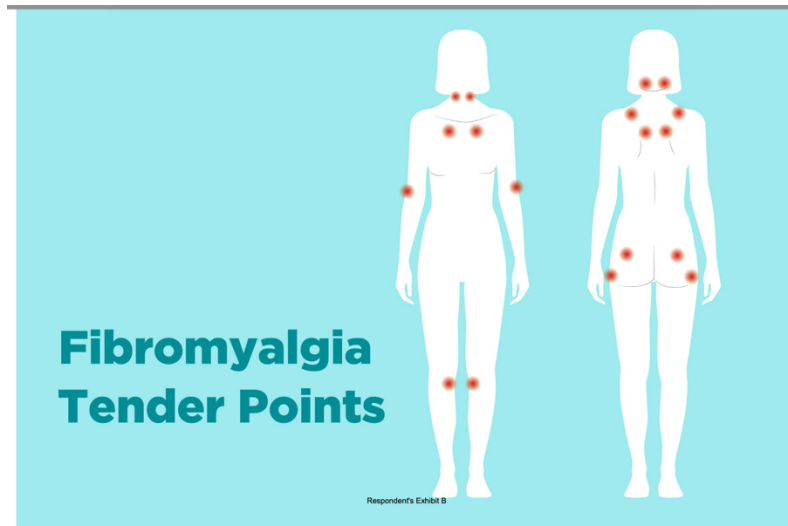
**Q. [By Mr. Wilcox:] Did you say anything when the doctor as you described touched near your clitoris?**

A. No. I was in complete shock. I didn't know what to do. I was like frozen like in my -- I couldn't believe what was happening. I was very uncomfortable, and I just wanted to get out of there right away.

(Tr. at 286).

The patient further related that when she had the trigger point injections, they were in her shoulders, and in areas on her back and neck, and not in her pubic area. (Tr. at 286-287).

A diagram of the fibromyalgia tender points presented by Dr. Abdelmalak at the hearing shows where the points are located on the front and back of a patient's body, with several located in the gluteal area on the back, but none in the pubic area on the front of the body:



(Ex. B at 4).

Patient 4 stated that she had never experienced anything like that from any other doctor in her whole life, and she reported the incident to the ombudsman's office "either that day or within a couple days." (Tr. at 287-288). When she was asked why she reported the incident to the Clinic, she testified, "Because I felt violated. It was -- it wasn't -- to me it did not feel right at all. It felt like I was being violated, groped or. It's just -- it wasn't right. It made me very extremely uncomfortable." (Tr. at 288).

Patient 4 said that after she made her complaint, she spoke to the investigator only on the phone -- not in person -- and she later got a letter that she believed was dismissive of her complaint. (Tr. at 287-288). The patient related:

I called the ombudsman and I complained and then they called me and had their Cleveland Clinic Police person, investigator, or something on the phone at another time and asked me about it. And they were going to do their investigation.

And then I remember, I don't know, getting a letter or something like that, or I don't know, something that made me feel like I was in the wrong. Like they found no -- that he did nothing wrong, like that was like a normal thing from their understanding for an examination. And I was like what? It made me feel like I was -- they made me feel like it was wrong to even say anything about this.

(Tr. at 287-288).

Patient 4 testified that after the August 2019 visit where Dr. Abdelmalak put his hands down her pants, she never went back to him. This presented a unique challenge for her because, as a chronic pain management patient, she was told that she had to get a letter saying that he was no longer her provider, before she could see another doctor. She explained that this left her unable to simply have an initial consultation with a different doctor, to see if she felt comfortable with the new provider. (Tr. at 289-290). The patient further explained, “And you could only go to one more – you know, one more person. And after that, that would be considered doctor shopping, but I was too afraid to go because I didn’t know who like I would feel comfortable around \* \* \*” (Tr. at 290).

At the time of the hearing, Patient 4 said that she did not have a pain management specialist. She had only her primary care doctor, whom she had seen for the last 15 years, and a female hematologist that she was seeing for bloodwork when it was needed. Patient 4 testified that this incident had made her anxiety worse, and had caused her not to want to be alone with male healthcare providers. (Tr. at 288-291). She added that she tries to avoid seeing all doctors in person now, and tries to see only female physicians when she has to be seen in person:

I try to do everything on video. I try not to go into offices if I don't have to. And I know -- like I always just have women. I had to have a colonoscopy by or something and they scheduled it and then I found out it was with a man. Made them reschedule it.

(Tr. at 290-291).

Patient 4 testified that she never filed a lawsuit against Dr. Abdelmalak, explaining:

[T]he clinic made it seem like he did nothing wrong and made me feel like for reporting him that I was – I had no reason to report him. It made me feel like I was crazy for thinking that that was wrong for him to do. That’s how I felt.

(Tr. at 291).

On cross-examination, Patient 4 was shown the diagram of the Fibromyalgia Tender Points, which include four points in the gluteal area. (Ex. B at 4). The patient testified that she has had providers push on points on her body to examine her for fibromyalgia, but she said that she had not had any of the tender points marked by the “inverse V” shown on the gluteal muscles in the diagram. She described her fibromyalgia symptoms as tenderness and tingling in her hands and feet, and diffuse pain all over her body, including in her face, neck, shoulders, back, and knees. (Tr. at 293-295).

Much of the cross-examination of Patient 4 was focused on whether she exhibited drug-seeking behavior that Dr. Abdelmalak would not tolerate from her. The patient said that she was on diazepam (Valium) as well as a statin when she began seeing Dr. Abdelmalak. She denied taking Norco at that time, although she said she had taken it in the past, before some of the laws

concerning pain medications were changed so that only pain management specialists could prescribe it for ongoing pain. (Tr. at 295-296). She also acknowledged that she had taken Cymbalta in the past, but she recalled that it did not relieve her pain, and she added, “I just remember nothing was helping.” (Tr. at 296).

Patient 4 agreed that Dr. Abdelmalak wanted her to go to physical therapy as well as pool therapy, and that both were modalities that she had not tried before. (Tr. at 297). When she was asked if she made an effort to go to pool therapy consistently, Patient 4 explained that she went, but that she found that it worsened her anxiety and her migraines:

I remember going a lot and I remember them having to like turn off the lights in the pool because of my migraines and I remember my anxiety getting really bad when I was there and them having me like sit in a chair.

(Tr. at 297).

Patient 4 also testified that there were times she was just not well enough to go to pool therapy, relating, “I feel like I remember that I went a lot. There are times that I might physically have not been even able to go but I don’t remember how many.” (Tr. at 300). A note in the patient’s medical record on April 15, 2019 states, “Patient is doing home aqua therapy.” (Ex. 4 at 114). Another note on July 23, 2019 indicates, “Patient reports she is currently doing aqua therapy.” (Ex. 4 at 37). However, the patient testified that she eventually stopped going to aqua therapy because she related, “I just remember it wasn’t helping.” (Tr. at 298).

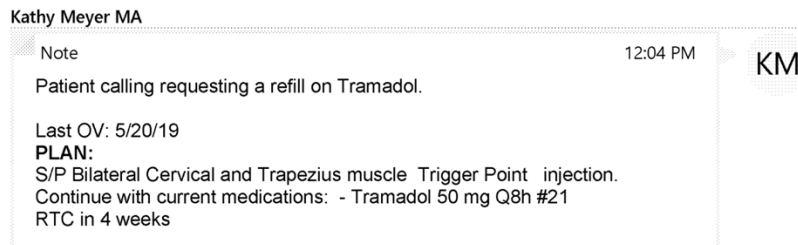
The patient also apparently followed up with the recommendation to have physical therapy, and her record indicates that she called Dr. Abdelmalak’s office on July 3, 2019 to explain that she was requesting a new evaluation so that she could continue going to physical therapy:

Just letting you know per Pt evaluation person I can't go to pt again until I can get into see her to be evaluated again then I am allowed to go again something about the clinic makes you get evaluated every 30 days

(Ex. 4 at 45).

Patient 4’s medical records indicate that as of June 4, 2019 when the note below was recorded, her plan of treatment was for trigger point injections in her neck and shoulder areas, and to continue taking tramadol 50 mg. every 8 hours, as Dr. Abdelmalak had prescribed for her at her visit on April 5, 2019. At that visit, he also prescribed amitriptyline 25 mg. at bedtime and Bentyl 20 mg. three times a day. (Ex. 4 at 122, 174). The patient was pressed on whether she rejected Dr. Abdelmalak’s suggestion that she try injections in her back, preferring to stay on pain medication, instead, as she was referred to a May 30, 2019 message in her chart in which she asked, “What are these back shots if they are anything like the neck shots they are not going to work what else can we do for this pain and movement restrictions I am hurting so much.” (Ex. 4 at 81). Patient 4 did not remember if she had any injections in her back, but she maintained that the injections in her neck and shoulders gave her relief for only a day or two. (Tr. at 299).

Although the patient did not recall ever asking Dr. Abdelmalak for “tramadol” by name, she agreed that she could have requested a refill of that medication, as shown by the June 4, 2019<sup>12</sup> note recorded by the medical assistant in her chart:



(Ex. 4 at 174; Tr. at 300-301).

Patient 4 agreed that Dr. Abdelmalak prescribed for her, but she did not remember the specific drugs he prescribed, except that she remembered tramadol because she said she had an allergic reaction to it. However, she did not remember what symptoms she had in that reaction or when the reaction started, and instead stated that she just remembered her pharmacist telling her to stop taking it and offering to call her doctor’s office for her. (Tr. at 300-303).

On cross-examination, Patient 4 maintained that there was always a woman in the room with Dr. Abdelmalak when he examined her, but she reiterated, “[A]s far as I know, she never looked over in my direction because the computer was towards the wall.” (Tr. at 304). When she was pressed about whether the woman “never once” looked at her, Patient 4 maintained, “I never saw her looking.” She did concede that it was possible that the chaperone could have looked her way when she was not looking at the chaperone, but she added, “I don’t know why that would be considered okay, and they wouldn’t have said anything.” (Tr. at 305). When she was asked to elaborate about what she meant, Patient 4 stated, “the stethoscope thing, my shirt was being lifted up and my bra, and the last visit why his hands were -- was down my pants.” (Tr. at 305).

Patient 4 was also cross-examined about why she continued seeing Dr. Abdelmalak after she felt there was something inappropriate in his exam, but she explained that she trusted him because he was a doctor:

**Q. [By Ms. Moore:] Why keep going back? I mean, you said the injections aren't working. You think he is doing something weird with the stethoscope.**

A. Because he was a doctor. I thought he was doing what he had to. I was very inflamed and stuff. I didn't know that wasn't like -- I just didn't know. I thought it was odd, but it was a doctor so someone you could trust.

---

<sup>12</sup> The date of June 4, 2019 appears in the record along with the patient’s name, but has been cropped in the image above, so that her name would not be included. (St. Ex. 4 at 174)



(Tr. at 305-306).

Dr. Abdelmalak's Testimony in Response to Patient 4's Allegations

Dr. Abdelmalak testified that he saw Patient 4 in January 2019 and diagnosed her with fibromyalgia, which he described as pain in the fibrous and muscle tissues of the body. He explained that under the AMA criteria, a diagnosis of fibromyalgia requires a finding that the patient is reactive in at least 11 out of the 18 tender points, so he had to examine those points in the front and back of her body. (Tr. at 866-868; Ex. B at 4). In his interview with Board investigators in May 2022, Dr. Abdelmalak said that Patient 4 had "a severe case of fibromyalgia." (Ex. C at 1:27:27-1:27:32).

Dr. Abdelmalak generally characterized Patient 4 as having drug-seeking behavior. He said that when he first saw her in January 2019, she was taking two tablets of Norco 5/325 mg every six hours, which was equivalent to 60 mg of morphine per day, and she was also taking 10 mg. of Valium every six hours, for an additional total of 40 mg daily of Valium. Dr. Abdelmalak said that this concerned him because it is a high dose, and because there is a black box warning not to combine "Valium with [a] narcotic," because it can cause respiratory arrest or death. (Tr. at 441-442, 448-449, 867-868).

He testified that he thought Patient 4 seemed "sleepy" at her office visits, as well as during her testimony at the hearing:

Valium is tranquilizer. It make the patient like relaxing, sleepy and this what she looks to me every time she came to the office. She looks like sleepy, delayed answer, the same picture I saw her in the video when I watch her testimony.

(Tr. at 868).

Dr. Abdelmalak explained that he referred Patient 4 back to her prescribing psychiatrist to discuss her Valium prescription because although he thought it was a high dose, he did not want to "step on his foot," but he agreed this was not documented in his notes. (Tr. at 872-873). Dr. Abdelmalak also testified that he did not continue writing Norco prescriptions for Patient 4 because it is not indicated for fibromyalgia. Instead, he prescribed gabapentin, Neurontin, and amitriptyline, to see if those medications would give her relief from her pain. However, he said that she complained that those drugs did not work and tried to present reasons that she should go back on Norco:

[W]hen she came for follow-up, did you take gabapentin? Oh, I stop it because it cause diarrhea. I never heard about gabapentin and diarrhea. Then I said no. We need to go back to it. I don't like to go back to it. Why? Because I read in the side effect it can cause weight gain.

(Tr. at 869-870).

Dr. Abdelmalak recalled that he did not initially prescribe tramadol for Patient 4, but that he later prescribed it in conjunction with trigger point injections at her second visit, to relieve her pain just enough so that she could tolerate the physical therapy he prescribed. (Tr. at 448, 870-871).

Dr. Abdelmalak emphasized that he offered several different kinds of treatments that could help Patient 4, but he contended that she only wanted medication:

I said do what we ask for, stop smoking because she is one pack use documented in her chart for long time. She smoke one pack cigarettes for 26 years. Do physical therapy, aqua therapy in the swimming pool. Go to behavioral health or psychiatry. Take the medication as prescribed.

**Q. [By Ms. Moore:] Sir, did she do any of those things?**

A. She was noncompliant for anything except medication.

(Tr. at 875).

Dr. Abdelmalak also questioned Patient 4's claim that she developed an allergic reaction to tramadol, which he believed was just before her last visit with him. He referenced an August 30, 2019 message from the patient that stated, "I have been getting tramadol it helps a little," but then adds, "I have been itchy this month." (Ex. 4 at 19). He pointed out that she was on tramadol when he saw her on August 9, 2019 and had not reported any side effects then, nor did he observe any signs of an allergy when she took the drug for a span of about three months. (Tr. at 878-879, 985; Ex. 4 at 15). At the hearing, he questioned, "[W]hy allergy come back after three months using?" (Tr. at 449). He suggested that the patient was drug-seeking because she was insistent about going back on Norco at every visit:

**Q. [By Ms. Moore:] What did you interpret her reference to Norco to be about?**

A. What she need, she need to go back to Norco because this is constant every visit. Are you going to give me some Norco? I said no. I give you tramadol.

**Q. So she had been asking about Norco at other visits.**

A. Every visit, not other, every visit.

(Tr. at 880).

Although his plan was to discuss other treatment options with Patient 4 at her next visit in September 2019, Dr. Abdelmalak said that the patient complained to the ombudsman before then, relating, "I understand she is not happy with my care and she want to be released." (Tr. at 880).

On cross-examination, Dr. Abdelmalak maintained that he believed Patient 4 “look[ed] drunk” when she testified by real time videoconference at the hearing, adding, “[S]he looks like drunk because she taking medication make her like this way.” (Tr. at 437).<sup>13</sup> He later conceded that he last saw Patient 4 about four years ago and did not know what medications she was currently taking, but he said that he thought she appeared to be under the effects of Valium, a tranquilizer, as she testified. (Tr. at 437-442). Dr. Abdelmalak agreed, however, that even though he had concerns about Patient 4’s use of Valium when he was treating her, he did not note those concerns anywhere in her patient record, and also did not note his impression that she was “really mad” about his refusal to prescribe Norco. (Tr. at 442-443, 987).

Dr. Abdelmalak clarified that Patient 4 was not seeking tramadol, even though the Assistant Attorney General suggested that tramadol has also been a controlled substance since 2014. He explained, “She is not drug-seeking tramadol \* \* \* She drug seeking narcotics which is, of course, Norco.” (Tr. at 445-446). He still agreed that he did not record that either, conceding, “I didn’t record anything about medication problem.” (Tr. at 453).

Patient 4’s records do not show that Dr. Abdelmalak was observing drug-seeking behavior from her or that he had reason to believe she was using pain medications improperly. In an April 15, 2019 entry that was about mid-way through her treatment with him, he noted that her OARRS report was checked and no suspicious activity was identified:

---

Neck: **Tenderness over the bilateral cervical paraspinal muscles**  
Back: **Tenderness on palpation over the lumbar spine, bilateral lumbar paraspinal muscles, Pain reproduced with extension and flexion**  
Extremities: **Tenderness over bilateral knees**

Neurological:  
Mental Status: alert and oriented x 3  
Gait: Normal.

OARRS website checked and validated. All prescriptions have been APPROPRIATELY filled. No suspicious activity was identified. - by Joseph Abdelmalak, MD

---

(Ex. 4 at 114).

Even by the time of Patient 4’s last visit with him in August 2019, Dr. Abdelmalak documented what appears to be a relatively low NARX Risk Score in her patient record:

---

<sup>13</sup> Although Patient 4 appeared to be a person who was not feeling very well, the Hearing Examiner does not believe that she appeared drunk or impaired in any way, and the transcript shows that she gave coherent testimony.

CCHS PDMP NARXCARE SCORES	
Row Name	08/09/19 0608
OTHER	
NARX Stimulants	000 -CC at 08/09/19 0608
NARX Sedatives	481 -CC at 08/09/19 0608
NARX Narcotics	411 -CC at 08/09/19 0608
NARX RISK SCORE	280 NARxCHECK scores -CC at 08/09/19 0608

(Ex. 4 at 31).

Nonetheless, Dr. Abdelmalak testified that he thought Patient 4 had fabricated a lie against him because he would not prescribe the drug that she wanted:

**Q. [By Ms. Snyder:] Okay. So you think she made the whole thing up because you didn't give her her drugs.**

A. 100 percent.

**Q. Oh, she is just lying about all of it.**

A. I am not saying lying. This is her perception. This is interpretation.

**Q. Oh, you said she made it up. That's lying, right?**

A. For me I cannot define made up by lie.

\* \* \*

**Q. So she made up this whole story about you groping her breasts because you wouldn't give her Norco?**

[Discussion of objection, which was overruled]

A. I don't know what they are -- thought, what they feel. I cannot speak in her behalf.

**Q. Okay. But that's your theory. I mean, that's your defense.**

A. My defense is she is not happy with my service –

**Q. Okay. Because [you] didn't give her the drugs.**

A. 100 percent.

(Tr. at 450-451).

Dr. Abdelmalak later retreated from calling the patient “drug-seeking,” explaining, “I cannot identify her as drug seeking, but she come for one drug in particular,” and then added, “[S]he looks to me like she is coming for taking medication because her primary care didn’t prescribe it \* \* \*” (Tr. at 983-984). Later in his testimony, he explained that he did not put this in her patient record because he did not have actual “evidence” of drug-seeking:

**Q. [By Ms. Snyder:] If you actually thought she was drug seeking, that's a very important piece of information to put in a patient's record, right?**

A. I said I cannot put this in the note without evidence. I see her behavior, yes; but I have evidence, no.

**Q. Okay. Isn't that an important thing to communicate to another physician who might treat her in the future, like, hey, I think this patient might have been drug seeking, watch out for the Norco?**

A. If I know who is the physician and if he ask me why she release from your care.

(Tr. at 986).

At the hearing, Dr. Abdelmalak introduced into evidence the report of the Cleveland Clinic Ombudsman’s office. The report indicates that Patient 4 complained that Dr. Abdelmalak had “grabbed her breast and rubbed them with his stethoscope” and that he “touched her above her pubic bone and the top of her behind (under her pants), while “the chaperone was looking at the wall.” (Ex. G at 2). It does not include any response by Dr. Abdelmalak to the patient’s complaint, although the report is very heavily redacted, so any summary of an interview with him may have appeared in the redacted section. The report indicates that by September 24, 2019, the Ombudsman’s office had informed the patient “criminal charges would not be pressed, as exam was appropriate,” but that a grievance would be filed on behalf of Patient 4. (Ex. G at 16).

At the end of the ombudsman’s investigation, Patient 4 received the same form of letter that had been sent to Patient 3, assuring her that her concerns were taken seriously and that a formal grievance had been filed against Dr. Abdelmalak with the Executive Administration, the highest level of the hospital’s leadership:

[Patient 4], I thank you for sharing this information with me. I cannot imagine how this has made you feel. The Cleveland Clinic takes concerns such as these very seriously. Please know that your concerns have been listened to by the Cleveland Clinic and they will continue to be listened to by the Cleveland Clinic. We will utilize your feedback as a learning opportunity with our providers in Pain Management, we will reiterate to them that open and clear dialogue with patients is very important and needs to be exhibited. A formal grievance has been filed against Dr. Abdelmalak. The grievance has been communicated to Executive Administration which is the highest level of hospital leadership.

(Ex. G at 17).

Testimony of Kathy Meyer, MA

Kathy Meyer is a medical assistant who worked with Dr. Abdelmalak at his Fairview office from late 2014 until sometime in 2020. (Tr. at 681-683). She testified that, in addition to rooming patients, taking vital signs, and transcribing office notes, she also sometimes served as a chaperone for Dr. Abdelmalak's exams. (Tr. at 683). Ms. Meyer said that the purpose of serving as a chaperone was "[t]o make sure that the patient and the provider are both covered and watch everything that happens if it's an exam \* \* \* make sure my eyes are focused on the exam that's going on." (Tr. at 683).

When she was shown the name of Patient 4 on the patient key, Ms. Meyer said that she recalled serving as a chaperone for that patient's exams, but she maintained that she never saw Dr. Abdelmalak use his stethoscope inappropriately:

**Q. [By Mr. Plinke:] Okay. Now, for this patient it is alleged that Dr. Abdelmalak on each visit would run his stethoscope over the patient's nipple. Did you ever observe anything like that?**

A. Absolutely not.

(Tr. at 684).

She stated that he would listen "up here" demonstrating near the clavicle, but "never near the nipples." (Tr. at 696).

Ms. Meyer testified that she "absolutely" would have been in a position to see if Dr. Abdelmalak had done this, emphasizing that the exam rooms are not very big and adding, "Any type of touching, we always watched." (Tr. at 685). Ms. Meyer also testified that she never saw Dr. Abdelmalak put a hand on Patient 4's breast to guide her back on the exam table. (Tr. at 686-687).

Ms. Meyer said that Patient 4 was being seen for back and neck pain, so the patient never had a pelvic exam. She stated that she was the chaperone "pretty much for every exam," although she could not recall how many office visits Patient 4 had. (Tr. at 685-688). When she was asked why she was there as a chaperone if Patient 4 never had a pelvic exam, Ms. Meyer responded, "I was also a transcriber \* \* \* I went in with every single patient, whether it was pelvic exam, back exam, neck exam. I was always in there present." (Tr. at 686).

When she was directed to the office visit notes of Patient 4's visit on August 19, 2019, she agreed that the "HPI and Assessment" section indicates, "Kathy Meyer present," which she said shows that she chaperoned this visit. (Tr. at 689-690; Ex. 4 at 18). Ms. Meyer said that she never saw Dr. Abdelmalak try to put his hands down Patient 4's pants or touch her in any way that was not for a medical purpose, and that if she had seen that, she would have reported it. (Tr. at 688, 691-692). She maintained that when she chaperones a visit, she pays attention to the patient and the

provider, offering, “I don’t ever look at the wall. \* \* \* I sit there and watch their conversations, listen to them, observe.” (Tr. at 690-691).

Although Ms. Meyer did not recall Dr. Abdelmalak discussing the dangers of mixing benzodiazepines with opioid medications, she said that Dr. Abdelmalak is “strongly against” prescribing a lot of narcotics for patients, especially for non-malignant types of pain, and that he sometimes discontinues the narcotics that patients are on when they start seeing him. (Tr. at 691). In Patient 4’s case, Ms. Meyer testified that she believed this patient was on hydrocodone (Norco) when she became Dr. Abdelmalak’s patient, but that he took her off that, and prescribed tramadol instead. (Tr. at 691-692).

Ms. Meyer testified that Patient 4 was given a short-term prescription for tramadol, but that she contacted the office “numerous times” requesting additional tramadol. (Tr. at 693). By August 30, 2019, however, Ms. Meyer testified that Patient 4 was complaining that the tramadol was making her itch and was asking if she could go back to taking Norco instead. (Tr. at 693-694; Ex. 4 at 15). She pointed to the following communication from Patient 4 on the morning of August 30, 2019:

I have been getting tramadol it helps a little with the pain however I have been itchy this month it is worse I itch everywhere and even have redness on neck and sometimes red bumps. I asked around and this has happened to other petiole who take tramadol I never got this when taking narco.

(Ex. 4 at 15).

Ms. Meyer responded to Patient 4’s message on September 3, 2019:

Good morning,

You were last seen by Dr. Abdelmalak on 8/9/19 and did not report any side effects from this medication at that time. You can discontinue the Tramadol and see if these symptoms resolve. You are scheduled on 9/16/19 and can discuss medications at that time with Joseph Abdelmalak, M.D.

(Ex. 4 at 15).

Ms. Meyer offered, “To me that is a red flag because she was asking for Norco. I remember previously I think when she was originally taken off of the Norco.” (Tr. at 695-696). However, on cross-examination, she agreed that Patient 4 was not specifically asking for Norco in her message — she was just stating that she did not get the itching when she took Norco. (Tr. at 698-699).

In later testimony, Ms. Meyer agreed that Patient 4’s OARRS report would have been checked and that most of the time, those reports were printed out. (Tr. at 708). She pointed to an example in the patient’s chart noting that her OARRS report had been checked on January 29, 2019:

OARRS website checked and validated. All prescriptions have been APPROPRIATELY filled. No suspicious activity was identified. - January 29, 2019 by Joseph Abdelmalak, MD

(Ex. 4 at 165).

A similar note appears in the office visit notes of Patient 4's appointment on April 15, 2019 (Ex. 4 at 114).

On cross-examination, Ms. Meyer was pressed on how she could have scribed the notes of Patient 4's August 19, 2019 office visit and still observed the exam as a chaperone. She agreed that if she were typing on the computer in the exam room, she would be facing the wall, but she maintained that she was not doing that during the exam, and instead, she offered, "Generally, I would not do like the actual transcribing until afterwards." (Tr. at 700).

Ms. Meyer also testified that she would usually "pre-chart" certain information in the notes, such as the patient's list of medications, before the exam, but she reiterated that she does not write things down as the doctor is doing the exam. When Ms. Meyer was directed to the detailed notes of an exam that she transcribed on January 29, 2019, in which the fibromyalgia tender points were examined, she testified that she would have written those from memory after the exam was finished:

**Q. [By Mr. Wilcox:] During the visit you are writing down the tender points and musculoskeletal exam, the neck is supple, the tenderness –**

A. After the exam is complete, yes, then I would put that in there.

**Q. How would you remember after the visit?**

A. I have been doing it for six years. I mean –

**Q. So you don't – you don't write things down contemporaneously, as the doctor is doing these.**

A. No. After he did his exam, some tender points, okay, whatever it is.

(Tr. at 707).

When Ms. Meyer was asked to describe Dr. Abdelmalak as a physician, she offered, "He's caring, compassionate. He explains everything to everybody for every exam what he is doing, reasons for it." (Tr. at 691).

On cross-examination, Ms. Meyer admitted that she just recently learned that seven different women had made complaints against Dr. Abdelmalak, and she agreed that this surprised her. (Tr. at 705). When she was asked if she could imagine any reason that multiple patients would make allegations of sexual assault against Dr. Abdelmalak, Ms. Meyer suggested that people sometimes seek out "chat rooms" online, and that she had heard of a pelvic pain website that served as a kind of support group for patients. However, she did not know if people in that chat room discussed



complaints against physicians, or if any of the patients in this case -- whose complaints were spread out over nine years -- took part in such a chat room. (Tr. at 705, 709-711). She ultimately concluded, “[H]onestly I have no idea why.” (Tr. at 710).

## **Patient 5**

Patient 5 lives in Michigan and testified that she traveled about four hours to testify at the hearing, along with her husband, who sat beside her while she testified. The patient has a bachelor’s degree from Marquette University, and she stated that she was a “fairly good salesperson” for a supply chain company until she began having debilitating pain, and that now, she describes herself primarily as a “chronic pain patient.” (Tr at 53-54, 141).

Patient 5 testified that she started having pain only a few weeks into her first pregnancy about ten years ago. After having an ultrasound that ruled out an ectopic pregnancy, the patient said that she “thought this is just what pregnancy was,” since it was her first pregnancy and she had nothing else to compare it to. (Tr. 56). Patient 5 said that she continued to have “crippling pain,” followed by a “very intense” 40-hour labor before her child was born in late December 2014. The patient explained that by this time, she was considered a chronic pain patient because her pain had continued for more than six months. (Tr. at 56-57).

Patient 5 testified that she continued to have extreme pelvic pain after her baby was born, and that she had various tests, including a pelvic x-ray that confirmed she did not have a broken pelvis. She did pelvic floor physical therapy, and when that did not resolve her pain, she had two hip surgeries in January 2015 to remediate femoroacetabular impingement (“FAI”) and labral tears on both hip joints. (Tr. at 57). However, Patient 5 said that after the surgeries, she had “horrendous pudendal nerve pain” that “spiral[ed] completely out of control,” and caused pain not only in her pelvis, but in her back, her neck, and her hands and feet. (Tr. at 57-58).

Patient 5 recalled that she saw multiple doctors to try to get some relief, counting on her fingers before announcing that she could think of at least ten different physicians “without any effort.” (Tr. at 59). The patient was living in Milwaukee at that time, and she said that by 2016, she had seen every doctor in Milwaukee and Chicago that she thought might be able to help her, to no avail. In desperation, she described turning to the internet, where she discovered the chronic pain program offered by The Cleveland Clinic. (Tr. at 58-59, 102). Patient 5 recounted that she traveled to Cleveland with her husband to take part in a chronic pain group that she had previously joined online, and there, she was referred to Dr. Abdelmalak who was available to see her that same day:

Nothing was helping, and then I literally started Googling. And I found Cleveland Clinic had a chronic pain program and I went to the chronic pain program and they didn't sign me up for interventional anesthesiology, so I asked in the lobby if they would give me an interventional anesthesiologist. And they said Dr. Abdelmalak, he is chronic pelvic pain. And he agreed to see me that same day at 3:00 or 3:30 in the afternoon \* \* \*

(Tr. at 59-60).

Patient 5 said that Dr. Abdelmalak was very personable and spent “an incredible amount of time” with her at her first visit with him. (Tr. at 60-61, 96). She said that he took a very detailed history from her, and then did an “incredibly thorough” exam, asking her which areas hurt as he conducted the exam. (Tr. at 60). Patient 5 credited Dr. Abdelmalak with being the first doctor to identify the source of her pain:

[H]e was the only doctor who was ever able to replicate and locate my what I will call cro[t]ch,<sup>14</sup> meaning like the area you sit on, pudendal nerve pain. \* \* \* He is the only one who could find it, identified it, diagnosed it. He was the only one.

(Tr. at 60-61).

Patient 5 related that Dr. Abdelmalak was very interactive, and that he spoke to her in a way that other doctors had not, showing her pictures of his family and asking questions about her own family. (Tr. at 61). At the hearing, she gave him credit for relieving her pain and for dramatically improving the quality of her life:

**Q. [By Ms. Snyder:] \* \* \* Did he give you any relief of your pain?**

A. 100 percent. He is the one who diagnosed my primary problem which is pudendal neuralgia. \* \* \* He is the reason why I have the diagnosis. He is the reason why I have treatment. He is the reason why I could get the ablation. He is the reason I have the spinal cord stimulator. \* \* \* He put the spinal cord stimulator into my spine. He is the reason I can sit. He is the reason I can walk. He is the reason I can -- do you see how fast I walked in here? I used to drive into his office and lay on the floor in the waiting room because I couldn't sit. I couldn't pick up my kid.

(Tr. at 62).

Patient 5 testified that Dr. Abdelmalak's treatment of her pain was so critical to her ability to function that, in 2017, she and her husband made the difficult decision to relocate their family to metro Detroit, her hometown, so that she could be in closer proximity to the Cleveland Clinic. At that time, Patient 5 quit her job and her husband transferred to his firm's Detroit office, which she said was a risky decision because his company was headquartered in Milwaukee, with only a satellite office in Detroit. (Tr. at 63-64, 136).

Patient 5 agreed that Dr. Abdelmalak never told her or induced her in any way to move closer to his practice, but she emphasized that he was the reason she chose to uproot her family and relocate to Detroit. (Tr. at 118-119, 140-141). And, although Patient 5 said that her mom served as “a

---

<sup>14</sup> The Hearing Examiner's notes indicate that Patient 5 used the word “crotch,” instead of “crouch,” the word that appears in the transcript. (Tr. at 60)

beautiful nanny” to her child once they moved to Detroit, Patient 5 disagreed with a suggestion that the move might have been motivated by the ability to have her family’s help with childcare, countering, “I would say the exclusive reason was Dr. Abdelmalak, bar none.” (Tr. at 141). She related during her testimony that she believed Dr. Abdelmalak was her only hope for an acceptable quality of life:

I was so certain that Dr. A was the only way I was ever going to be able to be a mom to my baby that I quit my job, and I moved back to my hometown, the place I swore I would never go to, so my mom could help me with my baby and so I could go see him as much as I needed to in order to get better because I couldn't keep going there and back in one day and going back to work in Milwaukee because that was not the way to get better. It was too draining, and I knew I only had a certain amount of energy. So I knew if I was going to get better for my baby, I had to only drive three hours each way. And so that's what [Patient 5's Husband] and I did.

(Tr. at 62-63).

Patient 5 testified that she treated with Dr. Abdelmalak consistently from 2016 to 2021, and that during that time, she had various procedures including nerve blocks, ablations, pubic symphysis injections, medication management appointments, and ultimately, a surgery to implant a spinal cord stimulator. The frequency of her visits ranged from once every three months to twice a month, depending on the type of treatment she was having. (Tr. at 64-65).

Patient 5 recalled that Dr. Abdelmalak performed “fairly frequent” pelvic exams on her, but not at every visit. (Tr. at 66). She explained, for example, that after she got a pudendal nerve block injection, he would do an exam to test her nerve responses, in order to evaluate how the nerve had responded. During a pelvic exam, she would lie on her back on the exam table, with her knees bent, while Dr. Abdelmalak put his hand in her vagina and pushed on an area that felt to her as though it was next to her hip joint, but on the inside. She said that the internal exam was “pretty fast,” and that very often during the exam, he would ask for his assistant to apply counterpressure on her knee. However, she said that when the assistant was not called to apply pressure, that person would be typing on the computer in the room. (Tr. at 66-70).

Patient 5’s last visit with Dr. Abdelmalak was on April 19, 2021. (Ex. 5a at 2586-2596). She related that she had gotten her spinal cord stimulator about 18 months earlier, and she wanted to talk to him at that appointment about some lingering pain in her right leg and right groin. The patient explained that she was generally very pleased with the spinal cord stimulator, but she wanted to find out if the pain in her right leg and right groin area – which she defined as the area when the body curls over, if you sit up straight and then lean forward – could be eliminated. She asked Dr. Abdelmalak if there was any nerve block or ablation that might be able to treat that remaining pain. (Tr. at 70-71). She emphasized in her testimony, “[T]he pain was not in my genitals. It was my groin, my hip, and my thigh.” (Tr. at 71).

Patient 5 recalled that she was not gowned at that visit, so she lay down on the exam table and pulled her shirt up to the width of about two fingers below her ribs, and then pulled her pants down to an area about the width of four or five fingers below her belly button, attempting to show him where her pain was. (Tr. at 73-75, 130-131). She said that during an exam, Dr. Abdelmalak would typically “pok[e] in a circle” around her belly button to see if she had any nerve pain there. When he did that on this visit, he noticed that she had a new medicine patch on her abdomen that Patient 5 explained was a non-narcotic medication for bladder spasticity, and as he pressed near her bladder, she told him that it felt like bladder pain. He then moved to her right side and she confirmed that he had found the precise location of very intense pain. (Tr. at 75-77, 136).

Patient 5 testified that Dr. Abdelmalak then asked her to put her legs in a “butterfly position,” but that she did not initially understand what that meant. She then demonstrated that this position has the soles of the feet placed together and drawn up towards the pelvis, with the knees out to the sides of the body. (Tr. at 77-79). When she did not understand him, she said that he then physically placed her feet in that position, while her pants remained in the same way she had placed them, unfastened and pulled down a few inches from her belly button. (Tr. at 78-79).

The Patient testified that during this part of the exam, Dr. Abdelmalak physically pulled her pants down more, separated her labia, and touched her clitoris without gloves on:

**Q. [By Ms. Snyder:] And then what happened?**

A. I didn't understand what he was saying at all to the point that he had to physically move my feet into the butterfly position.

**Q. Are your pants still up at the same level?**

A. Yes, untouched. And right around this time he asked the assistant for a sheet and I'm still like huh and then he pulls down my pants.

**Q. Can you be a little bit more descriptive about that?**

A. Yes. So he takes my feet, takes my feet and he puts them into the butterfly position \* \* \*

[witness explains butterfly position using gesturing]

**Q. Does he pull your pants down before or after the butterfly position?**

A. I remember it being after.

\* \* \* [Hearing Examiner did not hear clearly; asked her to repeat]

**Q. And then what happened next?**

A. Quite aggressively. Quite aggressively. Then very quickly, like I was very surprised and still am quite honestly, pulled my pants down far, like pants pulled completely off me like you -- I noticed immediately like firstly my backside got cold. I noticed a change of texture.

**Q. On what?**

A. Of your -- so like your t[u]sh<sup>15</sup> as you call it in my family had a change of texture and temperature.

**Q. So bare butt on the table?**

A. Bare -- yes. So -- so rapidly cold and texture change. Pants down and I remember thinking like what's going on. And then labia open, touch clitoris, and then can you feel this? And I am like, yes, I can feel that. Does it hurt? No. And then acting like nothing happened, walking away, talking about our plan of treatment and what we should do in terms of procedures and so on.

**Q. Did he have gloves on to your recollection?**

A. Definitely not.

**HEARING EXAMINER SHAMANSKY: Definitely or definitely not?**

THE WITNESS: Definitely not, negative.

**Q. (By Ms. Snyder) What makes you say definitely not?**

A. Well, because that was the first thing I said is when he started talking about plan of action, I sat up from the table with my pants mid-thighs and panties mid-thighs, and I said why are we acting like you just didn't touch my clitoris without gloves on with the medical assistant in the room. Why are we acting like that didn't happen? That was the very first thing I said. That was my first thought screaming in my head is what -- why are we acting like that didn't just happen.

**Q. Had he ever touched your clitoris on any prior medical examinations?**

A. Yes.

**Q. And was it different than that contact in the prior medical examinations?**

---

<sup>15</sup> The transcript indicates “tosh,” but the Hearing Examiner recalls that she referred to her “tush.” (Tr. at 79)

A. Yes.

**Q. How was it different?**

A. Well, it was communicated that we need to check to make sure all the branches of the pudendal nerve are intact, not painful, and that sensory is normal. Explained what all of the branches of the pudendal nerve are and there were gloves and it was discussed and then we proceeded. And also I got myself undressed, major component, and there was sterile gloves used, also a major component, and also the consent part discussed previously.

**Q. And you described in this visit that he spread your labia?**

A. Yeah, definitely.

**Q. Had that happened at other visits in that way?**

A. No, definitely not in that way.

**Q. What was going through your head at this point?**

A. Screaming \* \* \* Screaming like what is going on right now? How is this – what is happening? Like what's going on? Just like chaos, screaming, pretty much a circle – a circle loop of what is going on? How is this happening? I cannot believe this is happening. I need to run out of here. How do I get out of this room?

\* \* \*

**Q. Why did you want to leave?**

A. Because I felt unsafe.

(Tr. at 78-82).

Later in her testimony, Patient 5 was asked how Dr. Abdelmalak was able to physically pull down her pants, with her legs and feet in the butterfly position. She explained that this was possible because, in her physical condition, she was not able to extend her knees out very far to the sides or draw her feet up close to her body:

**Q. [By the Hearing Examiner:] I am puzzled how -- I think you said your -- your feet were in this butterfly position like the pads of your feet, the bottoms of your feet together, and your knees out to the sides and that he pulled your pants down when you were in that position. It seems like it would be hard to pull someone's pants down if their knees were out to the sides like that. Can you explain that?**

A. Sure. So if you are a flexible child or person, you will be able to get your -- your feet all the way to your middle.

**Q. Okay.**

A. But if you are an inflexible, rigid person who's been primarily on bedrest for a spinal cord sti[m]ulator, you are going to get like, oh, my God, ouch, ouch, ouch, ha, ha, ha, ha, and about here. That's all you are going to get.

**Q. I see.**

A. So this is butterfly position. It's your best shot.

**Q. You are gesturing, but you are showing you won't be able to pull your feet up to your body very well.**

A. Correct. So, yes, I appreciate the level of detail and your belief that I am truly flexible but like, remember, three hip surgeries, spinal cord stimulator. Like I am an optical illusion. I look very healthy, but I am not. Yes.

(Tr. at 137).

Patient 5 recalled that there was a new medical assistant, Mariam, in the room with her that day that she had not met before, and that the MA "spent a lot of time at or near the computer," which was located to the patient's left, at the end of the table that was near her head. (Tr. at 82-83, 85-86, 132-133). She said that during this exam, she and the MA "exchanged many looks," and the MA gave her "a lot of wide-eyed stares," adding, "I think if you asked her, she would also say that she felt unsafe." (Tr. at 83).

Patient 5 remembered Mariam Sliman as the medical assistant who was in the room during her last exam with Dr. Abdelmalak, because she said that Mariam had put her new medications into her chart before the exam, and that they chatted during that time. She recalled that Mariam was positioned to her side during the exam, and that she had made eye contact with Mariam, although she was not sure if that eye contact was during the offensive touching that she described. (Tr. at 139-140). When she was specifically asked if she believed Mariam would have been able to see, from her vantage point, where Dr. Abdelmalak was touching her, Patient 5 responded, "I have no reason to think she did not." (Tr. at 139).

Patient 5 confirmed that she verbally confronted Dr. Abdelmalak at that visit about why he had touched her clitoris -- she was not just thinking it in her head. (Tr. at 138). During her testimony, she related her interaction with Dr. Abdelmalak during that confrontation:

[A]fter my initial comment while sitting on the exam table, I said like why are we -- why are we acting like -- why are we acting like nothing happened? Like you

didn't just touch my clitoris? Dr. Abdelmalak said I didn't do that. I touched your pubic symphysis. And I said, no, you didn't. \* \* \*<sup>16</sup> I said you did not touch my pubic symphysis. You opened my labia and touched my clitoris. Why -- and he objected and said, no, I did not. I touched your pubic symphysis. And this went back and forth.

**Q. What did you say back to him when he said I touched your pubic symphysis?**

A. I said that is incorrect. I -- I can tell when my clitoris has been touched. That is a sensation that I am aware of. I know where you touched me. That's not true. And then at a certain point, he said okay. What can I do to make this better? And it boiled down to he apologized. He said he would use gloves. He didn't use gloves with me because he knew me. He washed his hands before.

**Q. Before what?**

A. Before coming into the room.

**Q. Before touching you?**

A. Right. Before coming into the room meaning I should be not -- like I should not be upset because his hands were clean. And I said okay. So that's good that you apologized. That's good that you are going to use gloves with patients from now on. But you -- he was saying that he knew me so well and because he knew me so well he didn't use gloves and he only uses gloves with people he does not know well. And I said you need to use gloves with everybody and that's good that you are apologizing and that you are going to use gloves with everybody. That's good. But that doesn't change the fact that you just touched my clitoris without gloves on. And I am not sure what this discussion is about. Like are you -- like let's -- let's move on.

I was starting to get very impatient. I was like my attitude let's get on with this. Let's move on. Can I get out of this room? That was kind of getting to be my attitude. I was like let's go. Like my attitude was getting to be like the deed has been done. Good for apologizing, good for saying you are going to use gloves for now on, good for admitting. All these things are good, you know. Can I get out of this room? But -- but he said he wanted to show me something over at the computer and so the medical assistant got up and so -- and I had to get off the exam table.

---

<sup>16</sup> Patient 5 misspoke at this point and erroneously stated that she accused him of touching her "pubic symphysis," but then she began again and corrected herself. (Tr. at 86)



(Tr. at 86-88).

Patient 5 described herself as “extremely confrontational” with Dr. Abdelmalak that day, which she said was unusual for her, but she explained that none of the many physicians she had seen had ever touched her that way. (Tr. at 91, 138). She explained that she was troubled by the fact that he did not wear gloves when he touched her clitoris, because the lack of gloves and his failure to wash his hands after the exam made it seem like a sexual touch:

**Q. [By Ms. Snyder:] Were you concerned that he didn't wear gloves?**

A. Very.

**Q. Why?**

A. Well, he brought up the germ component which to be honest wasn't even on my radar. My initial gut response, which still is my first response, is if you're not wearing gloves, then this is sexual. And if you are not washing your hands afterwards, then it continues to be sexual.

**Q. Can you elaborate on that, please?**

A. Yes. So like doctors -- again, I go to so many doctors. They -- the minute you walk in the door, [demonstrating] puff of hand sanitizer. Additionally often they wash their hands in addition to that. And often then after the exam, they wash their hands, and then they do a puff [of hand sanitizer] when they exit. Like so much sanitation, right?

There was no hand washing after the exam nor was there a puff of hand sanitizer. So that means that the scent of me, meaning of my cro[t]ch just to be clear what we are talking about here, the only scent on the hands, okay? That is like -- that's sexual. Clearly it's sexual.

(Tr. at 90).

Patient 5 was so upset about how Dr. Abdelmalak had touched her that day that she reported the incident to the Cleveland Clinic police “immediately on the front grass by the flagpoles” before she even left the hospital. (Tr. at 91, 138-139). She recalled that the Clinic police called her back within a couple hours and that she spoke with them “two-ish times the same day, maybe three times,” but that she was not satisfied with those calls, so she also sent “a pretty detailed email.” (Tr. at 92). An email from Patient 5 on April 19, 2021 at 2:00 p.m. that appears in the Ombudsman’s records stated:

Cleveland Clinic:

I am writing to report Physician Misconduct. My clitoris was touched with an un-gloved hand.

The doctor admitted to touching my clitoris with an un-gloved hand during my exam room confrontation. The nurse was in the exam room for the exam, confrontation and Physician's request for forgiveness.

I would like to discuss this in further detail. Please contact me directly.

(Ex. 18 at 5).

The patient gave a lengthy account of the exam in her written statement that was included in a supplemental report from the ombudsman's office. It was apparently written shortly after the incident, when it was fresh in her mind. Her written account is consistent with her testimony. (Ex. 19 at 8-10).

Patient 5 clarified that she never talked to anyone from the Clinic's police department in person – only over the telephone or by email. She said that she later received a notice that she characterized as “super flippant,” informing her that the investigation had been finalized and her allegations were not substantiated. (Tr. at 92-93). She concluded, “Nothing came of the report, yes.” (Tr. at 93).

Patient 5 never went back to Dr. Abdelmalak after her visit in April 2021. (Tr. at 93). At the hearing, she said that she was still having surgeries and procedures and still considered herself a chronic pain patient, but that she was “far better than [she] could have ever imagined [she] would be. Although she credited Dr. Abdelmalak giving her enough relief from pain to resume daily life, she said that his conduct at her last appointment had affected the way she views healthcare professionals, and this was unfortunate. (Tr. at 62, 94-95). She explained, “[Y]ou are just suspicious, cautious. I think on guard would be a good phrase to use.” (Tr. at 94).

Patient 5 testified that she never sued Dr. Abdelmalak or asked him for any money, and never contacted him again after her last office visit in April 2021. She also testified that she did not know any other patient who had made allegations against Dr. Abdelmalak. (Tr at 94, 141-142). The patient further testified that she had never complained to the ombudsman or the Cleveland Clinic police about any other healthcare provider, and that she had never sued any healthcare provider. (Tr. at 144-145, 148).

On cross-examination, Patient 5 agreed that she was also seeing Dr. Mark Dassel, another physician at The Cleveland Clinic, who was treating her for interstitial cystitis during that same time, so some of her appointments in Cleveland were with him. (Tr. at 102-103). She nonetheless estimated that she had had “some two dozen” appointments with Dr. Abdelmalak between 2016 and 2021. (Tr. at 104).

When she was asked on cross-examination if she felt comfortable with Dr. Abdelmalak during the entire four years of treatment before her last appointment in April 2021, Patient 5 paused for a few moments, and then explained that, aside from the last office visit, there was one other encounter that made her uncomfortable, but she added, “Obviously not to this degree, clearly.” (Tr. at 105). When asked to explain, Patient 5 related that she had an appointment with Dr. Abdelmalak at his Twinsburg office, where he conducted a pelvic exam that made her uncomfortable, even though he wore gloves. Although she could not remember what year it took place, she implied that it was after she had her spinal cord stimulator placed in 2018 because she referred to a pulsing, vibrating feeling in her back and hip that she attributed to the device. (Tr. at 105-107). The patient offered the following recollection of that exam, in which she said that Dr. Abdelmalak forcibly shoved his fingers into her vagina:

**Q. [By Ms. Moore:] And what about that appointment made you uncomfortable?**

A. A pelvic exam meaning vaginal with a glove, two fingers forcibly I would use the word shoved, launched, aggressively placed. All these terms can be used interchangeably for me. I am fine with all of them. Placed into the vagina and left there for at least 10 seconds while making eye contact and I remember thinking what is going on. This is super weird. This is bizarre. I'm going to -- I am going to start screaming, and then I looked away like why are we making contact. This is so weird. Screaming in my head, freaking out like quit. You are going to count to 10, and if he doesn't get off of you, you are going to kick him. And then right when I was about to start freaking out, he pulled his hands out, and he is like, I see what you are saying about that like pulsing, throbbing, tweaking, vibrating feeling you are referencing. Back to the medical talk.

(Tr. at 106-107).

Patient 5 explained that at that visit, she had told Dr. Abdelmalak she had pain in her hip and lower back – not in her vagina -- and she said that the unusual aspect of the exam was the thrusting of his fingers and the fact that he made eye contact with her while he was doing that:

**Q. [By Ms. Moore:] So on this date, you said that he was looking for the pulsing, vibrating feeling you were having inside of your vagina?**

A. Well, he only told me what he was up to after he left my vagina.

**Q. Did you report to him on that day that you were having this kind of pulsing, vibrating feeling in your vagina?**

A. No. I didn't report that in my vagina. I reported hip pain, lower back pain, pains elsewhere in my body. I don't remember [reporting] that.<sup>17</sup>

**Q. And was it the eye contact that made it weird?**

A. That was a large part of it, yes. And the first thing that made it weird was the two fingers and the thrusting and the holding and then the eye contact definitely topped it off, yes.

(Tr. at 108).

When Dr. Abdelmalak's counsel suggested that this type of exam is done by inserting a digit or two inside the vagina and feeling for nerves, Patient 5 countered that it is normally done with only one finger, adding, "And it is placed. It is not shoved forcefully as if a thrusting motion. See my visual aid? Thrusting." (Tr. at 109).

Patient 5 explained that she did not report that incident back then, because Dr. Abdelmalak was the only doctor who had been able to help her, so she wanted to give him the benefit of the doubt that there was some legitimacy to this exam:

**Q. [By Ms. Moore:] Why not?**

A. Well, my first answer is because Dr. Abdelmalak is the only person who can get me back into shape or keep me in shape to be a functioning human and to be a mother. And so if any benefit of the doubt is going to be given, it's going to be given to him. That's the train of thought.

(Tr. at 111).

During cross-examination, the patient offered an example of one other time where she gave Dr. Abdelmalak the benefit of the doubt that he was performing an appropriate medical intervention, even though she felt very uncomfortable. This incident occurred when she was getting an obturator nerve block for a nerve that went to her inner thigh, and it required the application of lidocaine using a piece of gauze. (Tr. at 112-113). Patient 5 described why she felt uncomfortable during that incident, and how she convinced herself that she was overreacting while the exam was going on:

So he grabs a big piece of gauze we'll call it, and he is moving it around. And he pinches the inner thigh and moves not just the inner thigh, the -- like the labia moves and moves and moves and moves like a lot. It spreads the labia quite a lot, more than expected.

---

<sup>17</sup> The transcript indicates that Patient 5 said, "I don't remember pointing that," but the Hearing Examiner's notes reflect that she said, "I don't remember reporting that." (Tr. at 108)

And -- and this happens like enough for me to have a full blown internal dialogue. The thought is like what is going on. This seems really weird. This seems excessive. I think he can see like my labia minora. This is like a lot going on, like actually into my vagina[l] canal. Like this is a lot. Like what is going on? Is this medically necessary? This seems like super invasive. Like full discussion.

Then I would like calm down. That is a whole bunch of Catholic school going on right now. There is a whole team of nurses and scrub techs and so on around here. Like everybody knows if this is medically necessary. Someone would say something if it's not. Like full blown freak out, calm down, suppression of Catholic school student going on in the head, like swirling. That's the internal dialogue.

(Tr. at 113-114).

The patient testified that she also did not report that incident to anyone. (Tr. at 114).

Patient 5 agreed that Dr. Abdelmalak never told her that he was the only one who could help her, but that she *believed* he was, based on her own experience, offering, "I would say my physical recovery is evidence of that." (Tr. at 111). She also acknowledged that she had referred another patient to him, a friend who was having knee pain, telling that friend that she should go see Dr. Abdelmalak about her pain. (Tr. at 115-116).

Patient 5 was also cross-examined extensively about whether she might have been angry with Dr. Abdelmalak about an incident when she drove herself to the Clinic from out of state to have a procedure and did not understand that she would need a driver if she went home that same day. The patient agreed that when she first started seeing Dr. Abdelmalak, she was driving 6-7 hours each way from Milwaukee. (Tr. at 116). She further agreed that over the course of her treatment, she had several nerve block injections, including pudendal injections and injections to the pubic symphysis, and that after some types of injections, she was not allowed to drive herself home. On those occasions, Patient 5 said that she brought her husband or her mom with her, but that as her condition improved, she was able to come to more appointments by herself. (Tr. at 116-117, 119-120, 126-127, 143). When Patient 5 was asked if she ever "pushed back" against Dr. Abdelmalak's request that she bring a driver with her to drive her home, the patient said that she did not. (Tr. at 125-126).

On cross-examination, Patient 5 was directed to communications about a nerve ablation procedure that she was going to have in July 2017. On the evening of June 27, 2017, the patient left a message for Dr. Abdelmalak that stated:

Dr. Abdelmalak:

I would like to confirm that I am able to have my bi-lateral Pudendal ablation (RFA) on 07.19.2017 without sedation and drive myself.

(Ex. 5a at 829).

Dr. Abdelmalak's PA, Barbara Maline, responded the next morning, June 28, 2017, writing that she would have to check with the doctor when he was back in the office, because some of the local numbing medications can cause numbness in the legs. (Ex. 5a at 828). The patient responded politely, adding that she had driven herself home after previous nerve blocks, but those were not radio-frequency ablations:

Ok, thank you.

Previously, I have driven home after Bi-lateral Pudendal NBs w/o sedation - but not a RFA.

(Ex. 5a at 828).

On June 30, 2017, the patient was sent a message that advised her she would still need a driver, even if she did not have sedation for the procedure:

Dr Abdelmalak responded to your message as below:

Patient needs a driver of this procedure. Although she ask for no sedation, this procedure involving numbing medication infiltration in both lower extremities.

Joseph Abdelmalak, MD

(Ex. 5a at 828).

The Hearing Examiner can find no indication that Patient 5 did not willingly comply with those instructions for the procedure in July 2017. (Ex. 5a).

Dr. Abdelmalak testified that there was a procedure a few years later on March 3, 2021 when Patient 5 came without a driver and they had an argument over whether she could drive herself home. He said that he had the nurse put a note in her chart that she was taking an Uber to a local hotel to stay overnight. However, the notes of the March 3, 2021 procedure indicate that, in fact, the patient's husband, whose name is used in the note, was there to drive her home. (Tr. at 896; Ex. 5a at 2453).

The notes of a different procedure one month earlier on February 3, 2021, however, do indicate that the patient arrived alone for a lateral cutaneous nerve block of the right thigh under ultrasound guidance. (Ex. 5a at 2337-2386). On that occasion, her medical record indicates that she was taking an Uber to a hotel, but it does not document any argument between the patient and Dr. Abdelmalak:

Family Waiting	No Family Available per dr Abdelmalak pt can uber to hotel -AH
Recorded by	[AH] AH 02/03/21 1112

(Ex. 5a at 2379).

When Patient 5 was asked if she ever had a disagreement with Dr. Abdelmalak about whether she could drive herself home after a procedure, the patient indicated that she knew what counsel was referring to, but she stated, “I would not call it a disagreement. I would call it a misunderstanding.” (Tr. at 135). When she was asked on redirect if she was “making the whole thing up” against Dr. Abdelmalak because of that misunderstanding, she replied, “Absolutely not.” (Tr. at 135).

Dr. Abdelmalak’s Testimony in Response to Patient 5’s Allegations

Dr. Abdelmalak testified that he saw Patient 5 more than 20 times for office visits and did more than 20 procedures for her. Those procedures included pudendal nerve blocks, pudendal nerve pulsed radiofrequency ablations, ilioinguinal nerve blocks, and sacroiliac injections into the patient’s hip. (Tr. at 886-892). Dr. Abdelmalak testified that most of the time, patients cannot drive themselves home after those injections because they have been under sedation, and because the numbing medication can spread to the legs and affect the nerves there, so that the patient would not be able to differentiate pushing the gas or brake pedals of a car, or tell how hard they were pushing on the pedals. (Tr. at 890).

Whether a patient can drive home after a procedure in which they are *not* sedated, however, depends on which leg the injection was in. Dr. Abdelmalak explained that if the injection was in the right hip or leg, the patient would not be able to drive, even if the patient was not sedated because they would not have full strength and sensation to operate the gas and brake pedals after the injection. (Tr. at 890-891, 895).

Dr. Abdelmalak testified that in early 2021, Patient 5 was having a series of inguinal nerve block injections. He submits that they had an argument on March 3, 2021 that caused her to get very angry at him because she came by herself without a driver, and he would not let her have the procedure until the charge nurse made a “deal” with her that she could have the procedure if she stayed overnight at a local hotel and drove herself home the next day. (Tr. at 894-897). Dr. Abdelmalak contends that that argument took place at her last procedure before the April 19, 2021 office visit in which she complained that he touched her inappropriately. However, the medical records show that it was actually on *February* 3, 2021 that she stayed overnight in a hotel, as noted in her record. The record notes that her husband brought her to the next procedure on March 3, 2021, so that she did not have to stay overnight after that procedure. (Ex. 5a at 2379, 2453).

Dr. Abdelmalak said that even though he agreed with the plan for Patient 5 to stay overnight in a hotel after her injection, “[S]he so mad because she wants to go home the same day and she doesn’t like to delay the injection,” emphasizing again later, “She is so mad.” (Tr. at 895-896). He related that Patient 5 said, “I didn’t expect this from you. You know me and all this stuff,” adding, “And I said I care about your safety more than anything.” (Tr. at 896). Dr. Abdelmalak testified that Patient 5’s next visit after that argument was the one on April 19, 2021, when she lodged a complaint against him for the way he touched her during the exam. However, as noted above, Patient 5’s medical records contradict that timeline, showing that she had a March 3, 2021 appointment between the time when she had to stay overnight in February and her last appointment in April 2021. (Tr. at 897; Ex. 5a at 2379, 2453).

Dr. Abdelmalak gave a long explanation theorizing that Patient 5 was so angry about his insistence that she stay the night in a hotel before driving herself home the next day, that she was motivated to fabricate the story about him touching her clitoris without gloves. (Tr. at 473-477). On cross-examination, Dr. Abdelmalak agreed that he was interviewed by the Cleveland Clinic Police about Patient 5's complaint shortly after she made it. He said that in that interview, he thought he told the police that he believed the patient was angry with him over the driving argument. (Tr. at 477-482). However, when he was presented with the report of that interview, he conceded, "It looks like I didn't tell them." (Tr. at 482; Ex. 18).

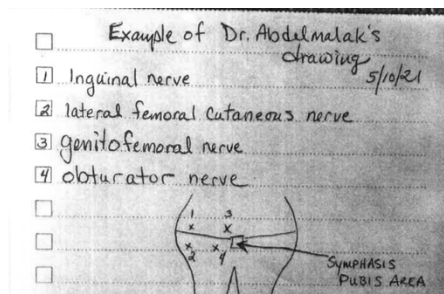
The police report gives the following details about what Dr. Abdelmalak did tell the police:

Dr. Abdelmalak said he completed the exam and that was when [Patient 5] told him he had touched her clitoris without a glove.

Dr. Abdelmalak said he immediately apologized to [Patient 5] and told her he had not touched her clitoris. Dr. Abdelmalak told us he explained to her that she may have felt sensation in the area of her clitoris but he had not touched it. He said he explained about the four main nerves and why he was checking them and also drew [Patient 5] a picture to explain the areas he checked. He told us he believes she may have an entrapped nerve or other effects from a recent mesh placement for a hernia repair. Dr. Abdelmalak told [Officer] Smith and I he will now be wearing gloves (a procedure he has never followed before). whenever he performs an exam of the symphysis pubis. He indicated that he makes changes whenever a patient raises a concern.

(Ex. 18 at 2).

During his testimony, Dr. Abdelmalak also explained his theory that Patient 5 could have been feeling "referred" pain, which caused her to think that he was touching her clitoris, even though he was not. (Tr. at 901-903). He also apparently explained this theory to the police when he was interviewed, as their report includes the following drawing, showing the other nerves that supply the pubic area:



(Ex. 18 at 3).



At the hearing, Dr. Abdelmalak elaborated on the concept of “referred pain,” which he contends may account for why Patient 5 thought he was touching her clitoris:

[G]enitofemoral is the genital branch. If it is inflamed, when I push it, you feel different sensation in the area which is numbness or tingling. Also when you pushing the symphysis pubis, you can find referred pain, not nerve pain, in this area as well.

\* \* \*

Like if I have heart attack, I didn't feel the pain in the heart, but I can feel it in the right arm or the right chin -- left arm or left chin. This is called referred pain, not pain in the area where I feel the pain.

(Tr. at 902-903).

Dr. Abdelmalak suggested that Patient 5 must have sensed “referred pain” from the genitofemoral nerve which caused her to think he was touching her clitoris even though he was not touching it, and he related that he drew some pictures for her, so that she would understand:

**Q. [By Ms. Moore:] The symphysis pubis joint would have referred pain –**

A. To the front area.

**Q. To the -- to the genitals.**

A. Yes, same as genitofemoral. Genitofemoral is a nerve pain.

**Q. All right.**

A. And I did the same with the patient. I show her picture, and I draw some images for her to understand.

(Tr. at 903).

Dr. Abdelmalak maintained that he did not touch Patient 5’s clitoris, and that his MA, Mariam Sliman, was in the room during the entire exam. (Tr. at 903). He said that he told the patient he was going to examine her groin, and that she consented to that exam. He further testified that Mariam had “a complete view of what [he was] doing.” (Tr. at 906-907). However, in an interview with Board investigators in January 2022, Dr. Abdelmalak testified that when Patient 5 accused him of touching her clitoris, he “asked Mariam to stand up from computer,” and then elaborated: “She was in the room and I ask her to stand up from the computer because she’s sitting at the computer to open the stuff.” (Ex. Q 46:27:46:40). This suggests that the MA was sitting at the computer scribing for him during Patient 5’s examination.

Dr. Abdelmalak also maintained during his testimony that he did not pull down Patient 5's pants during the exam, as she testified. (Tr. at 483-483). When he was asked how he could have touched her pubic symphysis without pulling them down, since she was not gowned, he explained, "I moved the midline just so I can feel the symphysis pubis." (Tr. at 484). However, the Cleveland Clinic Police report states that he told them that he "did pull the top of her underwear down slightly to touch her skin in an area." (Ex. 18 at 2). On cross-examination at the hearing, he offered, "I move a little bit down for this area. If I examine the corner here, I can move this area. It is like one centimeter, not a big deal." (Tr. at 484-485).

Dr. Abdelmalak explained that after the interaction that he had with Patient 5 that day, he apologized to her because she felt bad about it:

After we finish the visit, she sat down. I am in the computer finishing my plan of care, and then I ask her do you have any questions? She said, yes, one question. I said what? She said why you touch me without gloves? I said what do you mean? She said I feel like you touched -- I feel like you touched my clitoris without gloves. I don't care if you touch it, but you have to use gloves. I said, Mrs. So and So, I'm sorry if you have same feeling, if you have this feeling. So I apologize for having this bad feeling, not apologize because I touched her and this is misunderstanding from her. And I said this to the officer when he came to the office. Then I said I didn't touch it. You might think sensation in this area when we press on this nerve and this joint.

**Q. [By Ms. Moore:] Why did you apologize?**

A. Usually I apologize when I find somebody came to me and said I am still in pain. I said I am sorry. That's not me, I create the pain, but I apologize like he has this bad feeling.

\* \* \*

Then I promised her, I said once you raise this issue, I promise you I am going to use gloves from now for every time I examine the symphysis pubis and this area, I usually don't have to -- do not have to wear gloves in this area, but once you raise this issue, I wear regular gloves. I am losing nothing, but I like not raising other issue in the future.

(Tr. at 904-905).

With respect to his use of gloves during an exam, Dr. Abdelmalak testified, "I don't have to wear gloves for abdomen, but I have to wear gloves for vaginal exam." (Tr. at 906).

On cross-examination, Dr. Abdelmalak agreed that Patient 5 complained during the office visit that he had touched her clitoris, and he further agreed that that was an unusual thing for a patient to accuse him of. However, he confirmed that he did not note any of that interaction with her in the patient's medical record:

**Q. [By Ms. Snyder:] Did you record anywhere that she made that complaint to you in her patient record?**

A. No. She never complained.

**Q. Okay. That doesn't seem like something notable to record in a patient's record when they make a complaint of sexual misconduct?**

A. I never see it before.

(Tr. at 489).

Presence of Chaperone Mariam Sliman<sup>18</sup> During Patient 4's April 19, 2021 Exam

Patient 5's medical record indicates that MA Mariam Sliman was present during the April 19, 2021 exam, and Dr. Abdelmalak, Patient 5, and Ms. Sliman all agreed that she was in the room that day. (Ex. 5a at 2591; Tr. at 546-548).

Ms. Sliman, who testified that she was about 21 or 22 years old in 2021, recalled that Dr. Abdelmalak only did an "outside exam," and that she was standing right beside Dr. Abdelmalak as he examined Patient 5. Ms. Sliman later explained that an "outside exam" meant that he did not put his hands into the patient's vagina, but she also testified that he did not touch the patient's labia, nor anywhere below the pubic hairline. (Tr. at 574-575, 581-583). She said she was certain that she was standing right next to him and was not "scribing" during the exam:

[T]here was no place where I would scribe yes or – or no. So I am 100 percent -- I am 100 percent sure I was standing right next to him. Like we're not supposed to scribe until after the – after Dr. Abdelmalak is done with his whole exam.

(Tr. at 574-575).

Ms. Sliman did recall Patient 5 getting upset that Dr. Abdelmalak did not wear gloves for the exam. (Tr. at 549-550, 583). She recalled the following details of that patient's office visit:

So then I think he asked her to lay down, and he did like an outside exam. He didn't do any inside exam. I remember that exactly because he didn't wear gloves and that was the huge deal that she made about after the whole visit was over is him not wearing gloves. Okay? That's like I – I remember that like exactly. So he just did like an outside exam, you know, like where the pubic synthesis<sup>19</sup> [*sic*] area is and

---

<sup>18</sup> Ms. Sliman testified that she was previously known as Mariam Assaf. (Tr. at 541).

<sup>19</sup> Ms. Sliman testified that she was "not like really good at like anatomy words." (Tr. at 550). When she was asked if she could see the patient's vulva during the exam, she stated that she did not know what that word meant. (Tr. at 581)

like the lower abdomen is. And then he asked her to sit up, and then they continued talking about what like the next plan is.

(Tr. at 549-550).

Ms. Sliman testified that Dr. Abdelmalak did not pull down Patient 5's pants or touch her vagina, and she said that she would have intervened if he had done that:

**Q. [By Mr. Plinke:] Okay. All right. Do you recall Dr. Abdelmalak forcefully pulling the pants down and touching the patient's vagina?**

A. No, no. I do not recall that at all, huh-uh.

**Q. If -- if that had occurred, were you in a position where you would have been able to observe that?**

A. I would have definitely said something. I would have definitely like either like let the patient know or I would like, Dr. Abdelmalak, let's -- first of all, you are not even wearing gloves, okay? And, second of all, you didn't ask me to put her in a gown so how could you like forcibly like pull her pants down and touch that area without any like, you know, like any of that. I would have definitely went, and like I mentioned to you the other day, I would have definitely went and got the physician assistant involved or the nurse practitioner that was there.

(Tr. at 551-552).

Ms. Sliman maintained that she did not recall making any "big-eyed visual contact" with Patient 5 during that exam, and that she did not think Dr. Abdelmalak did anything inappropriate that day at all. (Tr. at 552-553). She reiterated that she would have spoken up if she saw that:

I'm the type of person I don't let things like slide, so if I would have noticed any little like -- any little touching, any little like misbehaving, any little thing that for me that I wouldn't agree on myself to that Patient No. 5, I would have definitely spoken up and said something but that day I do not recall. I don't remember. There was like -- I do not even like -- not even like a little bit to like tell you where her, oh, hold on. There might be, oh, just wait. No, there wasn't any of that thing at all.

(Tr. at 553).

Ms. Sliman agreed that Patient 5 was so upset that the patient called her back into the room after Ms. Sliman had left the exam room, and she confronted her, asking if she had witnessed the fact that Dr. Abdelmalak was not wearing gloves, but she maintained that that was all Patient 5 asked:

A. \* \* \* [S]he came back inside the room and called me, but I --I remember being called in and she was asking me did you -- did you see him wear -- wear gloves.

**Q. [By Mr. Plinke:] Okay. And your response to that was what?**

A. I was like no. You are right. He didn't have gloves on.

**Q. Okay. And did she ask you anything after that?**

A. Nothing, no, huh-uh. That was the only question.

(Tr. at 555).

Ms. Sliman testified that a short time later, the Clinic ombudsman came to speak with her, but she again insisted that she was only asked if he wore gloves during the exam, recalling, “That was the only question I was asked and they said okay. Thank you for your time.” (Tr. at 558). She insisted that Patient 5 never claimed to have been sexually assaulted, and that no one ever asked her if she had witnessed a sexual assault until a month or so before the hearing, when she was visited by a Board investigator. (Tr. at 557-563). She said that she also told the Board’s investigator that the only thing Patient 5 “made a big deal about” was the fact that Dr. Abdelmalak did not wear gloves when he examined her, and that she had not observed any sexual assault. (Tr. at 562-563).

On cross-examination, Ms. Sliman agreed that she was testifying voluntarily, without a subpoena. (Tr. at 568). She related that she had not been asked about this case since 2021, and said that when the Board’s investigator came to talk to her about a month before the hearing, “[A]t first, it was like a blank slate. Like I didn’t remember anything.” (Tr. at 571). Since then she said that she had tried to “squeeze [her] brain out” so that she would be able to tell what she did remember from that exam. (Tr. at 571).

Ms. Sliman related that when the ombudsman contacted her in May 2021, the investigator came into Dr. Abdelmalak’s office to talk to her – it was not a phone call or a Zoom call. (Tr. at 571-572). As she testified on direct exam, Ms. Sliman maintained that the ombudsman’s investigator “just asked if he was wearing gloves,” and did not inquire about any touching that might have been of a sexual nature. (Tr. at 573). However, a summary of Inspector Bradbeer’s interview of Ms. Sliman (then known as Ms. Assaf). in the Cleveland Clinic Police report indicates that on May 10, 2021, she told Inspector Bradbeer that she was scribing on the computer during the exam:

Assaf said Dr. Abdelmalak did not have her prepare [Patient 5] to remove any clothing. She said Dr. Abdelmalak did not have gloves on. She said Dr. Abdelmalak started his exam by telling [Patient 5] he would be touching her pubic symphysis area to check for pain. Assaf said Dr. Abdelmalak touched in several areas and asked if she was having pain. As he was doing this, Assaf was watching and scribing on the computer after each place he touched. She said [Patient 5] would answer Dr. Abdelmalak each time he touched, saying yes or no. Assaf said Dr. Abdelmalak only touched [Patient 5’s] bare skin and did not touch her clitoris

or any areas near it. Assaf said [Patient 5] did not mention her concern about Dr. Abdelmalak touching her without gloves until the very end of the appointment when Dr. Abdelmalak said he was finished. According to Assaf, [Patient 5] did not say anything other than her answers about where she had pain, during the exam.

(Ex. 18 at 2).

Inspector Bradbeer apparently then contacted Ms. Sliman by a “Zoom call” three days later on May 13, 2021 to ask additional questions of her. The investigator’s notes indicate that during that interview, Ms. Sliman did, in fact, recall Patient 5 telling Dr. Abdelmalak, “you touched my clitoris,” and Ms. Sliman again reiterated to him that she was scribing for Dr. Abdelmalak that day, so she was sitting at the computer documenting where the patient said she had pain, as the exam was taking place:

did the patient say anything?  
-stated you touched my clitoris  
-Dr. A stated, no I did not touch your clitoris, touched your s pubis  
-Dr. explained the exam and drew a diagram

did the patient ever ask Dr. A to stop the exam?  
-no, never said please stop  
-only mentioned the no gloves after the exam

did Dr. A say anything during the exam?  
-just the normal when testing for pain  
-he says it out loud so can document

where were you during the exam and could you see what was going on?  
-sitting at the computer  
-am the designated scribe  
-look up when he is asking for the pain, so can document

(Ex. 19 at 1).

On cross-examination, Ms. Sliman was pressed on why she told the investigator a different version of events on May 13, 2021 than the account she gave during her testimony. She appeared flustered, and she suggested that the investigator may have misunderstood her:

**Q. [By Mr. Wilcox:] So why would you tell the investigators that you were scribing and placing in the computer each place he touched during the examination?**

A. Like I -- like I said, I don't know if -- if the investigator like misunder -- understood me and I was trying to -- to say that after the exam was -- was done, I was able to sit down and record, but I do not recall me scribing while Dr. Abdelmalak was doing the examination, so I -- I don't -- I don't know if he misunderstood me or just didn't explain it to him good enough but that's -- I know for a fact that that's not what -- what happened. I was standing the whole time the exam was being -- was being done.

(Tr. at 575-576).

Ms. Sliman also insisted that she did not recall telling the investigator in May 2021 that Patient 5 confronted Dr. Abdelmalak about touching her clitoris, even though the investigator's notes say that Ms. Sliman did tell him that:

**Q. [By Mr. Wilcox:] Okay. You don't recall stating that a patient confronted him in the room about touching the clitoris, about him touching her clitoris?**

A. No, I don't, huh-uh. I don't -- I don't recall that, no.

(Tr. at 578).

Ms. Sliman agreed that what she told the investigator in May 2021, according to the notes of that interview, was different than the account of events she gave in her testimony:

**Q. [By Mr. Wilcox:] Would you agree that's different than what you have told us today under oath?**

A. It was different than what I said, yes, today, uh-huh.

(Tr. at 579).

Ms. Sliman testified that she found Dr. Abdelmalak to be very nice and easygoing, adding, "[H]e was just a great doctor to work with." (Tr. at 565). She said that she never saw him do anything that she found inappropriate, and that he was very professional with all of his patients. (Tr. at 566). Later in her testimony, Ms. Sliman confirmed that she did not know Dr. Abdelmalak outside of working with him between January 2021 and February 2022, and that she had not spoken to him since she left her job when she became pregnant in 2022. (Tr. at 579, 582).

### **Patient 7**

Patient 7 was 42 years old at the time of the hearing, and she testified that she had a long, complex medical history that began when she was only 16 years old. She recounted that she had been diagnosed with endometriosis, as well as numerous GI issues, and that she had had multiple surgeries throughout her life. She first saw a gynecologist as a teenager because she was having abdominal pain, and a laparoscopic surgery found endometriosis that involved her bowel. Patient 7 estimated that she had been treated by 10-20 different physicians, and she recalled that she began seeing Dr. Abdelmalak in about 2016 for chronic pain after she had an ileostomy surgery that removed her bowel. (Tr. at 184-186).

Patient 7 first saw Dr. Abdelmalak at the Fairview Hospital, but she later had some of her appointments with him at his Twinsburg office. She said that she found him very personable, with a very good bedside manner. She believed that Dr. Abdelmalak wanted her to be comfortable with him, so he tried to understand her history and her anxieties. One of those anxieties involved the

fact that Patient 7 had been a victim of rape at the age of 18, and as a result, she had anxiety about pelvic exams. (Tr. at 187).

Patient 7 said that she felt as though Dr. Abdelmalak created a personal connection with her that was different than her relationships with other doctors, because he shared his personal feelings with her, and he encouraged her to share personal feelings with him. Some of those feelings involved the complicated relationship between Patient 7 and her husband, which resulted at least in part from her extensive medical issues. Patient 7 explained that because of her endometriosis and her GI surgeries, she has no feeling at all in her vagina, except on the outside around the clitoris area, and she has nerve problems in her pelvis that make penetration painful for her. (Tr. at 187-189). She said that the personal conversations she had with Dr. Abdelmalak made her feel closer to him, relating, “[H]e was being human. He was being personable, and it helped me feel closer to him as a patient.” (Tr. at 207).

Patient 7 said that she first began talking to Dr. Abdelmalak about her sexual relationship with her husband as it related to the pain she was having in her lower pelvic area. (Tr. at 189). When she was asked if it always seemed like a medical conversation, she responded, “In the beginning, yes.” (Tr. at 189). The patient explained, “So we would talk in detail about things that I had tried and things my husband had tried to stimulate each other.” (Tr. at 189).

Patient 7 testified that Dr. Abdelmalak suggested touching her husband in certain ways, and letting him touch her in certain ways. However, when she was asked if he gave graphic descriptions, she said that he did not go into specifics about what she should do, and that some of his suggestions were simply about trying different positions that might cause her less pain. (Tr. at 190-192). Patient 7 testified that her husband found it “odd” when she told him about these discussions she had had with Dr. Abdelmalak, but she said that she had never seen a doctor that specialized in this field, so she tried to keep an open mind, to see if his suggestions had any value. (Tr. at 191-192). She said that the discussions about her sexual issues with her husband were “a frequent conversation [she and Dr. Abdelmalak] had,” and she added, “I think we hugged on occasion.” (Tr. at 201-202).

Patient 7 testified that she had her last visit with Dr. Abdelmalak at the Twinsburg office, but that sometime before that, there was an unusual conversation in which he asked her whether she felt comfortable with him:

[H]e had come into the room one day and he had asked me if I was comfortable with him and this was before that incident and I said yes. Why? And he said he had just heard that some people were uncomfortable, and I said I am comfortable with you. But that was before that incident [at a January 2021 appointment].

(Tr. at 210-211).

Patient 7 said that the last time she saw Dr. Abdelmalak, it was at Twinsburg. She then described what she believed was her last visit, recalling, “The medical assistant put me in the room and told



me to – to undress.” (Tr at 194). The patient explained that she was not given a gown to wear, but instead, the MA gave her only a “drape,” later adding, “A drape is basically a paper sheet.” (Tr. at 194). She testified that she took off all of her clothes and then held the drape up so that it was covering her breasts because, she explained, “when he comes in, I don’t want people in the hallway to see.” (Tr. at 211-212).

Patient 7 testified that there was no chaperone in the room with her at her appointment that day at Twinsburg, explaining that sometimes Dr. Abdelmalak had a chaperone for pelvic exams, and sometimes he did not. (Tr. at 198). However, she said that usually, the exams did not seem any different when he had a chaperone as compared to when he did not, except for “just this one day.” (Tr. at 198-199).

**Q. [By Ms. Snyder:] So walk me through the visit. You were put in the exam room and what happens next?**

A. He -- he came in, and he closed the door. And we started -- I laid down on the table, and he started the exam he normally does where he would feel my breast and feel around my armpits; and he would, you know, kind of look at my belly. I -- I have an ileostomy, so he was looking at my belly and moved down then to do the pelvic exam.

(Tr. at 194).

Patient 7 testified that she thought the paper drape was pulled up to the top of her while Dr. Abdelmalak did a pelvic exam, but she was not sure if he pulled it up, or if she did. (Tr. at 194, 212-213).

[H]e started touching -- touching me around my clitoris. I think, you know -- and he was going in a circular manner with his fingers, and he asked me -- he leaned over me and he asked me do you want me to stop? And I believe I said, well, if you are done with the examination, then yes. And he was still doing this while he was speaking to me. And then he asked me again a second time do you want me to stop? And at that point I said yes. And I backed up from the edge of the table and sat up.

(Tr. at 193).

Patient 7 said that Dr. Abdelmalak had never touched her clitoris like that before:

**Q. [By Ms. Snyder:] \* \* \* Had he ever touched your clitoris like that as part of a medical examination before?**

A. Not like that.

**Q. How was it different?**

A. This time he was going around it like rubbing around it in a circular manner. He did check my -- my clitoris before because I have had other problems with my -- my bottom before with pain.

(Tr. at 195).

Patient 7 said that after Dr. Abdelmalak finished the exam, he sat at a desk in the room and started putting notes into the computer. (Tr. at 195-196). She testified that she started getting dressed, recalling that she put on "[m]y bra, my panties, my shirt, my pants, socks, and shoes," concluding, "That was the order in which I put them on." (Tr at 198). Patient 7 said that Dr. Abdelmalak stayed in the room while she was getting dressed, talking to her and looking back occasionally as he entered notes on the computer while she put on her clothes. She said this made her uncomfortable to get dressed while he was in the room, particularly after the uncomfortable exam she had just had. (Tr. at 195-198, 213).

Patient 7 said that some of the questions Dr. Abdelmalak was asking her as she got dressed were medical in nature, but some were questions about her level of intimacy with her husband, and if she was having pain during intercourse. She related that she told him that she and her husband had not been sexually active in a long time, and that this was a very emotional issue for her. (Tr. at 199, 213). The patient then described an earlier interaction with Dr. Abdelmalak that had made her uncomfortable, explaining why her relationship with her husband was such an emotional thing for her to talk about:

I had been married before. My first husband had an affair. We were not intimate. So the fact that I married again, and my husband and I are not intimate, that made me very sad. So that's why I was getting emotional and getting upset. And at that time Dr. Abdelmalak stood up from his -- his stool and he stepped in front of the chair that I was sitting in and he put a hand on each shoulder and I stood up. We are very close. So I was standing, and he was standing very close to me so like this.

**Q. [By Ms. Snyder:] So I'm going -- I'm going to say for the record what you are doing, and you tell me if I am saying it correctly. So you are approximately the same height, and he puts his hands on the top of your shoulders.**

A. On the sides of my shoulders.

**Q. On the sides of your shoulders, okay.**

A. And he looked at me, and he told me that it was not my fault. I am a very beautiful girl. I have nothing to be ashamed of. It made me feel uncomfortable because we were just very close.

**Q. Do you mean close in proximity?**

A. Close in proximity.

**Q. Okay. Thank you.**

A. So I felt as though something else may happen. So I tried to -- I ducked my head down and tried to twist my back so that I could get out from the one arm that was on my right so that I could sit in another chair further down and I sat down in another chair further down.

**Q. What were you afraid was going to happen?**

A. I was afraid that he and I may kiss.

(Tr. at 199-200).

Patient 7 did not remember when that interaction happened. She testified that she had seen many doctors, and at the hearing, she could not remember the date or even the season of the year when that incident occurred. (Tr. at 214-216). She narrowed the time down only by saying it was “either the last time I saw him or the very last time I saw him.” (Tr. at 192). She was sure, however, that it happened at the Twinsburg office. (Tr. at 192).

Patient 7’s medical records show that she had her last office visit with Dr. Abdelmalak on September 2, 2021, and shortly after that, Dr. Abdelmalak went on medical leave for his kidney transplant that occurred on September 16, 2021. (Ex. 7 at 6). The medical record for Patient 7’s office visit on September 2, 2021 indicates, “Benerly [*sic*] Collins, RN was present for the interview and physical exam.” (Ex. 7 at 14). However, the records show an office visit at the Twinsburg location a few months prior to that last visit on January 21, 2021, and the notes of that visit do not indicate that anyone else was present during the exam. (Ex. 7 at 150-162). Patient 7 maintained several times during her testimony that there was no chaperone in the room during the visit when Dr. Abdelmalak rubbed her clitoris in circles and asked if she wanted him to stop. (Tr. at 198, 209). As will be explained later, it is clear that the offensive touching must have occurred at the January 2021 appointment, and not at Patient 7’s last appointment in September 2021, because Dr. Abdelmalak testified that Patient 7 had already made a complaint against him when he saw her for the last time. (Tr. at Tr. at 939-941)

Patient 7 explained that she did not report the uncomfortable incident until her GI specialist asked her why she did not want to continue seeing Dr. Abdelmalak, and when she told him the reason, he encouraged her to report the matter to the ombudsman:

I was having pain, and my gastroenterologist said, well, you really should go back to Dr. Abdelmalak and have him look into this. And I told him I couldn't -- I didn't want to go back, and he asked me why. And I told him about this last -- this last

incident, and then it was then that he -- my gastroenterologist then said you really need to tell the ombudsman about this incident.

(Tr. at 202).

Patient 7 then reported the incident to the Ombudsman's office, but she said that she did not think the ombudsman believed her. (Tr. at 205). She explained that the only thing to come out of her report was that a note was put into her own patient record that she has trouble with male doctors:

I felt like they did not believe me. It was handled so cavalier. I talked to someone just briefly over the phone and that was it. And they just basically said okay, and the Cleveland Clinic put a note in my personal record that I have trouble with male physicians. So every time I see a doctor -- and 98 percent of my doctors are men, I have two in my care team that are women and only because they were just recently referred to me. But every time they open up my record, they ask me are you okay if I examine you? And I kind of have to say, well, yes, I'm okay. I just had a bad experience.

(Tr. at 205).

The patient related that she did not think the note in her chart has affected the *quality* of care that she receives, but she believes that it limits how other providers can take care of her. As an example, she offered that when she had a procedure done just a few days before the hearing, there had to be two other women in the room while a male doctor accessed her port. This meant that more people had to enter into a sterile field, possibly increasing her medical risk. (Tr. at 206).

Patient 7 testified that the Cleveland Clinic Police Department also contacted her, but that she only talked to someone on the phone one time, and she never saw any report generated from her call. She stated that she heard no more about her complaint until a representative of the Board came to her house to talk to her. (Tr. at 202-203).

The patient testified that she has never made a complaint about any other doctor she has seen, throughout her long, complex medical history. Nor has she ever sued Dr. Abdelmalak or any other doctor. When she was asked if she ever asked him to prescribe narcotics for her, she explained that she cannot use narcotics because they would slow her bowels. The patient said that she used only liquid Neurontin and gabapentin, because pills would come out in her ileostomy bag before they could be dissolved. (Tr. at 214-215).

Patient 7 admitted that she felt "guilty" about giving testimony at the hearing, because Dr. Abdelmalak was the only one who had been able to give her relief from her pain:

I had been with him five to six years and I did feel -- I did feel a personal connection with him because he did share parts about his life with me. And I was talking about some pretty personal things with mine, so I did feel that we had had more of a personal connection than just him being my doctor.

And I respect him very much for what he does. I know he helps a lot of people, and I know he's the only one who does what he does at the Cleveland Clinic. And he was able to give me relief which no one has been able to do since I stopped seeing him. And I'm sorry if this hurts him in any way because I do think that he is a good doctor. Because of the last incident we had, I no longer feel comfortable being his patient.

(Tr. at 201).

Patient 7 further testified that since she has left Dr. Abdelmalak's care, she has not found any other doctor who has been able to help her as much as he did:

So I have now had 12 surgeries. And my stomach stopped working last fall. I just had another procedure on my stomach done just last Wednesday. So I deal with a lot of discomfort and getting sick and a lot of pain. And Dr. Abdelmalak was able to take some of that away. And since I left his care, I don't have anyone else to help with those areas. So there's no one who has been able to help me.

**Q. [By Ms. Snyder:] Do you feel like Dr. Abdelmalak was irreplaceable?**

A. I do. They have not replaced him. There is no one else to see because I -- I did ask if there was another person who dealt with chronic pelvic pain management, and they told me they didn't know of anyone else that was their specialty, so they referred me to another anesthesiologist, but he doesn't do the same type of work that Dr. Abdelmalak does, so he's only been able to help me with a small portion of what's wrong.

But when you have a patient who is in pain all the time and you have the ability to make some of it go away, it's really devastating, you know, when you don't have that relief anymore.

(Tr. at 203-204).

On cross-examination, Patient 7 agreed that she received a call from Dr. Abdelmalak's office in the fall of 2021, telling her that Dr. Abdelmalak was on leave, and that her next visit would need to be rescheduled. She acknowledged that she had recurring regular appointments scheduled for follow up visits, as she had been seeing him frequently for pudendal and genitofemoral procedures. She further agreed that when Dr. Abdelmalak's counsel had called her to ask about her experience before the hearing, she did not mention that he touched her clitoris. She explained that she was on vacation and was not in a private place when she received the call, so she only alluded to the fact that the objectionable touching was during the pelvic exam. (Tr. at 208-209). She explained, "[T]here is a big difference between someone physically holding your shoulders and talking about your clitoris in public." (Tr. at 209).

Dr. Abdelmalak's Testimony in Response to Patient 7's Allegations

Dr. Abdelmalak recalled treating Patient 7 with pudendal and coccygeal nerve injections, but he added that she had multiple other doctors, including GI and colorectal specialists, and that she had also had frequent ER visits. He explained that the dissection from her colectomy was compressing nerves and causing pudendal neuralgia and tailbone pain. He testified that he began treating her for pelvic pain in 2019 – pointing out that Patient 7 testified that she thought she began seeing him in 2016. The medical records indicate that Patient 7's first appointment with Dr. Abdelmalak was, in fact, in October 2019. (Tr. at 184-186; 497, 926-928; Ex. 7).

Dr. Abdelmalak testified that Patient 7 was referred to him by her ob-gyn specialist, and that she had been evaluated by a psychiatrist because she was a victim of prior sexual abuse. He explained that pelvic pain can have many causes, including sexual abuse, which he said can be a psychological reason for pelvic pain. Although he knew about this history when Patient 7 was referred to him, Dr. Abdelmalak said that he waited until she was comfortable with him to raise any issues of sexual wellbeing with her. (Tr. at 927-928).

Dr. Abdelmalak testified that is clinically appropriate to address whether pelvic pain patients are sexually active and how their pain affects their quality of life, including if they have pain with sexual relations. He recalled that Patient 7 sometimes offered more information than he expected, relating that when he first asked if she was sexually active, she said only about once a month because it was very painful.<sup>20</sup> (Tr. at 930-931).

When he was asked if he ever had any detailed conversations about sexual activity, Dr. Abdelmalak hesitated and then offered, “[S]he raise it up one time.” (Tr. at 936). He related that he believed she was prompted to overshare information about her relationship with her husband when he asked questions related to her pelvic pain:

She came and she said -- ask her how is the injection last time. She said very good. I got 90 percent for three weeks. I said so the pain in the pelvic is 90 percent improved? She said yes. So now you can have sexual relationship because you said you cannot have it because you have pain.

And this question looks like trigger hair. You know what I am feeling, so ugly, nobody likes me. My husband, I tried to approach him. I said wait, wait, wait. If you asking for any conversation about this, I refer you to your OB-GYN Dr. Strasburg. She is excellent in this area. She refuse and said I trust you. What I can

---

<sup>20</sup> Dr. Abdelmalak was questioned about a positive pregnancy test that Patient 7 had as part of a pre-operative workup before one of her procedures, and there appeared to be some suggestion at times that Patient 7 was not truthful in her statements about her lack of sexual activity. However, this was not an issue affecting her credibility because Dr. Abdelmalak ordered a blood test that showed that the patient was not, in fact, pregnant, and that the earlier test was a false positive. (Tr. at 501-502, 931-936; St. Ex. 7 at 70, 83).

do? I said I don't know what you can do. You are a woman. You know, if one position hurting you, use different position. That's it. And we end the conversation.

(Tr. at 936-937).

Dr. Abdelmalak disagreed with Patient 7's testimony that the two of them were growing closer personally, maintaining, "Maybe she feel closer. I don't know. I don't control patient feeling, but for me she is one of the patient." (Tr. at 937-938). He testified that he never called Patient 7 or saw her outside of his medical office, and that he did not believe he was ever emotionally inappropriate with her. (Tr. at 938).

Although Patient 7 did not remember the date of the visit that made her uncomfortable, Dr. Abdelmalak apparently believed that the visit that prompted Patient 7's complaint was not her last visit, but a visit shortly before that, as he testified that she had already complained about him when he saw her for the last time in his office. (Tr. at 939-941). He related that when Patient 7 came in for another office visit after she had complained about him touching her inappropriately, he called the ombudsman and asked for guidance:

When she came to this visit, I call the ombudsman. I said this patient complaining and we -- you came and do investigation schedule with me. I don't know how to proceed because usually ombudsman after patient complain there is no reason for my care. She [the ombudsman] said no way. We talked to her like we find you another physician. I said my question is how I can proceed. She said make sure like you have somebody with you from the first minute enter the room until last minute you leave the room.

(Tr. at 939-940).

As a result of that guidance, Dr. Abdelmalak said that he made sure he had his nurse, Beverly Collins with him. And, in fact, the notes of Patient 7's last appointment indicate that Ms. Collins was present for the exam, while the notes of the appointment in January 2021 do not contain the name of any chaperone who was present. (Ex. 7 at 6-22, 146-162). Dr. Abdelmalak said that he did not do a pelvic exam at that last visit, and he pointed out that Patient 7 still scheduled another appointment at the end of the office visit, but his medical leave prevented that appointment from taking place:

Last visit I have Beverly Collins with me. She came. She discussed the plan for the future. We didn't do any pelvic exam. She said I have abdominal tenderness, so we look at the abdomen. We document like ileostomy tube in the right side. Tenderness in the -- around this area. And then we put a plan for the injection. She scheduled. And she has appointment, and we called her to cancel the appointment because I went for medical leave.

(Tr. at 942).

When Dr. Abdelmalak was asked if he ever put his hands on Patient 7's shoulders and looked into her eyes, he said that that never happened, adding that Ms. Collins was present during that exam. However, Patient 7 did not say this had occurred at her last exam. (Tr. at 943). Dr. Abdelmalak denied ever touching Patient 7 inappropriately on her breasts or around her vaginal area.<sup>21</sup> (Tr. at 944-945). Although he adamantly denied any romantic intention, he acknowledged that he always looks patients in the eye, and he said that he sometimes puts one hand on the patient's shoulder when he is giving them instructions that he needs them to understand, but he added, "not two hand like what she describe." (Tr. at 943-944).

On cross-examination, Dr. Abdelmalak agreed that he would "100 percent" consider Patient 7 to be a vulnerable patient. (Tr. at 499). He described a traumatic social history including not only sexual abuse, but also domestic abuse in her previous marriage, and he said that she was also medically vulnerable because of the extent of her complex medical problems. (Tr. at 499-501). Dr. Abdelmalak agreed that when Patient 7 testified at the hearing, accompanied by her husband, she was tearful during her testimony but still spoke well of how he had helped her, and he offered the following suggestion for why she cried:

**Q. (By Ms. Snyder). Did it look like she was having fun testifying yesterday?**

A. I think she feeling like she lost somebody helping her.

(Tr. at 499).

Dr. Abdelmalak maintained on cross-examination that he never talked about specific sexual maneuvers for Patient 7 to try with her husband, aside from suggesting that if one position hurts, she should try a different one. (Tr. at 502-503). He also testified that he did not touch her clitoris. (Tr. at 504). Dr. Abdelmalak further testified that although Patient 7 testified that she had lost sensation in her vagina and had feeling only in her clitoris area, he had never heard that from her before, stating, "This is all brand new information for me." (Tr. at 505).

When Dr. Abdelmalak was pressed on cross-examination about whether he touched Patient 7's clitoris in the way she described, he was initially somewhat evasive. Rather than simply saying that he did not do that, he instead argued that there was no reason to do such an exam and that this could not have happened because the chaperone was present at her last appointment:

**Q. (By Ms. Snyder). Okay. You would agree though you had no reason to be touching her clitoris in that office visit, right?**

A. I don't have any reason, but I never do pelvic exam without chaperone.

---

<sup>21</sup> Patient 7 testified that Dr. Abdelmalak had never touched her breasts inappropriately. (Tr. at 206)



**Q. But my question to you there would be no reason for you to be touching her clitoris in that office visit, right?**

A. No reason to examine her in this office visit. She come in for like postop, post-procedure.

\* \* \*

**Q. She testified yesterday that you moved your fingers on her clitoris and said do you want me to stop. Do you remember that testimony?**

A. No. I, if this has happened, chaperone is there. I never said this word.

**Q. Okay. She said you said it at least twice, so you disagree with that.**

A. 100 percent.

(Tr. at 505-506).

Although Dr. Abdelmalak insisted that a chaperone was present during the visit in which Patient 7 accused him of sexual misconduct, he agreed that the notes of the office visit on January 21, 2021 do not indicate that anyone else was present during his exam, and he conceded, "For this visit there is no chaperone." (Tr. at 510). However, he agreed that by the time of her last visit in September 2021, there was a flag in her chart indicating that a chaperone would have to be present:

**Q. (By Ms. Snyder). \* \* \* We start out looking at a visit in January of 2021 and I asked you to show me where there was a chaperone and you were not able to do that, right?**

A. Yes. There is no chaperone because she is not coming for pelvic exam.

**Q. Okay. But you had said she had a flag in her record --**

A. Yes.

**Q. -- that required that you always have a chaperone in the room.**

A. This is like in the last visit the nurse told me about this.

**Q. Okay. Could the flag be because of the last visit?**

A. May be.

(Tr. at 511-512).

Finally, when Dr. Abdelmalak was asked if he could think of any reason that Patient 7 would give false testimony against him, he was only able to suggest that psychological issues could be the cause:

**Q. (By Ms. Snyder). Can you think of any reason why she would make that up?**

A. For me I find like no reason more than like some depression. \* \* \* Depression, some psych issue or stress at home. I have no idea.

**Q. Because, again, she didn't sue you or ask you for money, right?**

A. No.

**Q. And she lost a physician that she felt helped her tremendously, right?**

A. This is what I understand from her talk yesterday.

**Q. She was crying over her testimony, right?**

A. Yes.

(Tr. at 507).

Although Patient 7 was not sure when the visit that caused her to make the complaint occurred, all of the evidence indicates that it was the visit on January 21, 2021, and that the patient still returned for appointments on May 14, 2021 – when the exam was chaperoned by Caryl Trinetti, MA – and a final appointment on September 2, 2021 – when the exam was chaperoned by Beverly Collins, RN. Dr. Abdelmalak apparently agreed that Patient 7's last appointment was not the one that caused her to file the complaint, because he testified that when Patient 7 came back in September 2021, he already knew that she had made a complaint to the ombudsman about him, so he made sure to have a chaperone. (Tr. at 939-941). The notes of the May and September 2021 visits indicate that a chaperone was in the room, but the notes of the January 2021 visit do not indicate that anyone else was present in the exam room. The notes of the January 2021 visit are signed only by Dr. Abdelmalak. Patient 7 testified that she did not initially plan to make a complaint until her GI specialist later directed her to tell the ombudsman what had happened. (Ex. 7 at 14, 117, 150).

Testimony of Beverly Collins, RN

Beverly Collins has been a registered nurse for 16 years and has worked as a charge nurse and unit manager at the Twinsburg campus for about 11 years. She said that she worked with Dr. Abdelmalak during that entire time, and that she served as a chaperone for him multiple times. (Tr. at 586-588).

Ms. Collins testified that Dr. Abdelmalak would let her or another member of the medical staff know when he needed a chaperone, and they would get the patient gowned and ready, and would then assist him during the exam. (Tr. at 588-589). She explained that the chaperone was there for the safety of the patient, and also for the doctor's protection, to make sure that "nothing comes back on the provider." (Tr. at 589). Ms. Collins emphasized that she took that role very seriously, stating, "My job was to be there, be a witness to make sure the exam went as it was supposed to and that nothing happened that wasn't supposed to happen." (Tr. at 588-589). She later added, "[M]y job is to know what is appropriate and not appropriate and that would also be my job if I heard something inappropriate to report it." (Tr. at 594).

Although the evidence shows that the appointment that resulted in Patient 7's complaint was in January 2021, Ms. Collins was directed to the notes of the September 2, 2021 office visit, and she confirmed that her name appeared as the chaperone for that visit. She stated that this record indicates there was no pelvic exam performed at that appointment, because it indicates, "GU: not examined." She said that Dr. Abdelmalak did not do or say anything inappropriate at that exam, and she added that she had "absolutely" never seen him do anything inappropriate with any patient. (Tr. at 590-595; Ex. 7 at 14).

On cross-examination, Ms. Collins said that she did not specifically remember Patient 7's September 2, 2021 visit, but she offered: "I don't have recollection, but I can guarantee you that if I was a chaperone, that my -- I am not going to risk my job or my license for anybody or anything, so if something would have happened, I would have reported it."

(Tr. at 602-603).

Ms. Collins later re-emphasized her commitment to protecting the patient and the doctor:

[M]y job is a nurse and if I am called here to \* \* \* testify, I don't have any idea, I am going to say what I know happened whenever -- what I am being asked for. I am here for the patient. I am here for the doctor. I am here -- that's my job. I am not here as a friend. I am not -- like my oath, my license, is a nurse, safety of the patient, safety of the doctor -- \* \* \* not as a friend.

(Tr. at 603-604).

Finally, she testified: "[F]or anyone to think that this would happen on -- that I would let this happen, I think that's a disgrace actually under my license and my name too." (Tr. at 606-607).

Although she maintained that she was testifying "as a nurse" and not as a friend or acquaintance of Dr. Abdelmalak, Ms. Collins offered her assessment of him as a colleague and as a physician:

Dr. Abdelmalak was a great physician. He was great with his patients. Actually a -- his patients loved him. They came from all over to see him. When he did leave, we had patients calling all the time wondering where he was, when he was coming back, if he was coming back \* \* \*

(Tr. at 595).

Ms. Collins testified that, to her knowledge, Dr. Abdelmalak never performed a pelvic exam on a patient without a chaperone present. She also confirmed that whenever a nurse or a medical assistant serves as a chaperone, that person's name is always documented in the patient's record. (Tr. at 607-608, 610).

On cross-examination, Ms. Collins said that she recognized only the *name* of Patient 7, and that she would be surprised to learn that seven different women had accused Dr. Abdelmalak of misconduct, because she did not believe that would ever happen:

**Q. [By Mr. Wilcox:] Are you aware of what the doctor is charged with as we sit in this room today?**

A. I am aware that false accusations have been made.

**Q. And as you term false accusations, do you know how many women have come forward and alleged sexual abuse –**

A. I do not.

**Q. -- at this time? You have no idea?**

A. I do not.

**Q. Would it surprise you to know that seven different women have come forward?**

A. Yes.

**Q. And why would that surprise you?**

A. Because -- \* \* \* I would never -- I would never -- I would never say that would ever happen.

(Tr. at 601-602).

When she was asked to clarify if she did not believe *any* physician would ever sexually abuse a patient, Ms. Collins clarified, "I don't think Dr. Abdelmalak would ever do that." (Tr. at 608).

#### **Patient 6**

Patient 6 was a young woman who traveled to the hearing from Akron and was accompanied by her father while she testified. She testified that, in January 2019, she was working in a factory and

was injured on the job.<sup>22</sup> Her claim with the Bureau of Workers' Compensation ("BWC"). was approved, but she was still having ongoing pain in her shoulder and her back where she had been injured, and she sought treatment with Dr. Abdelmalak beginning on or about February 26, 2021. The notes of that visit indicate that Patient 6 was 28 years old and had been suffering from chronic neck pain for two years since her injury. The notes also indicate that Dr. Abdelmalak told the patient early on that he does not complete paperwork for disability, FMLA, or insurance-related forms, but that his documentation would be made available to her primary care doctor. At the hearing, Patient 6 confirmed that her primary care doctor was the one who completed her BWC forms. (Tr. at 314-315, 343-344, 346; Ex. 6 at 156).

Patient 6 testified that her primary care doctor had referred her for a consultation about pain in the left side of her neck, as well as her shoulder and bicep area, and that Dr. Abdelmalak suggested trigger point injections as a possible solution. She said that she saw Dr. Abdelmalak at the Twinsburg location, and that she went to the appointments by herself. Over the course of her treatment, Patient 6 said that she saw Dr. Abdelmalak for both office visits and injection procedures in her left shoulder and the left side of her neck. (Tr. at 316-319).

Patient 6 continued treating with Dr. Abdelmalak for about seven months until about September 2021, when she said that she decided not to go back to him anymore because she related, "It just got more and more unprofessional." (Tr. at 319). Patient 7 said that Dr. Abdelmalak made comments about her appearance, beginning in about the second or third visit with him, and that those uncomfortable interactions made her question whether she should continue seeing him. (Tr. at 319-320). She recalled, "Initially it was just the comments about my looks like saying I was pretty or just different compliments like that." (Tr. at 319). However, she said that he would also kiss her on both cheeks at the end of her visit and this made her very uncomfortable:

A. Whenever I would go to leave, he would kiss like this cheek and this cheek, both cheeks.

**Q. [By Mr. Wilcox:] Okay. And would he say anything at that point?**

A. He would say something about my appearance.

**Q. Did that start initially at the first visit, or do you recall approximately when?**

A. I think the second or third.

---

<sup>22</sup> In a videorecorded interview with the Twinsburg Police about this patient, Dr. Abdelmalak recollected that something had fallen on Patient 6's left shoulder at work, and when he reviewed her MRI, he found that she had a bulging disc in the area of C-5 to C-6 or 7 that he believed was compressing a nerve. (Ex. R)

**Q. And how did that make you feel when the doctor was either –**

A. Super uncomfortable. Like I questioned at that point going back.

(Tr. at 320).

Patient 6 testified that at her first injection appointment, there were other patients in a procedure area that were curtained off from her, but after that appointment, she was always alone in the room with Dr. Abdelmalak. (Tr. at 347-348). She said that when she was examined by Dr. Abdelmalak at the Twinsburg office, she was asked to take off her shirt, as well as her bra:

**Q. [By Mr. Wilcox:] Were you asked to remove any articles of clothing?**

A. Yes.

**Q. And what was that?**

A. Everything on the top.

**Q. So whatever shirt or sweatshirt.**

A. Shirt, bra, all of that. Like I asked if I could keep the bra on, but they said no.

**Q. And when the doctor would examine you on these occasions, would there be anyone else in the room with you?**

A. No.

**Q. Did you ask for anyone else to be in the room?**

A. I don't think so. I didn't know I was allowed to. I do now.

(Tr. at 322).

Later in her testimony, when Patient 6 was asked who told her that she could not keep her bra on, she said that it was Dr. Abdelmalak, and she confirmed that she did not wear sports bras to her appointments, but just “normal bras.” (Tr. at 333, 348). She clarified that she was given only “a top shirt kind of gown, not a dress” to wear during the exam. (Tr. at 321).

Patient 6 explained how the progression of her visits made her feel more and more uncomfortable with Dr. Abdelmalak, until the last visit, when she said that he grabbed her breasts and asked her to take off her pants:

**Q. [By Mr. Wilcox:] Tell us how, if you recall, those examinations would go from the doctor. What would he do?**

\* \* \*

A. Initially it was the inappropriate comments and then the kissing of the cheeks or like a hug and the kiss on both cheeks. And then he just grabbed both of my breasts at the same time and said they were perfect or a perfect C cup. I don't remember. And he asked me to take off my pants during the last session, and I said no.

**Q. Okay.**

A. And he also like always poked around my whole body. Does this hurt? Does this hurt? And it -- a lot of the time it wasn't just the areas that were affected.

**Q. And did you have pain in your breasts?**

A. No.

**Q. Did you have pain anywhere else besides your shoulder, your neck?**

A. No.

**Q. Your left shoulder?**

A. And you could tell I was always anxious, nervous, and sweating, and he prescribed a drug that had nothing to do with where I was hurt and said what would you do for me if this works. And I said pay my bill because he was suggesting something sexual.

**Q. That's what you thought he was saying?**

A. Yeah. It just was a weird question.

(Tr. at 322-323).

Patient 6 clarified that Dr. Abdelmalak grabbed her breasts with both of his hands only one time at an office visit, but that it made her feel scared and uncomfortable:

**Q. [By Mr. Wilcox:] You said at one point he grabbed your breasts with both his hands.**

A. Yes, at the same time.

**Q. Okay.**

A. He said they were perfect.

**Q. Okay. When did that occur, if you recall, in an appointment? Was it during the exam, after the exam?**

A. During the exam like right after the pain triggers because he started with a poking around the whole body and then would administer them and then that's when he cupped them the one day and asked me to take off my pants to which I said no.

**Q. Okay. How many times, if you recall, did Dr. Abdelmalak touch or grab your breasts?**

A. Just the one time but there was always comments.

**Q. When he touched your breasts or grabbed your breasts, what did you -- how did that make you feel?**

A. Scared and uncomfortable.

(Tr. at 325).

Patient 6 further testified that she had had breast exams with other doctors, but she said that those exams were “Nothing like how he grabbed me,” adding, “[H]e literally just like – (indicating).<sup>23</sup> \* \* \* [H]e just cupped them at the same time. It wasn't like a breast exam.” (Tr. at 325-326). On cross-examination, she said that his hands were “full on straight ahead” on her breasts, and she demonstrated by placing both of her hands on her own breasts at the same time. (Tr. at 334-335).

When she was pressed for detail about what Dr. Abdelmalak said about her breasts, Patient 6 said, “He said they were perfect or I thought he said they were a perfect size C,” adding that she did not think that interaction had any medical purpose. (Tr. at 327).

Patient 6 explained that she never went back to Dr. Abdelmalak after that visit:

**Q. [By Mr. Wilcox:] And did you go back to the doctor after he had grabbed your breasts?**

A. Not after he grabbed my breasts and asked me to take off my pants. That was like the final straw. And also the incentivizing like I owed him if that medication worked.

---

<sup>23</sup> Patient 6 placed her own hands on both of her breasts at the same time to indicate how Dr. Abdelmalak had “cupped” her breasts. (Tr. at 325)



(Tr. at 327).

The medical record of Patient 6 indicates that her last appointment with Dr. Abdelmalak was at the Twinsburg office on September 3, 2021, when she had a left cervical and trapezius trigger point injection. Although the notes of that visit indicate that Caryl Trinetti (now Abramowski) and Beverly Collins, RN, previously entered the medications that Patient 6 was taking into her medical history, the Hearing Examiner can find no indication that a chaperone was present during that procedure on September 3, 2021. (Ex. 6 at 1-21).

Patient 6 said that she “just always had a bad feeling” going into her appointments with Dr. Abdelmalak. (Tr. at 321). However, she said that she was afraid to say anything until the “most disturbing, uncomfortable” visit in September 2021. (Tr. at 327). She explained: “I was always more and more terrified to see him because everything progressively got worse. I was scared to say something because I didn't want something worse to happen.” (Tr. at 327-328).

Patient 6 recalled that the trigger point injections she got from Dr. Abdelmalak helped for “maybe for a day or two,” concluding, “I don’t think it did a whole lot.” (Tr. at 321). However, she added on cross-examination that she was not sure if she had to continue getting the injections for a while in order to feel some relief. (Tr. at 335-336). When she was pressed on why she kept going back if she was feeling more and more uncomfortable and the injections were not helping very much, she offered the following explanation:

I guess I was scared to say something like I didn't know if it would lead to someone like get -- I was just terrified, kind of freeze up because I never had something like that happen before, and I was in pain too. \* \* \* I was scared if I asked for somebody else, like just speaking up, if they would understand or not.

(Tr. at 331-332).

Patient 6 said that she finally decided not to go back after the last visit, when Dr. Abdelmalak had grabbed her breasts and asked her to take off her pants. She recalled that he would “poke around” her pelvic area, asking if different places hurt, but that she had not told him she had any pelvic pain, and he did not tell her why he wanted her to take off her pants at the last visit. (Tr. at 328-329).

At first, Patient 6 said that she did not make a formal complaint, but that she wrote some online reviews of Dr. Abdelmalak, in which she insisted she was honest.<sup>24</sup> (Tr. at 330, 339-340, 346). However, she said that she was persuaded to report the incident to the police after she confided in a friend, recalling, “I finally talked to a friend about it because I was scared to say -- I was scared

---

<sup>24</sup> Since this was the last patient to file a complaint against Dr. Abdelmalak, her online reviews of him necessarily could not have caused the other patients to file their complaints against him, since those occurred at an earlier time.

to say something to Cleveland Clinic. \* \* \* She said ‘you need to say something.’” (Tr. at 329-330).

Based on her friend’s advice, Patient 6 made a report with the Twinsburg Police. She testified that the police asked her questions about her experience and told her that they were going to investigate. However, she said that she never heard anything more from the police about her complaint after she made her report. (Tr. at 330-331).

Patient 6 testified that this experience had caused her to have trust issues with everything in life, and with doctors in particular. (Tr at 346-347). She stated, “It’s made a very negative impact in my life. It’s caused a lot of trauma and trust issues. \* \* \* I was scared to even go to doctors for a while. And now I always ask someone to be in the room.” (Tr. at 347).

On cross examination, Patient 6 conceded that her work injury kept her off work for a period of “years,” although at the time of the hearing, she was working in the retail field, in a different type of job than the factory setting where she had been injured. (Tr. at 315, 336, 345). She said that Dr. Abdelmalak showed anger through his voice and demeanor with her when they discussed her returning to work. (Tr. at 335-337). She testified:

[H]e wanted me to lift 50 pounds, and I wasn't able to do it, but he insisted that I go back to work. That's when the aggression would show if I even spoke up about how I didn't feel I was ready. \* \* \* Like he would just get angry if I even suggested something as in like if I need more pain trig[ger] injections or something before going back to work or maybe I shouldn't lift so heavy.

(Tr. at 336-337).

Patient 6 elaborated that it was her goal to go back to work and said that she still missed her factory job. She said that she went to occupational therapy and physical therapy a few times in 2019, and that it was beneficial. (Tr. at 341-345). However, she recalled, “I attempted to go back [to work] a few times, but it never lasted because the pain was so bad.” (Tr. at 345). This testimony was corroborated by a video-recorded interview of Dr. Abdelmalak by the Twinsburg Police, in which he stated that at one point in her treatment, Patient 6 said that she was about 70% better and thought she could go back to work, but that she checked with her employer, and their lawyer said she could not return until she was 100% recovered, as they did not have any kind of administrative work for her. (Ex. R at 20:38-20:48).

With respect to the kissing and the compliments, Patient 6 said on cross-examination that Dr. Abdelmalak would kiss her on both cheeks without any explanation why he did that, and that he did it “multiple times” at the end of her appointments. (Tr. at 350). She also maintained that she understood Dr. Abdelmalak’s compliments to be romantic in nature, because he was also touching her inappropriately or kissing her at those times:

**Q. [By Ms. Moore:] Regarding the conversation where you state that he said you were pretty or beautiful, as a girl, sometimes people say that, you know,**

**my dog is pretty, my baby is pretty. Was he meaning it in that manner, or was he meaning it in the romantic interest?**

A. Romantic interest.

**Q. How do you know?**

A. Because he was touching me inappropriately. That's not professional.

**Q. So he said that you were pretty and beautiful while he was touching your breasts?**

A. Yes, ma'am.

**Q. To be clear you said that he touched your breasts at only one occasion?**

A. Yes, just grabbed them one time.

**Q. Okay. So on the other instances when he said that, he wasn't touching you.**

A. Either kissing or touching like poking around my body or asking me to take my pants off.

(Tr. at 349-350).

Patient 6 insisted on cross-examination that she had never asked Dr. Abdelmalak for a hug. (Tr. at 338). When she was asked if she ever asked him for a referral about a sweating problem, the patient recalled, "He noticed I was sweating and prescribed some – I don't even remember what it was called. \* \* \* He just sent in the script." (Tr. at 339). When she was asked if she took that medication, she replied, "Maybe once." (Tr. at 339).

Patient 6 also maintained on cross-examination that she never asked Dr. Abdelmalak for a referral to a plastic surgeon, and never discussed any kind of plastic surgery with him, flatly denying any discussion of a "breast job," tummy tuck, or liposuction, and emphasizing, "No, never." (Tr. at 339).

Finally, Patient 6 testified on cross-examination that she had never filed a complaint against any other doctor besides Dr. Abdelmalak, concluding, "No. I never had a doctor touch me like that." (Tr. at 340).

Dr. Abdelmalak's Testimony in Response to Patient 6's Allegations

Dr. Abdelmalak testified that he saw Patient 6 for seven visits at his Twinsburg office, and that some of those visits were procedures for injections, including a cervical epidural steroid injection, as well as trigger point injections in her back, neck, and trapezius muscle. (Tr. at 909-909). He said that she was always gowned, and despite Patient 6's testimony that he asked her to remove her bra, Dr. Abdelmalak testified that he did not ask her to remove it, but that he only asked her to move the strap:

**Q. [By Ms. Moore:] So Patient 6 states that you asked her to remove her bra. Did you?**

A. I never asked the patient to remove the bra. I said when I find it in the area where I am going to inject, I ask her to move the strap down under the -- under the gown.

(Tr. at 909).

When he was asked if he kissed Patient 6 on her cheeks, Dr. Abdelmalak initially appeared to evade the question, offering reasons why he would not have done this, rather than simply saying that he did not:

**Q. [By Ms. Moore:] Okay. So Patient 6 says that you kissed her \* \* \* on the cheeks, both cheeks starting on visit No. 2.**

A. This is what she said yesterday, but No. 1 visit -- No. 2 was a cervical epidural steroidal injection in the OR. Patient laying in the OR table face down. There is four nurses in the room. Then taken to the recovery. The recovery room is the same description of the other recovery. And there is nurses with her. I don't know where I can find time to kiss her. No. 2, during this time it was COVID, and I always wearing mask. This is mandatory of every Cleveland Clinic employee to wear a mask. \* \* \* Reason No. 3, trigger point the same situation.

(Tr. at 911-912).

Dr. Abdelmalak added that all of Patient 6's visits were in 2021, when his kidney disease was considered terminal and he was awaiting a transplant. He said that he would not have kissed her because he was immunocompromised then. (Tr. at 912-913). Additionally, he offered that it is not his culture to kiss women on the cheeks, stating, "In Egypt, we didn't kiss woman. Men kiss men, and women kiss women. So when I move here, I find difference." (Tr. at 913). Finally, he concluded: "This is not true. If it happened at every visit and she was not comfortable as she said like from the second visit, why she continue to come?" (Tr. at 914). With respect to any hugging, Dr. Abdelmalak testified that it is also not his culture to hug people, but he said that he had recently started adapting to hugging people, away from the face. (Tr. at 913).

Dr. Abdelmalak said that there was only one time at Patient 6's last visit when he reluctantly hugged her, because the patient asked if she could hug him, offering the following meandering account of that visit:

**Q. (By Ms. Moore) Okay. Did you ever hug Patient No. 6?**

A. So this happened like one -- I think the last visit maybe she was because every visit like she always angry when I ask for anything. I am not angry. I said I like you to be—I like to be clear with you. I am not here to give you injection every week as you ask or give you medication as you want. I am here to help you to go back to work so, please, we cannot give this injection every two weeks because it has cortisone and this can affect your muscle and affect your life. So this is what she said. And then yesterday in her testimony she denied like I send her for PT and OT. And you can find a lot of messages since PT ordered to Mercy Hospital and then can you repeat the PT order like work conditioning, can you send the letter OT, and this is like indicated like I did all this stuff. The last visit she came, she said, Dr. Abdelmalak, you are the only one helping me with the PT.

**Q. Is this what she -- so let me -- let me point of clarification because my question to you was did you ever hug her?**

A. That's -- I am going to tell you why she raise this issue. She said you are the only one who helping me with the PT and look at my muscle, and she made that fist like her muscle.

\* \* \* [objection made to unresponsiveness]

HEARING OFFICER SHAMANSKY: He has not answered if he hugged her or not.

THE WITNESS: I don't.

HEARING OFFICER SHAMANSKY: Can't you just give an answer yes or no and explain?

A. She said I am a hugging lady. Can I give you hug? And she stand and open her arms like this.

**Q. (By Ms. Moore). When did that happen that she asked you for a hug?**

A. This is last visit.

**Q. Did you give her a hug?**

A. She is standing, open her arms like this. I eventually said okay. Congratulations. And sit down. Again, the hug is not like touching her hardly or just kissing her. It just give her hug and sit down.

**Q. Okay. So that was the only time you hugged her?**

A. Yes. She asked for the hug, not I ask her.

(Tr. at 916-918).

Dr. Abdelmalak testified that the Twinsburg police interviewed him in March 2022, and that he understood from that interview that Patient 6 had made a complaint that he touched her breasts, kissed her cheeks, and hugged her. He pointed out that in the Patient's testimony, she did not accuse him of touching her vaginal area, and only said that he asked her to pull down her pants, but she refused. He testified, however, that he never asked her to pull down her pants, and further stated that he did not "poke circles" around her pelvic area, as Patient 6 stated in her testimony. Although Patient 6 did not recall having a fibromyalgia exam, Dr. Abdelmalak said that he did a fibromyalgia exam on Patient 6, in which he examined the tender points. (Tr. at 350, 919-920). He conceded, however, that he did not document doing the fibromyalgia tender point exam on her in the medical record, because he said that he only documents performing the exam if it is positive, and that in this case, it was negative, concluding, "[I]f positive, I record it." (Tr. at 988).

He also denied asking Patient 6 what she would give him if the Detrol medication that he prescribed for her sweating worked, adding, "I get my salary from the Cleveland Clinic, not from the patient." (Tr. at 921-922).

Dr. Abdelmalak contended in his testimony that in one of Patient 6's last two visits, she asked him about whether she should consider breast reduction surgery, to help alleviate her back pain. He related that she brought up the idea, and that he discouraged her from having surgery:

The other occasion she discussed about I feel so good, but I want to -- if you recommend me breast reduction so help my neck and back and I look much better. \* \* \* Once she said this, I immediately said, No. 1, you look great. You don't need it, maybe a little bit overweight. You can use any weight loss program, but I don't recommend it for your age for anyone because the scar after the reduction and the scar after the liposuction for the belly can affect you with pregnancy and lactation in the future.

**Q. [By Ms. Moore:] Did you make any comments about her breasts or appearance that were not related for medical care?**

A. No. She said I feel I am fat. I said no. You look great. And everything looks normal.

(Tr. at 922-923).

Dr. Abdelmalak admitted that he did not document the conversation about breast reduction surgery in Patient 6's record, because he said that it took place after he had given her the after-visit summary, at which time he considered the visit finished, adding, "I consider this like away from visit." (Tr. at 924-925, 988-989). He likewise testified that the conversation about her sweating was also brought up by the patient after her office visit, and that he prescribed Detrol LA, and told her that if it did not work, she could see a dermatologist about possibly using Botox for excess perspiration. The order for that medication, but not the conversation that led to it, is documented in the patient's record. (Tr. at 494-495; Ex. 6 at 17).

Dr. Abdelmalak maintained on cross-examination that any remarks he may have made about Patient 6's appearance were strictly for clinical reasons:

A. I make a comment but not for other reason. She asked to go for a cosmetic breast reduction and liposuction because it might help her neck and shoulder. And my comment I said you are great. You look great. You don't need this, especially you are young girl. You are going to get married, pregnant, nursing, and this procedure will give you a lot of hard time. If you need to lose some weight, you can do weight loss program rather than do surgery.

**Q. [By Ms. Snyder:] Okay. Did you -- so is it your testimony that you had a discussion about her appearance for clinical reasons?**

A. Yes, because she asked for reduction.

(Tr. at 493).

Finally, on cross-examination, Dr. Abdelmalak acknowledged that there was no chaperone in the room at Patient 6's last visit with him. He stated that his MA had roomed the patient and had given her the gown, but then left before he came in to give Patient 6 the injection. (Tr. at 496). He denied making any reference to her breasts as "C cups," saying that he did not know what that meant:

**Q. [By Ms. Snyder:] Okay. Did you tell her that her breasts were perfect?**

A. I said you look perfect. You look great.

**Q. Did you say anything about her breasts being a C cup?**

A. No. I don't know what the C cup.

(Tr. at 496).

After listening to the testimony of all seven patients, Dr. Abdelmalak agreed that none of these women had ever sued him for money, and that, to his knowledge, they had also never sued the Cleveland Clinic. (Tr. at 424-425).

Twinsburg Police Interview of Dr. Abdelmalak

Dr. Abdelmalak testified that he voluntarily interviewed with the Twinsburg police after Patient 6 made her complaint against him. He offered the video of that interview into evidence, to show that he cooperated, and that the police apparently found Patient 6's complaint unfounded, since they took no action.<sup>25</sup> However, in that interview, Dr. Abdelmalak told the police several things that contradict the testimony he gave at the hearing or call into question the testimony about the routine use of chaperones during his exams. (Tr. at 914-916; Exs. R, S).

After Patient 6 made her police report, Dr. Abdelmalak spoke to the Twinsburg police, accompanied by counsel from the law firm of Hilow and Spellacy.<sup>26</sup> Although the officer stated at the start of the recording that the date of the interview was March 23, he did not indicate the year; however, since it was shortly after Patient 6's complaint, it was presumably in 2022. Dr. Abdelmalak had apparently reviewed Patient 6's medical record before meeting with the police that day, because he told the officer that he had left his office notes of this patient's visits in his car. (Ex. R).

Throughout his testimony at the hearing, Dr. Abdelmalak maintained that his purported discussion with Patient 6 about cosmetic surgery was about breast *reduction* surgery – not breast augmentation, and the Hearing Examiner remembers Patient 6 as a young woman with a voluptuous, curvy figure. Despite this testimony from him at the hearing, Dr. Abdelmalak portrayed Patient 6 in a completely different light to the Twinsburg police, representing in his videorecorded interview that she was looking for a way to have insurance cover breast implants and cosmetic liposuction. (Ex. R). He first stated that the patient was very happy with his treatment and related their last interaction:

Last time she mentioned, “Thank you, Doctor, I appreciate what you did. I’d like to ask you question.” I said yes. “Do you know somebody doing cosmetic because I’m planning to do liposuction for my belly and breast augmentation or breast surgery.” I don’t know what she said.

(Ex. R at 18:36-19:06).

---

<sup>25</sup> The videorecording of Dr. Abdelmalak's interview with the Twinsburg police is in two parts due to its volume. Exhibit R is the first part of the interview, and Exhibit S is the second part.

<sup>26</sup> In Dr. Abdelmalak's May 2022 interview with Board investigators, he told them that the Cleveland Clinic had hired Mr. Hilow to represent him in the interview with the Twinsburg Police, and that, a couple weeks after this interview, he was told that the investigation was closed and no action would be taken. (Ex. C)



The officer conducts the next portion of the interview operating under the assumption that this consultation with Patient 6 was about breast augmentation, asking Dr. Abdelmalak questions such as, “[S]he did come to you and talk about her liposuction and breast augmentation. Would you maybe have done like a – a quick exam of her breasts to say, there’s no reason for this?” and later asks him, “When she was talking about the breast augmentation, was she covered, uncovered?” (Ex. R at 48:14 -49:21). Dr. Abdelmalak told the officer that he discouraged cosmetic surgery and added, “We have a lot of people come to us for that – mainly for breast implants, so they can access forms medical necessity for breast augmentation to the insurance companies,” to which the officer replies, “Sure.” (Ex. R at 49:33-49:54).

At the hearing, Dr. Abdelmalak testified that Patient 6 would have kept her bra on for the injections, and that he would have just moved a strap if it was in the way of the injection site. (Tr. at 909-911). However, when the Twinsburg police officer asked him what type of bra Patient 6 was wearing, Dr. Abdelmalak stated, “Some patient came in with bra; some patient came in without bra,” and when pressed by the police about whether he recalled if this patient wore one, he added, “Maybe she wearing bra. I don’t know.” (Ex. R at 40:26-40:54).

The police officer also probed Dr. Abdelmalak about whether he had had any other complaints against him in the 22 years that he had practiced with the Clinic, and Dr. Abdelmalak can be seen on the video extending his hands and shrugging in response. (Ex. R at 51:52-51:58). By this time, Dr. Abdelmalak had talked to the Ombudsman multiple times about allegations that he had touched patients inappropriately and had also spoken to the Cleveland Police and the Cleveland Clinic’s police about several other complaints made by other patients. Dr. Abdelmalak nonetheless appears bewildered about why he is there, except to explain that in pain management, it is common to have complaints from people who are refused narcotics. He also suggested that “[s]ome people came and they said like he discriminate me because my color,” and then cited another complaint to the ombudsman from a patient who claimed Dr. Abdelmalak discriminated against him because he was gay. He gave further examples of patients who complained because they had to wait a long time for their appointments, or because traffic was bad on the way there, relating to the police officer, “So you have a lot of stuff like this.” (Ex. R at 51:52-54:40). At the start of the second videorecording of the interview, the police officer laughs and quips, “So of course that’s your fault.” (Ex. S at 00:00-01:00). Although Dr. Abdelmalak estimates to the police that there are on average 2-3 ombudsman complaints a year, he suggests that they are complaints such as “He didn’t listen, he didn’t get back to me, he didn’t discuss with me.” He does not mention the fact that by this time there had been about six prior complaints alleging that he inappropriately touched patients in a sexual manner. (Ex. S at 00:15-00:22).

In the second half of the interview, Dr. Abdelmalak continued offering examples of disgruntled patients who had complained, stating, “Also patient try to find reason for complaint if you don’t give her things,” citing an example of a patient who wanted an intrathecal pump for pain relief, but needed to try to lose weight and stop smoking first; he related that that patient complained that he said she was fat. (Ex. S at 3:25-4:05).

The police officer appeared to conflate the Board with the “Ohio Department of Health,” and pressed Dr. Abdelmalak about whether there had been any complaints against him to the ODH. In response, he is heard saying, “There is nothing written. But one time they said patient said that you examined her back without noticing telling me. They said please improve your communication tell her, “I’m going to touch in this area – are you okay?” When he was asked, “As far as you know, there’s only been one complaint against you to the Ohio Board of Health?” Dr. Abdelmalak responded, “Yeah.” The police officer sympathized, saying, “I can imagine, and I’m very sorry for you and your profession, you probably have a lot of people come in, to put it very bluntly, looking for pain medication. They’ll tell you this hurts, this hurts, they exhibit no physical signs – they’re basically like doctor or drug shopping? I’m sure you’ve run into that. Dr. Abdelmalak nodded and replied, “Every day.” (Ex. R at 3:27-7:57).

At the hearing, Dr. Abdelmalak agreed that there was no chaperone in the room at Patient 6’s last appointment. (Tr. at 496). However, during his police interview, he told the officer that a nurse *was* in the room that day, stating, “In this case - in this case, I have a nurse with me. I wearing gloves. She ask to show the breasts to see how much is hanging down because usually, raise with the bra.” (Ex. R at 50:05-50:20).

Dr. Abdelmalak also told the police during the video interview that there was a staffing shortage at the Twinsburg office, so chaperones are only present during pelvic exams, explaining:

In Twinsburg, I’m saying in Twinsburg, because like we are a multi-specialty area so we have limited number of physician and nurses and medical assistants so I avoid -- because when a patient come in with pelvic pain and I examine vaginally, I have to have somebody with me, that’s why I wait until somebody would be ready. But for the trigger and stuff like shoulder pain, elbow pain, hand pain, back pain, no.

(Ex. R at 42:44).

Dr. Abdelmalak explained to the officer that when a patient is having an injection, the nurse confirms the patient’s information and gets informed consent and enters that information into the computer along with the patient’s medications, concluding, “And then she leave.” (Ex. R at 33:58-34:46).

When he was asked if Patient 6 was ever offered a chaperone to be in the room with her, Dr. Abdelmalak told the police, “No, we don’t offer that unless the patient *wants* somebody. Some patient came like, doctor, can I have somebody, yes.” He then added, “I usually offer it and they insist, say no, I trust you, I don’t need the [inaudible]. I can for pelvic exam, but for other exam, no.” (Ex. R at 42:52-43:28).

At the end of the police interview, Dr. Abdelmalak left, but his attorney remained and asked to speak to the police officer privately. Although the attorney requested that the video be turned off, it remained on, and their meeting is included in the video. The attorney thanked the officer for his time and submitted that all of Dr. Abdelmalak’s patient reviews and letters consistently showed

“what a great guy he is” and how he treats people, and he also informed the officer of Dr. Abdelmalak’s recent health problems. The attorney then appeared to try to build rapport with the officer, expressing sympathy for recent high-profile cases in which he believed that police officers had put themselves at risk and been treated unfairly, and discussing how difficult it had become to recruit police officers as a result. The attorney suggested that “[n]obody wants to hear the real story because it doesn’t fit an agenda.” (Ex. S).

### **III. BOARD ALLEGATIONS**

In the Notice of Opportunity for Hearing, the Board alleged the following:

1. In the course of his practice, Dr. Abdelmalak undertook the treatment, provided care, and/or prescribed medications to seven patients, as identified in the confidential Patient Key that was provided to him with the Notice. While providing the care and/or treatment, Dr. Abdelmalak inappropriately touched Patients 1 through 7 as set forth below:
  - (a) On or about November 23, 2012, Dr. Abdelmalak inappropriately touched the pubic or vaginal area of Patient 1 for a purpose other than appropriate health care services.
  - (b) On or about December 22, 2016, Dr. Abdelmalak inappropriately touched the vaginal area of Patient 2 for a purpose other than appropriate health care services.
  - (c) On or about January 11, 2019, Dr. Abdelmalak inappropriately touched the breasts of Patient 3 for a purpose other than appropriate health care services.
  - (d) On or about August 19, 2019, Dr. Abdelmalak inappropriately touched the breasts and/or vaginal area of Patient 4 for a purpose other than appropriate health care services.
  - (e) On or about April 19, 2021, Dr. Abdelmalak inappropriately touched the vaginal area of Patient 5 for a purpose other than appropriate health care services, and he failed to wear gloves for the examination.
  - (f) In or around August 2021, Dr. Abdelmalak inappropriately touched the breasts and/or vaginal area of Patient 6 for a purpose other than appropriate health care services on multiple occasions over the course of multiple appointments. He also made inappropriate comments to Patient 6 that were not clinically relevant.
  - (g) In or around January 2021, Dr. Abdelmalak inappropriately touched the breasts and/or vaginal area of Patient 7 for a purpose other than appropriate health care services on multiple occasions over the course of multiple appointments. Further, he made inappropriate comments to Patient 7 that were not clinically relevant.

#### **IV. FINDINGS OF FACT**

1. Dr. Abdelmalak was first licensed to practice medicine and surgery in Ohio in July 2009. His license was most recently renewed on March 7, 2023 and remains valid through July 1, 2025.<sup>27</sup>
2. In the course of his practice, Dr. Abdelmalak undertook the treatment, provided care, and/or prescribed medications to seven patients, as identified in the confidential Patient Key. While providing the care and/or treatment, Dr. Abdelmalak inappropriately touched Patients 1 through 7 as set forth below:
  - (a) On or about November 23, 2012, Dr. Abdelmalak inappropriately touched the pubic or vaginal area of Patient 1 for a purpose other than appropriate health care services.
  - (b) On or about December 22, 2016, Dr. Abdelmalak inappropriately touched the vaginal area of Patient 2 for a purpose other than appropriate health care services.
  - (c) On or about January 11, 2019, Dr. Abdelmalak inappropriately touched the breast or breasts of Patient 3 for a purpose other than appropriate health care services.
  - (d) On or about August 19, 2019, Dr. Abdelmalak inappropriately touched the breasts and/or vaginal area of Patient 4 for a purpose other than appropriate health care services.
  - (e) On or about April 19, 2021, Dr. Abdelmalak inappropriately touched the vaginal area of Patient 5 for a purpose other than appropriate health care services, and he failed to wear gloves for the examination.
  - (f) In or around August 2021, Dr. Abdelmalak inappropriately touched the breasts of Patient 6 for a purpose other than appropriate health care services. He also made inappropriate comments to Patient 6 that were not clinically relevant.
  - (g) In or around January 2021, Dr. Abdelmalak inappropriately touched the vaginal area of Patient 7 for a purpose other than appropriate health care services. Further, he made inappropriate comments to Patient 7 that were not clinically relevant.

#### **V. CONCLUSIONS OF LAW**

1. Dr. Abdelmalak's acts, conduct, and/or omissions in Findings of Fact 2(a) through 2(g), 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

---

<sup>27</sup> [https://elicense.ohio.gov/oh\\_verifylicense](https://elicense.ohio.gov/oh_verifylicense), accessed July 10, 2024.

in R.C. 4731.22(B)(20); to wit: Prohibitions, OAC Rule 4731-26-02, regarding sexual misconduct, as in effect from November 30, 2010 through September 29, 2021.

2. Pursuant to OAC Rule 4731-26-03, as in effect from November 30, 2010 through June 29, 2016, a violation of Rule 4731-26-02 also constitutes a violation of R.C. 4731.22(B)(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.”
3. Further, pursuant to OAC Rule 4731-26-03, as in effect from June 30, 2016 through September 29, 2021, a violation of Rule 4731-26-02 also constitutes a violation of R.C. 4731.22(B)(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.”
4. Pursuant to Section 4731.225, Ohio Revised Code, the Board is authorized to impose a civil penalty for violations that occurred after September 29, 2015, which may be in addition to any other action the Board may take under R.C. 4731.22. Because the conduct alleged in Findings of Fact 2(b) through 2(g) occurred after September 29, 2015, the Board is authorized to impose a fine for those violations pursuant to R.C. 4731.225. The fining guidelines for this violation are:
5. The guidelines for this violation are as follows:

Minimum Fine: \$ 6,000

Maximum Fine: \$20,000

### **RATIONALE FOR THE PROPOSED ORDER**

Over the course of a five-day hearing, six women filed into the hearing room, one by one, to face Dr. Abdelmalak and testify in the starkest terms against him. One additional woman who was not well enough to travel testified against him by real-time videoconference. The women were of various walks of life, ranging in age from their late twenties to their late sixties when the events that brought them to the hearing occurred. They came from various social and economic strata. Some held college degrees, while one was a patient on CareSource public insurance. Some were accompanied by their husbands or by victims’ advocates as they testified, while the youngest woman was accompanied by her father. All six of the in-person witnesses had traveled several hours to testify, knowing that their testimony would be subjected to cross-examination by skilled defense attorneys, and that their character and integrity would be scrutinized and challenged. In the long period of time since their experiences with Dr. Abdelmalak, none of the patient witnesses have sued him, and none appeared to have anything to gain from their testimony, except for the closure that comes from speaking their truth.

Each patient was cross-examined skillfully, but also tactfully and respectfully, and each witness's testimony held up to zealous cross-examination. In addition to the Hearing Examiner's personal impression that the seven patient witnesses gave credible testimony, their testimony carried other indicia of reliability. Their complaints were made over a span of almost 10 years, and each patient reported the assault almost immediately after it occurred, because it was obvious to her that the way she had been examined was not professional. The sporadic nature of their complaints over several years' time also suggests that these women did not collaborate in an online "chat room" to devise a plot against Dr. Abdelmalak, as one of the medical assistants suggested could have happened. Each patient also testified that she did not know any other patient who had made a complaint against this physician, and no evidence was introduced to rebut that testimony.

There were certain similarities in the women's testimony, even though the witnesses were separated and were instructed prior to the hearing not to speak to any other potential witness. Several women said that Dr. Abdelmalak had rubbed their clitoris or stroked their labia, shoved fingers into their vaginas, or touched their breasts when there was no indication for any kind of breast exam. Their testimony about the context of the touching also lends credence to their belief that it was for a sexual purpose. Patient 6 testified that Dr. Abdelmalak cupped both of her breasts with his hands and told her that they were perfect. Patient 7 testified that he made eye contact with her as he rubbed her clitoris in a circular motion and asked her several times if she wanted him to stop. Patient 3 testified that she protested and ultimately cried tears during her shoulder exam, telling Dr. Abdelmalak that her pain was "not that far down" as he slipped his hand into her bra, but that he silenced her, telling her "Shh... It's okay." (Tr. at 158).

In the years since 2012, none of the patients had ever sued Dr. Abdelmalak or asked anything of him or the Clinic, and the time for most of them to bring such a suit has likely long since passed. The women who complained to the authorities about Dr. Abdelmalak's conduct and later faced him to give uncomfortable testimony in the hearing gained nothing by doing so. It was clearly a gut-wrenching experience for each of them to relive a disturbing event and to have their integrity questioned on cross-examination, while they sat facing the person who had sexually assaulted them. Each patient gave credible testimony that Dr. Abdelmalak had touched her in ways that had no apparent medical purpose and only served to violate her, and in the process, also violated her trust in the entire medical community. This physician's conduct harmed these seven patients in ways that will likely stay with them for the rest of their lives.

Dr. Abdelmalak offered various reasons that each woman might have to fabricate a false story against him. He portrayed Patient 4 as a drug-seeker, but the medical record that he created for her does not support that characterization. He testified that Patient 2 got very angry with him because he refused to write a letter attributing her condition to her pelvic mesh implant for use in her class action suit, but that is not documented in her record. And, in his interview with the Twinsburg police, Dr. Abdelmalak can be seen on video saying that no such confrontation ever occurred, and that it was merely his "gut feeling" that Patient 2 was looking for information to bolster her claim against the manufacturer of the pelvic mesh. Dr. Abdelmalak suggested that Patient 5 was so angry about not being allowed to drive herself home after a procedure that she, too, made up a false story sometime later that he sexually assaulted her, and he suggested that

Patient 7 had “psychological problems” that caused her to fabricate her story. Dr. Abdelmalak can be seen in the video interview with the Twinsburg Police suggesting that Patient 6 was just trying to find a way to get insurance to pay for breast implants, leading the officer to believe her complaint was frivolous, while at the hearing, he represented that she had asked him about breast *reduction* surgery as a possible intervention for her back and neck pain. Dr. Abdelmalak’s suggestions for why these patients might be motivated to give false testimony against him were simply not credible, especially when compared with his own inconsistent representations that appear throughout the evidence.

There was a suggestion by Ms. Maline, Dr. Abdelmalak’s PA, that touching a patient’s clitoris was a necessary part of Dr. Abdelmalak’s pelvic pain examination, but that testimony was contradicted by information provided by Dr. Abdelmalak himself. In his testimony about his examination of Patient 2 for pudendal neuralgia, Dr. Abdelmalak agreed on cross-examination that it would be inappropriate for him to touch the patient’s clitoris in that type of exam. (Tr. at 428). He also agreed while being cross-examined about Patient 7 that he would have no reason to touch her clitoris during the exam that she complained about. (Tr. at 505). Finally, in the recorded interview of Dr. Abdelmalak by Board investigators in January 2022, he can be heard saying that the only time he would need to touch a patient’s clitoris to examine her is if she has “sexual arousal disorder,” a condition that no one has alleged any of these patients had. (Ex. Q at 37:50-38:38).

Dr. Abdelmalak’s testimony that a woman might feel “referred pain” in her clitoris when some other part of her body was touched can be evaluated by the physician members of the Board, as can other aspects of his testimony that the Hearing Examiner found questionable, such as his assertion that the physician would never be alone with a patient in the post-operative area, or that patients would be wearing their undergarments as they came out of surgery, or that patients after back surgery would be rolled over to check the injection site, or that it would be impossible to tear off a piece of the exam table paper while a patient is sitting on the table.

These complaints have been made for many years against Dr. Abdelmalak, and as they were investigated, people all along the way gave him the benefit of the doubt because he is a physician. Because of the esteemed position that physicians occupy in society, doctors are afforded a wide degree of deference. People are taught from childhood that doctors may touch them in places that other people cannot, because a physician’s touch is always for a legitimate medical purpose.

The people who investigated these complaints appear to have operated under that same assumption. The police and Ombudsman’s office investigators seem to have brushed off patients’ concerns, believing that patients were being unreasonable or that they misunderstood the nature of the exam. The medical assistants, nurses, and physician assistant who work with Dr. Abdelmalak firmly believed that this physician would never take advantage of a patient, and the police likewise gave Dr. Abdelmalak’s explanations the strong benefit of the doubt when they interviewed him. This can be seen in their reactions that are shown in the recorded interviews, and from the fact that he was never subject to any kind of discipline or criminal prosecution.

Even the patients themselves in this case wanted to believe that their doctor would never violate them, and some of them held onto that assumption over a long course of treatment, until it became undeniable that something very wrong had occurred in their interactions with him. Patient 7, who had the most complex medical history that included a total colectomy, continued seeing Dr. Abdelmalak for several months even after she realized that he had taken advantage of her, perhaps because she had few other treatment options. In the words of Patient 5, who credited Dr. Abdelmalak with restoring her health so that she could be a mom to her child, “[I]f any benefit of the doubt is going to be given, it's going to be given to him.” (Tr. at 111).

These seven patients carry their experiences with them today, and it continues to harm them and to harm medicine in general, as many of them testified that they are distrusting of doctors and hesitant to seek medical care because of this experience.

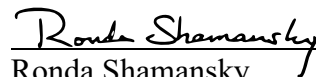
Dr. Abdelmalak was skillfully defended by his counsel, but a careful and thorough review of all of the evidence reveals inconsistencies and contradictions in the doctor’s own explanations and accounts of events, which call his credibility into serious question. When his testimony is compared with that of the seven patients who testified against him, he was the less credible witness.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION:** The license of Joseph Badie Abdelmalak, M.D. to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. Abdelmalak shall remit payment in full of a fine of twenty thousand dollars (\$20,000.00). 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.

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

  
\_\_\_\_\_  
Ronda Shamansky  
Hearing Examiner





EXCERPT FROM THE DRAFT MINUTES OF AUGUST 14, 2024 IN THE MATTER OF  
JOSEPH BADIE ABDELMALAK, M.D.

.....  
**REPORTS AND RECOMMENDATIONS**

Dr. Feibel asked the Board to consider the Report and Recommendation appearing on the agenda: Joseph Badie Abdelmalak, M.D.; Shuying G. Wang-Thomas, R.C.P.; and Delia Jan Herzog, M.D.

Dr. Feibel 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. Kakarala	- aye
Dr. Bechtel	- aye
Ms. Brumby	- aye
Dr. Reddy	- aye
Mr. Gonidakis	- aye
Ms. Montgomery	- aye
Dr. Johnson	- aye
Dr. Boyle	- aye
Dr. Feibel	- aye

In accordance with the provision in Ohio Revised Code 4731.22(F)(2), 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. Kakarala served as Supervising Member.

During these proceedings, no oral motions may be made by either party.

.....  
**Joseph Badie Abdelmalak, M.D.**

.....

**Mr. Gonidakis moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Abdelmalak. Dr. Johnson seconded the motion.**

.....

Dr. Lewis entered the meeting during the discussion. Dr. Feibel asked Dr. Lewis 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?

Dr. Lewis answered affirmatively.

.....

A vote was taken on Mr. Gonidakis' motion to approve:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Kakarala	- abstain
	Dr. Bechtel	- aye
	Ms. Brumby	- aye
	Dr. Reddy	- aye
	Mr. Gonidakis	- aye
	Dr. Lewis	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Boyle	- aye
	Dr. Feibel	- aye

The motion to approve carried.



April 12, 2023

Case number: 23-CRF- 0065

Joseph Badie Abdelmalak, M.D.  
361 Countryside Dr.  
Broadview Heights, OH 44147-3417

Dear Doctor Abdelmalak:

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 or suspend your license or certificate, or refuse to grant or register or issue the license or certificate for which you have a pending application in accordance with Section 9.79 of the Ohio Revised Code, or refuse to 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 seven patients, as identified in the attached Patient Key. (Patient Key is confidential and shall be withheld from public disclosure.) While providing the care and/or treatment, you inappropriately touched Patients 1 through 7 as set forth below:
  - (a) On or about November 23, 2012, you inappropriately touched the pubic or vaginal area of Patient 1 for a purpose other than appropriate health care services.
  - (b) On or about December 22, 2016, you inappropriately touched the vaginal area of Patient 2 for a purpose other than appropriate health care services.
  - (c) On or about January 11, 2019, you inappropriately touched the breasts of Patient 3 for a purpose other than appropriate health care services.
  - (d) On or about August 19, 2019, you inappropriately touched the breasts and/or vaginal area of Patient 4 for a purpose other than appropriate health care services.
  - (e) On or about April 19, 2021, you inappropriately touched the vaginal area of Patient 5 for a purpose other than appropriate health care services, and you failed to wear gloves for the examination.

Mailed 4/13/23

- (f) In or around August 2021, you inappropriately touched the breasts and/or vaginal area of Patient 6 for a purpose other than appropriate health care services on multiple occasions over the course of multiple appointments. You also made inappropriate comments to Patient 6 that were not clinically relevant.
- (g) In or around January 2021, you inappropriately touched the breasts and/or vaginal area of Patient 7 for a purpose other than appropriate health care services on multiple occasions over the course of multiple appointments. Further, you made inappropriate comments to Patient 7 that were not clinically relevant.

Your acts, conduct, and/or omissions as alleged in paragraphs (1)(a) through (g) 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 Prohibitions, Rule 4731-26-02, Ohio Administrative Code, regarding sexual misconduct, as in effect from November 30, 2010, through September 29, 2021.

Pursuant to Rule 4731-26-03, Ohio Administrative Code, as in effect from November 30, 2010, through June 29, 2016, a violation of Rule 4731-26-02, Ohio Administrative Code, also constitutes a violation of Section 4731.22(B)(6), Ohio Revised Code, "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."

Further, pursuant to Rule 4731-26-03, Ohio Administrative Code, as in effect from June 30, 2016, through September 29, 2021, a violation of Rule 4731-26-02, Ohio Administrative Code, also constitutes a violation of Section 4731.22(B)(6), Ohio Revised Code, "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.

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 or suspend your license or certificate, or refuse to grant or register or issue the license or certificate for which you have a pending application in accordance with Section 9.79 of the Ohio Revised Code, or refuse

to renew or reinstate your license or certificate 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, M.D.  
Secretary

KGR/JBR/lv  
Enclosures

CERTIFIED MAIL # 9414814903152968021306  
RETURN RECEIPT REQUESTED

cc: Eric Plinke  
Dinsmore & Shohl  
191 West Nationwide Blvd  
Suite 200  
Columbus, OH 43215

CERTIFIED MAIL # 9414814903152968021313  
RETURN RECEIPT REQUESTED

**IN THE MATTER OF  
Joseph Badie Abdelmalak, M.D.**

**23-CRF-0065**

**APRIL 12, 2023, NOTICE OF  
OPPORTUNITY FOR HEARING -  
PATIENT KEY**

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



April 12, 2023

Case number: 23-CRF- 0065

Joseph Badie Abdelmalak, M.D.  
361 Countryside Dr.  
Broadview Heights, OH 44147-3417

Dear Doctor Abdelmalak:

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 or suspend your license or certificate, or refuse to grant or register or issue the license or certificate for which you have a pending application in accordance with Section 9.79 of the Ohio Revised Code, or refuse to 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 seven patients, as identified in the attached Patient Key. (Patient Key is confidential and shall be withheld from public disclosure.) While providing the care and/or treatment, you inappropriately touched Patients 1 through 7 as set forth below:
  - (a) On or about November 23, 2012, you inappropriately touched the pubic or vaginal area of Patient 1 for a purpose other than appropriate health care services.
  - (b) On or about December 22, 2016, you inappropriately touched the vaginal area of Patient 2 for a purpose other than appropriate health care services.
  - (c) On or about January 11, 2019, you inappropriately touched the breasts of Patient 3 for a purpose other than appropriate health care services.
  - (d) On or about August 19, 2019, you inappropriately touched the breasts and/or vaginal area of Patient 4 for a purpose other than appropriate health care services.
  - (e) On or about April 19, 2021, you inappropriately touched the vaginal area of Patient 5 for a purpose other than appropriate health care services, and you failed to wear gloves for the examination.

Mailed 4/13/23



- (f) In or around August 2021, you inappropriately touched the breasts and/or vaginal area of Patient 6 for a purpose other than appropriate health care services on multiple occasions over the course of multiple appointments. You also made inappropriate comments to Patient 6 that were not clinically relevant.
- (g) In or around January 2021, you inappropriately touched the breasts and/or vaginal area of Patient 7 for a purpose other than appropriate health care services on multiple occasions over the course of multiple appointments. Further, you made inappropriate comments to Patient 7 that were not clinically relevant.

Your acts, conduct, and/or omissions as alleged in paragraphs (1)(a) through (g) 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 Prohibitions, Rule 4731-26-02, Ohio Administrative Code, regarding sexual misconduct, as in effect from November 30, 2010, through September 29, 2021.

Pursuant to Rule 4731-26-03, Ohio Administrative Code, as in effect from November 30, 2010, through June 29, 2016, a violation of Rule 4731-26-02, Ohio Administrative Code, also constitutes a violation of Section 4731.22(B)(6), Ohio Revised Code, "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."

Further, pursuant to Rule 4731-26-03, Ohio Administrative Code, as in effect from June 30, 2016, through September 29, 2021, a violation of Rule 4731-26-02, Ohio Administrative Code, also constitutes a violation of Section 4731.22(B)(6), Ohio Revised Code, "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.

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 or suspend your license or certificate, or refuse to grant or register or issue the license or certificate for which you have a pending application in accordance with Section 9.79 of the Ohio Revised Code, or refuse

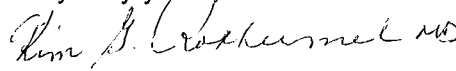


to renew or reinstate your license or certificate to practice medicine and surgery, or to reprimand you or place you on probation.

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, M.D.  
Secretary

KGR/JBR/lv  
Enclosures

CERTIFIED MAIL # 9414814903152968021306  
RETURN RECEIPT REQUESTED

cc: Eric Plinke  
Dinsmore & Shohl  
191 West Nationwide Blvd  
Suite 200  
Columbus, OH 43215

CERTIFIED MAIL # 9414814903152968021313  
RETURN RECEIPT REQUESTED

**IN THE MATTER OF  
Joseph Badie Abdelmalak, M.D.**

**23-CRF-0065**

**APRIL 12, 2023, NOTICE OF  
OPPORTUNITY FOR HEARING -  
PATIENT KEY**

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