

STATE OF INDIANA)	MARION COUNTY SUPERIOR COURT
)	SS:
COUNTY OF MARION)	CAUSE NO. 49 _____
)	
WILLIAM DAVID MOORE, M.D.,)	
)	ON REVIEW FROM THE MEDICAL
Petitioner)	LICENSING BOARD OF INDIANA
)	CAUSE NO: 2023 MLB 0001
v.)	
)	
MEDICAL LICENSING BOARD OF)	
INDIANA,)	
)	
Respondent.)	

WILLIAM DAVID MOORE, M.D.'S VERIFIED PETITION
FOR JUDICIAL REVIEW

William David Moore, M.D. ("Dr. Moore"), by Counsel, hereby petitions this Court to conduct a judicial review of a Final Order issued by the Indiana Medical Licensing Board ("Board") pursuant to Indiana Code chapter 4-21.5-5.

I. INDIANA CODE SECTION 4-21.5-5-7

1. Pursuant to Indiana Code section 4-21.5-5-7(b), the Petitioner is William David Moore, M.D. Dr. Moore's mailing address is:

1127 N. Western Avenue
Marion, IN 46952

2. Pursuant to Indiana Code section 4-21.5-5-7(b)(2), this Petition involves action taken by the Medical Licensing Board of Indiana ("Board"). The Board's mailing address is:

Indiana Professional Licensing Agency
ATTN: Medical Licensing Board of Indiana
402 W. Washington Street, Room W072
Indianapolis, IN 46204

3. Pursuant to Indiana Code section 4-21.5-5-7(b)(3), Dr. Moore herein challenges the Board's revocation of his medical license and imposition of a \$65,000 fine. A copy of the Board's *Findings of Fact and Conclusions of Law and Order Facts ("Final Order")* issued on January 22, 2024, is attached herewith as **EXHIBIT A**. Dr. Moore further challenges the Board's denial of his Petition to voluntarily surrender his medical license. The Board's January 22, 2024 *Order Denying Respondent's Petition to Surrender License* is attached herewith as **EXHIBIT B**.
4. Pursuant to Indiana Code section 4-21.5-5-7(b)(4), the Office of the Attorney General ("OAG") initiated an investigation in response to Consumer Complaints, which thereafter led to the agency action now at issue. A copy of this Petition is being served to the OAG.

II. RELEVANT FACTS AND PROCEDURAL HISTORY¹

5. Dr. Moore became licensed to practice medicine in Indiana on December 1, 1994. (See *Physician License Information from Indiana Professional Licensing Agency*, appended as **EXHIBIT C**).
6. Dr. Moore practiced medicine in Marion, Indiana, for approximately twenty-eight years. He was board certified in obstetrics and gynecology. (*Transcript of January 26, 2023 Suspension Hearing*, at p.70, appended as **EXHIBIT D**).
7. During his tenure as a practicing physician, prior to the complaints now at issue, Dr. Moore's medical license was never suspended, and he was never subjected to any disciplinary action.

¹ See Ind. Code § 4-21.5-5-7(b)(5).

8. Between June 27, 2022, and March 3, 2023, the OAG received sixteen Consumer Complaints raising allegations of misconduct against Dr. Moore. The Consumer Complaints were tendered by the following individuals: S.M., M.S., S.H., A.F., Nurse A.M., C.C., A.R., W.S., C.H., T.G., C.M., A.H., K.T., Nurse M.K., M.M., T.H. (See *Amended Administrative Complaint*, at pp. 34-70, appended as **EXHIBIT E**).
9. The Consumer Complaints filed with the OAG included various allegations of misconduct by Dr. Moore, which instances were alleged to have occurred during patient appointments at times between 2006 and 2022. (EXHIBIT E, at pp. 34-70). The OAG subsequently commenced an investigation.
10. On July 18, 2022, the Indiana State Police received a request to investigate an allegation of sexual misconduct against Dr. Moore. (EXHIBIT E, at p. 67). On July 29, 2022, Indiana State Police Detective Joshua Maller ("Detective Maller") conducted an interview with S.M. (EXHIBIT D, at p. 57). Subsequent to this interview, Detective Maller applied for, obtained, and executed a search warrant for Dr. Moore's medical practice. (EXHIBIT D, at p. 57). Detective Maller also interviewed other individuals who subsequently came forward with complaints against Dr. Moore. On March 3, 2023, Detective Maller filed a Consumer Complaint with the OAG based on what he learned in his investigation. (EXHIBIT E, at pp. 66-67).
11. In December of 2022, after providing notice to his patients, Dr. Moore retired and closed his medical practice. He has not engaged in the practice of medicine since his retirement. (EXHIBIT A, at p. 2).

12. On January 13, 2023, the OAG filed a Petition for Summary Suspension of Dr. Moore's medical license. (EXHIBIT D, at p. 5).
13. On January 26, 2023, the Board conducted an administrative hearing to determine whether Dr. Moore's license should be summarily suspended. At that hearing, S.H., M.S., A.F., C.C., and S.M. testified about the allegations they raised in their Consumer Complaints. (See generally EXHIBIT D).
14. At the conclusion of the hearing, the Board voted to suspend Dr. Moore's medical license for a period of ninety days. (See *Summary Suspension Order and Voluntary Agreement to Summary Suspension*, at p. 4, appended as EXHIBIT F). The Board memorialized the suspension in a February 23, 2023 order. (EXHIBIT F, at p. 4). On March 22, 2023, the Board extended Dr. Moore's summary suspension for an additional ninety days. (See *Summary Suspension Order and Voluntary Agreement to Summary Suspension*, at p. 4, appended as EXHIBIT F). On July 19, 2023, Dr. Moore and the OAG agreed to a summary suspension of Dr. Moore's medical license pending a final order from the Board. (EXHIBIT F).
15. On July 31, 2023, the Board issued a "Summary Suspension Order." (EXHIBIT F). Therein, the Board adopted Dr. Moore's Voluntary Agreement to Summary Suspension and ordered Dr. Moore "to immediately cease and desist all acts constituting the practice of medicine" pending a final order. (EXHIBIT F).
16. On October 24, 2023, the OAG filed an Amended Administrative Complaint. (See EXHIBIT E). This Amended Administrative Complaint relied on the sixteen consumer complaints filed by S.M., M.S., S.H., A.F., Nurse A.M., C.C., A.R., W.S., C.H., T.G.,

C.M., A.H., K.T., Nurse M.K., M.M., T.H. The OAG requested that the Board “impose[] one or more of the disciplinary sanctions authorized by Ind[iana] Code § 25-1-9-9”; to “pay all of the costs incurred in the prosecution of this case”; to pay a \$5.00 fee to the Health Records and Personal Identifying Information Protection Trust Fund; and to award any other relief deemed appropriate by the Board.

17. On November 21, 2023, Dr. Moore filed a Petition to Surrender Medical License voluntarily, pursuant to Indiana Code section 25-1-9-14. (*Petition of William David Moore, M.D. to Surrender Medical License, Filed November 21, 2023*, appended as **EXHIBIT G**). The same day, the OAG filed a response in opposition to a voluntary surrender. (*Response in Opposition to Petition to Surrender Medical License, Filed November 21, 2023*, appended as **EXHIBIT H**).

18. On December 7, 2023, the Board conducted a hearing on the revocation of Dr. Moore’s medical license. (*See Transcript of December 7, 2023 Revocation Hearing*, appended as **EXHIBIT I**). During this hearing, M.M., A.H., W.S., and T.H. testified regarding their allegations against Dr. Moore. The OAG also tendered affidavits from K.T., A.R., and M.K. to support these individuals’ respective complaints against Dr. Moore, which the Board admitted over Dr. Moore’s objections. (*State’s Exhibits 1-4, Admitted at December 7, 2023 Hearing*, appended as **EXHIBIT J**). Finally, Detective Maller testified as to the police interviews of C.M. and T.G. to convey their allegations to the Board.

19. The OAG also tendered to the Board an affidavit from Dr. Christopher Stroud, M.D., in an attempt to provide an expert opinion regarding Dr. Moore's purported conduct. (EXHIBIT J, at pp. 10-21).
20. On January 22, 2024, the Board issued an *ORDER DENYING RESPONDENT'S PETITION TO SURRENDER MEDICAL LICENSE*. (EXHIBIT B).
21. On January 22, 2024, the Board also issued *FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FACTS ("Order")* (EXHIBIT A). The Board revoked Dr. Moore's medical license and ordered that he pay a fine totaling \$65,000 to the Indiana Professional Licensing Agency within 180 days of the *Order*.
22. The Board determined that Dr. Moore committed sixty-five violations of Indiana Code section 25-1-9-4 (Counts 1-19, 21, 24-36, 38-46, 48-59, 61-69, and 71-72). The Board found that Dr. Moore did *not* commit the violations set forth in Counts 20, 22, 23, 47, and 70; the Board also dismissed Counts 37 and 60.

III. BOARD AUTHORITY & JURISDICTION

The Board regulates the practice of medicine within Indiana and is charged with establishing standards for the competent practice of medicine in the state. Ind. Code § 25-22.5-2-1 *et seq.* Medical practitioners "are subject to the exercise of disciplinary sanctions if the Board finds after a hearing that the practitioner has violated any one of the" subsections of Indiana Code section 25-1-9-4(a)(1). *Gray v. Med. Licensing Bd. of Ind.*, 102 N.E.3d 917, 922-23 (Ind. Ct. App. 2018). More specifically, sanctions are appropriate upon a finding that a practitioner has committed at least one of the below violations (among others enumerated in the statute):

- Knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question;
- Continued to practice although the practitioner has become unfit to practice due to a failure to keep abreast of current professional theory or practice; or
- Engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public.

Ind. Code § 25-1-9-4(a)(3)-(5).

IV. STANDARD OF REVIEW

The Administrative Orders and Procedures Act (“AOPA”) governs review of judicial decisions made by the Board. Ind. Code § 4-21.5-2-0.1. Agency action subject to the AOPA is subject to reversal if this Court finds that Dr. Moore has been prejudiced by Board action that is:

- (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;**
- (2) Contrary to constitutional right, power, privilege, or immunity;**
- (3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;**
- (4) Without observance of procedure required by law; or**
- (5) Unsupported by substantial evidence.**

Ind. Code § 4-21.5-5-14(d); see *Terkosky v. Ind. Dep’t of Education*, 996 N.E.2d 832, 841-42 (Ind. Ct. App. 2013).

A trial court reviews the decision of an administrative agency with deference to the agency's expertise, without substituting its judgment for that of the agency or reweighing evidence. *Gray v. Med. Licensing Bd. of Ind.*, 102 N.E.3d 917, 921 (Ind. Ct. App. 2018). The burden of demonstrating the invalidity of the agency action lies with the party seeking

judicial review. *Id.* (citing Ind. Code §4-21.5-5-14(a)). On review, this Court is constrained to the agency record. *Id.* Findings of fact are entitled to deference “if supported by substantial evidence”; however, questions of law are reviewed *de novo*. *Id.*

If the reviewing court finds, on an issue properly preserved for judicial review, that the record before the Board fails to support the Board’s action or fails to demonstrate that the Board has considered all relevant factors, or if the court “simply cannot evaluate the challenged board action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the board for additional investigation or explanation.” *Med. Licensing Bd. of Ind. v. Provisor*, 669 N.E.2d 406, 410 (Ind. 1996) (citing *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)).

V. ARGUMENT

Dr. Moore’s medical license was revoked, and he was ordered to pay a \$65,000 fine for the violations found by the Board. As more specifically set forth below, Dr. Moore contends that the Board erred in its decision by exceeding its constitutional and statutory authority and by issuing sanctions despite a lack of substantial evidence. *Dr. Moore requests that this Court take the proper action so as to vacate the revocation of his medical license, and accept his voluntary surrender of the same, and to vacate the excessive and unconstitutional monetary penalty.*

A. The Board’s Decision is Contrary to Constitutional Rights and Exceeds the Board’s Authority; Was Issued Absent Procedure Required by Law; and is Capricious and an Abuse of Discretion

There is no dispute that the Board has authority to impose sanctions, “singly or in combination” if it finds that a practitioner is subject to disciplinary action. Ind. Code § 25-

1-9-9. The enumerated sanctions include authority to permanently revoke a practitioner's license and to assess a fine "in an amount not to exceed one thousand dollars (\$1,000) for each violation listed in [Indiana Code section 25-1-9-3-4]." Here, however, the revocation of Dr. Moore's license and the imposition of the \$65,000 fine are contrary to Dr. Moore's constitutional rights and state law.

1. *The Board's Order Is Contrary to Constitutional Rights and Power and is so Arbitrary and Capricious that it is Fundamentally Unjust*

Both trial and appellate courts have the duty to see that fundamental rights of due process are not improperly denied in any type of action. See, e.g., *Kaiser Aluminum & Chemical Sales, Inc. v. Dickerhoff*, 199 N.E.2d 719, 721 (Ind. Ct. App. 1964). The constitutional guarantee of due process of law is intended to prevent the State from exercising, by way of any of its departments, arbitrary or capricious power over its citizens or their property. *Id.* In general, administrative action is arbitrary and capricious if it is "patently unreasonable and is made without consideration of the facts and in total disregard of the circumstances." See *Ind. Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 380 (Ind. 2017). Simply, the Board's Order is arbitrary and capricious because it does not safeguard or benefit the public, deter future conduct, or benefit the patients who alleged misconduct against Dr. Moore.

The Order Is Unsupported by Evidence of Sixty-Five Separate Acts of Misconduct

The Board's Order is contrary to principles of due process and protections against double jeopardy.² The Board found sixty-five violations against Dr. Moore and imposed a

² Notably, this is not an error that could have been preserved for appeal during the Board hearing because the issue did not arise until the Board issued its Order imposing the fine.

\$1,000 fine for each. However, there is no evidence of sixty-five separate and independent acts of misconduct that could support sixty-five separate violations or a \$65,000 fine. Instead, for each complainant, the Board found the same alleged act/incident constituted a violation of up to three statutes. The Board imposed a fine for each statutory violation notwithstanding that the same conduct had already been fined. Simply, the Board's finding of violations and imposition of a \$65,000 fine is fundamentally unjust.

The Double Jeopardy Clause provides that no person "shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. AMEND. V. This provision safeguards against "multiple punishments for the same offense." *Davis v. State*, 819 N.E.2d 863, 867 (Ind. Ct. App. 2004). Of course, the Double Jeopardy Clause applies to criminal punishments, but it can likewise apply to civil penalties under certain conditions. Where "it is found that the legislature intended the sanction to be civil, the party challenging the sanction must provide 'the clearest proof' that the 'statutory scheme is so punitive in purpose or effect to negate [the State's] intention to deem it civil.'" *Davis*, 819 N.E.3d at 868. The Supreme Court has previously articulated the criteria to consider for determining whether a civil sanction is so punitive as to be the equivalent of criminal punishment:

- (1) whether the sanction involves an affirmative disability or restraint;
- (2) whether it has historically been regarded as a punishment;
- (3) whether it comes into play only on a finding of scienter;
- (4) whether its operation will promote the traditional aims of punishment-retribution and deterrence;
- (5) whether the behavior to which it applies is already a crime;
- (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and

(7) whether it appears excessive in relation to the alternative purpose assigned.

Id.

The Supreme Court has specified that “*in personam* civil penalties such as fines” can be punitive in some circumstances. *Id.* (citing *United States v. Ursery*, 518 U.S. 267 (1996)). Here, the punitive nature of the \$65,000 fine is clear. The Board imposed repetitive fines to the same underlying conduct, effectively double or triple sanctioning each alleged act of misconduct. Furthermore, the Board was explicit regarding its intent to penalize Dr. Moore. (EXHIBIT I, at p. 11:10-16). In fact, one Board member specifically noted that by allowing Dr. Moore to surrender his medical license instead of the Board revoking it, “[w]e can’t act on it. We can’t discipline it; right? We’ve got 96 people.” (EXHIBIT I, at p. 11:11-14) (emphasis added). Of course, the Board did not have before it ninety-six complainants against Dr. Moore. Instead, the Board was made aware by the OAG that “96 people” filed medical malpractice claims against Dr. Moore, separately pending before the Indiana Department of Insurance. (EXHIBIT I, at p. 9). By emphasizing that Dr. Moore should be disciplined based on the existence of 96 other individuals with claims that were *not* before the Board, the \$65,000 fine is undoubtedly punitive and implicates double jeopardy concerns.

Duplicate Violations for Same Misconduct

For nearly every act of misconduct alleged, Dr. Moore was subjected to multiple violations and fines. This is not because the Board found that Dr. Moore committed a specific violation against any given patient on more than one distinct occasion. Rather, the Board issued a separate violation – and a separate \$1,000 penalty – for each statute that was

violated by one act of misconduct. To illustrate, the Board determined that Dr. Moore committed three separate violations and should be fined \$3,000 for taking photographs of Patient C.C.'s breasts because doing so violated three different statutes—including the statutory prohibition against engaging in a course of lewd or immoral conduct in connection with the delivery of services to the public, the requirement to exercise reasonable care and diligence in treating a patient, and the prohibition against practicing despite being unfit due to a failure to keep abreast of current professional theory or practice. See Ind. Code § 25-1-9-4(a)(3); 844 IAC 5-2-5; Ind. Code § 25-1-9-4(a)(4)(B); and Ind. Code § 25-1-9-4(a)(5). This is a quintessential violation of double jeopardy because it is clear that Dr. Moore received “multiple punishments for the same offense.” *Davis v. State*, 819 N.E.2d 863, 867 (Ind. Ct. App. 2004). Each patient will be addressed in turn below.

- For M.M., the Board found three violations. Of those, Count 30 and Count 53 are duplicative. Specifically, they are both based on evidence that Dr. Moore attempted to insert his fingers into her vagina despite her “microperforate hymen,” which he advised her to resolve by having sexual intercourse. The Board did not issue a finding that Dr. Moore committed this act against M.M. on two separate and distinct occasions. Instead, the Board found that Count 30 violated Indiana Code § 25-1-9-4(a)(4)(B) (*i.e.*, continuing to practice although unfit by virtue of a failure to keep abreast of current professional theory or practice) and that Count 53 violated Indiana Code § 25-1-9-4(a)(3) and 844 IAC 5-2-5 (*i.e.*, knowingly violating a state rule regulating the practice of medicine by failing to exercise reasonable care and diligence in the treatment of patients based upon generally accepted scientific principles, methods, treatments, and current professional

theory and practice). **Count 53 and the corresponding \$1,000 must be vacated due to a violation of double jeopardy and lack of evidence to support two separate violations.**

- For A.H., the Board found three violations, two of which are duplicates. Count 31 and Count 54 both conclude that Dr. Moore performed medically unnecessary pelvic examinations prior to A.H. turning eighteen years old. As with M.M., the Board did not specifically find that Dr. Moore repeated this conduct against A.H. on separate and distinct occasions. Instead, the Board found violations of both Count 31 and Count 54 because the conduct constituted a violation of Indiana Code § 25-1-9-4(a)(4)(B), as well as Indiana Code § 25-1-9-4(a)(3) with 844 IAC 5-2-5. **Count 54 and the corresponding \$1,000 must be vacated due to a violation of double jeopardy and lack of evidence to support two separate violations.**
- For K.T., the Board found eight violations. Of these eight Counts, four violations (Counts 32, 33, 55, and 56) were based on performing pelvic examinations before K.T. turned 18 and which were medically unnecessary. Additionally, two Counts (Counts 34 and 57) involved photographing K.T.'s genitals without a legitimate medical purpose or her informed consent. Thus, **Counts 33, 55, 56, and 57 and the corresponding \$4,000 in fines must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**³
- For S.H., the Board found six violations. These Counts included three violations based on taking photographs of her genitals without a legitimate medical purpose and without

³ As discussed below, and as a separate and independently viable argument, the violations relating to K.T. must be vacated regardless as they are entirely based on inadmissible hearsay evidence.

informed consent (Counts 10, 35, and 58), as well as two violations for inappropriate comments Dr. Moore purportedly made about S.H.'s hymen (Counts 36 and 59). Once again, the Board found repetitive violations relating to the same misconduct, not because the Board found that Dr. Moore repeated the conduct but rather because the singular act constituted a violation of multiple statutes. (EXHIBIT A, at pp. 10, 26, 28, 30-31). **Counts 35, 58, and 59 and the corresponding \$3,000 must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**

- For M.S., the Board found seven violations. Three of those violations (Counts 12, 38, and 61) involved an allegation that Dr. Moore squeezed her nipples without a legitimate medical purpose or informed consent. Three violations (Counts 13, 39, and 62) also involved allegations that Dr. Moore photographed her genitals without a legitimate medical purpose or informed consent. Once again, the compounding of violations was solely due to the fact that multiple statutes were considered violated, contrary to double jeopardy. Thus, **Counts 38, 39, 61, and 62 and the corresponding \$4,000 in fines must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**
- For A.F., the Board found seven violations. Three of those violations (Counts 14, 42, and 65) were based on allegations that Dr. Moore photographed A.F.'s genitals without a legitimate medical purpose or informed consent. Two violations (Counts 41 and 64) were based on an alleged performance of anal examinations without informed consent. Finally, two violations (Counts 40 and 63) were based on allegations that Dr. Moore performed pelvic examinations every three months. The compounding of violations was

solely due to the fact that multiple statutes were considered violated, contrary to double jeopardy. Thus, **Counts 42, 63, 64, and 65 and the corresponding \$4,000 in fines must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**

- For C.C., the Board found nine violations. Of those violations, two Counts (Counts 43 and 66) alleged that Dr. Moore performed unnecessary pelvic examinations before C.C. turned 18; three Counts (Counts 16, 44, and 67) alleged that Dr. Moore photographed her breasts without a legitimate medical purpose or informed consent, and three Counts (Counts 17, 45, and 68) alleged that Dr. Moore photographed her genitals without a legitimate medical purpose or informed consent. For the same reasons set forth for the above-referenced patients, **Counts 44, 45, 66, 67, and 68 and the corresponding \$5,000 in fines must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**
- For W.S., the Board found four violations. Two of those violations (Counts 46 and 69) alleged that Dr. Moore moved his fingers in and out of W.S.'s vagina during a pelvic examination. The Board found two violations solely because the conduct violated two different statutes. Because W.S. received two fines for one act of misconduct, the *Order* is contrary to double jeopardy. **Count 69 and the corresponding \$1,000 fine must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**
- For T.H., the Board found six violations. Three violations (Counts 24, 48, and 71) alleged that Dr. Moore photographed her genitals without a legitimate medical purpose and

informed consent, and two violations (Counts 49 and 72) alleged that Dr. Moore squeezed her nipples during a breast examination. The duplicate Counts were found solely because multiple statutes were violated by the same act in violation of double jeopardy. **Counts 48, 71, and 72 and the corresponding \$3,000 in fines must be vacated due to a violation of double jeopardy and lack of evidence to support separate violations.**

Counts Not Linked to a Specific Patient

In addition, the Board's *Order* contains a finding of eight violations that are not linked to any identifiable patient treated by Dr. Moore. Specifically, Counts 2 and 27 allege that Dr. Moore took photographs of unspecified patients' genitals and breasts without informed consent in violation of Indiana Code § 25-1-9-4(a)(5) and Indiana Code § 25-1-9-4(a)(4)(B), respectively. Counts 3 and 28 represent violations for taking photographs of unspecified patients' genitals and breasts without a legitimate medical purpose, in violation of Indiana Code § 25-1-9-4(a)(5) and Indiana Code § 25-1-9-4(a)(4)(B), respectively. Count 29 is based on conducting pelvic examinations of unspecified patients under age eighteen for the sole purpose of prescribing birth control, contrary to Indiana Code § 25-1-9-4(a)(4)(B). Count 50 also represents a violation for taking photographs of unspecified patients' genitals and breasts without informed consent, and Count 51 is for taking the same type of photographs without a legitimate medical purpose, both in violation of 844 IAC 5-2-5. Count 52 constitutes a violation for conducting pelvic examination on unspecified patients under the age of eighteen for the sole purpose of prescribing birth control, in violation of 844 IAC 5-2-5.

Not only are the foregoing eight violations vague—with no reference to a specific patient or incident date, these Counts (*i.e.*, Counts 2, 3, 27, 28, 29, 50, 51, and 52) are duplicative of other violations found by the Board. Specifically, the Board found a total of twenty-one *other* violations against Dr. Moore for photographing patients' genitals and breasts—either without informed consent or without a legitimate medical purpose. (See Counts 5, 10, 13, 14, 16, 17, 24, 34, 35, 39, 42, 44, 45, 48, 57, 58, 62, 65, 67, 68, 71). These twenty-one other violations were specifically linked to S.M. (one Count), S.H. (three Counts), M.S. (three Counts), A.F. (three Counts), C.C. (six Counts), T.H. (three Counts), and K.T. (two Counts). Likewise, Counts 29 and 52 refer to performing pelvic examinations on patients under the age of eighteen for the purpose of prescribing birth control. Yet, the Board found violations for the same conduct related to patients A.H., K.T., and C.C. (Counts 31, 32, 43, 55, 66).

The Counts for violations not linked to a specific patient must be vacated because they are not supported by evidence separate and apart from the evidence relied upon to find violations for the same conduct involving specific patients. In other words, this is a quintessential double jeopardy issue because multiple violations were found by relying on the commission of one singular act. The fact that the misconduct could be found to breach multiple statutes does not allow for the imposition of repeated fines when there is no evidence of separate and distinct incidents. **Counts 2, 3, 27, 28, 29, 50, 51, and 52 – and the \$8,000 in fines, must be vacated because these Counts violate principles of double jeopardy and because there is not substantial evidence to support multiple violations.**

The Order Is Arbitrary and Capricious

The *Order* revoking Dr. Moore's license, refusing to accept his voluntary surrender, and imposing a \$65,000 fine should further be overturned because it is arbitrary and capricious.

First, the Board acted in an entirely inappropriate and arbitrary and capricious manner by refusing to accept Dr. Moore's surrender of his medical license and by imposing such a significant fine. Dr. Moore had already retired from the practice of medicine *and* tried to surrender his medical license. In addition, Dr. Moore also represented that he would agree not to apply for reinstatement of his medical license as a condition of the Board accepting his voluntary surrender. (EXHIBIT I, at p. 11:3-9). The OAG argued that it was "seeking protection for Indiana women and patients against Dr. Moore in not allowing him to practice medicine." (EXHIBIT I, at p. 10:4-6). This purpose would have been wholly accomplished by allowing Dr. Moore to surrender his medical license voluntarily. In addition, by accepting Dr. Moore's offer to surrender his license, Indiana taxpayers would have been spared the cost of the administrative hearing and judicial review. Yet, the Board rejected Dr. Moore's petition to voluntarily surrender his license because this case has never about "protecting Indiana women." Rather, as discussed above, the Board endeavored to harshly penalize Dr. Moore to the fullest extent, without regard to the quantity or quality of evidence and without regard to constitutional or statutory protections.

Second, the \$65,000 fine does nothing to deter future misconduct. The Board revoked Dr. Moore's license. Thus, he cannot practice medicine and will never have the

opportunity to repeat his purported misconduct. The fine was unnecessary and ineffective for the purpose of preventing future violations.

Third, the Board ordered that Dr. Moore pay \$65,000 to the Indiana Professional Licensing Agency. (EXHIBIT A, at p. 33). No portion of the hefty fine will be paid to the individuals who filed consumer complaints against Dr. Moore. In this regard, the fine is intended solely to penalize but has no compensatory purpose.

Finally, the Board's imposition of a \$65,000 fine necessarily exceeds the scope of its statutory authority. The Board has revoked Dr. Moore's medical license; thus, he is no longer subject to the powers and jurisdiction of the Board. See Ind. Code § 25-22.5-2-7. Necessarily, physicians are beholden to the Board's authority in order to maintain their medical licenses, but those who have been stripped of their licensure are not subject to being haled before the Board. Accordingly, because the Board has already revoked Dr. Moore's license, it did not retain power to enforce additional sanctions – namely, the fine. This is supported by Indiana Code section 25-1-9-9, which specifies that “[i]f the practitioner fails to pay the fine within the time specified by the board, the board may suspend the practitioner's license without additional proceedings.” Clearly, the statute presumes a physician will be subject to fines as a sanction only in situations where the Board has ongoing authority to impose further sanctions if the physician does not comply. Such is not the case here.

As a result, the *Order* revoking Dr. Moore's license should be vacated, he should be permitted to voluntarily surrender his license, and the \$65,000 in fines should be vacated.

Dr. Moore Was Deprived of Confrontation and Cross Examination Rights

The Board's *Order* was contrary to due process because Dr. Moore was deprived of the right to confront and cross-examine his accusers. "The right to confront witnesses is enshrined in both the United States and Indiana Constitutions. U.S. CONST. amend. VI; Ind. Const. Art. I, Sec. 13(a)." *Keene v. State*, 118 N.E.3d 801, 802 (Ind. Ct. App. 2019). Though both constitutions reference this right in the context of criminal prosecutions, "[i]t has been found to extend to certain civil settings." *Id.* The proceedings at issue put Dr. Moore's bank account in jeopardy. See *id.* (discussing how an expungement proceeding did not place the petitioner at risk of a fine, additional time on his sentence, or a new conviction such that "neither his liberty nor his bank account [was] at stake" to merit finding a right of cross-examination).

Patients A.R., T.G., C.M., K.T., and Nurse M.K. did not testify at either hearing conducted before the Board. Instead, to support the allegations for these patients, the OAG presented affidavits from K.T., A.R., and Nurse M.K., and the OAG solicited testimony from Dr. Maller regarding the statements made by T.G. and C.M. during their police interviews. This type of hearsay-based evidence would be inadmissible under the rules governing civil cases, and the evidence should not have been admitted to the Board, particularly given that there was no other independent evidence to support these specific claims.

The affidavits and hearsay testimony relating to A.R., T.G., C.M., K.T. and Nurse M.K. wholly precluded Dr. Moore from inquiring into the veracity of the claimants' allegations and credibility. As a result of Dr. Moore's inability to challenge these complainants' allegations, the Board found eight violations involving K.T. (Counts 7-8, 32-34, and 55-57),

one violation involving Nurse M.K. (Count 26), and one violation involving T.G. (Count 21)⁴ This means that the Board imposed a \$10,000 penalty based on nothing more than hearsay and written allegations that were not subject to cross-examination. This is contrary to due process (and amounts to a taking of Dr. Moore's property without due process). **Accordingly, Counts 7-8, 21, 26, 32-34, and 55-57, and the associated \$10,000 in penalties, must be vacated.**

2. *The Board's Order was Issued Absent Procedure Required by Law*

In addition to due process shortcomings, the *Order* was crafted without regard to compliance with the law because the Board failed to consider Dr. Moore's *ability to pay a \$65,000 fine*.

Dr. Moore acknowledges that Indiana Code section 25-1-9-9 provides the Board with authority to "assess a fine against the practitioner in an amount not to exceed one thousand dollars (\$1,000) for each violation listed in section 4 of this chapter." However, Indiana Code section 25-1-9-9(a)(6) specifically provides that "[w]hen imposing a fine, the board shall consider a practitioner's ability to pay the amount assessed." Here, the transcripts from both the suspension and the revocation hearings, conducted on January 26, 2023, and December 7, 2023, respectively, are devoid of any discussion relating to the imposition of the fine or Dr. Moore's ability to pay the amount assessed. Likewise, there is nothing in the *Order* to support a finding that the Board took into account Dr. Moore's ability to pay before ordering him to remit \$65,000 to the Indiana Professional Licensing Agency.

⁴ The Board found no violation for the allegations involving Nurse A.R. (Count 22) or C.M. (Count 23).

Dr. Moore retired prior to the commencement of these proceedings. Moreover, he has been stripped of his medical license, and thus his ability to earn future or additional income from the trade he practiced for nearly three decades. Sixty-Five Thousand Dollars is not an inconsequential sum. It was wholly contrary to the explicit language of Indiana law for the Board to have ordered this fine without specifically considering Dr. Moore's ability to pay. **Accordingly, the Court must vacate the \$65,000 sanction and remand this matter to the Board for a proper consideration of Dr. Moore's ability to pay a fine.**

B. The Board's Decision Is Not Supported by Substantial Evidence

On judicial review, the reviewing court is bound by an agency's findings of fact if those findings are supported by substantial evidence. *Terkosky*, 996 N.E.2d at 842. "Indiana courts have defined substantial evidence as something 'more than a scintilla, but something less than a preponderance of the evidence.'" *Terkosky*, 996 N.E.2d at 842. Additionally, "the substantial evidence standard authorizes a reviewing court to set aside [administrative] findings of fact when a review of the whole record clearly indicates that the agency's decision lacks a reasonably sound basis of evidentiary support." *Medical Licensing Bd. v. Ward*, 449 N.E.2d 1129, 1136-1137 (Ind. Ct. App. 1983) (quoting *City of Evansville v. Southern Ind. Gas & Electric Co.*, 339 N.E.3d 562, 572 (Ind. Ct. App. 1975)).

1. There Is Not Substantial Evidence to Support Sixty-Five Separate Violations, and the Fine for Each.

In the above section relating to double jeopardy principles, Dr. Moore demonstrated the extent to which the Board improperly inflated the number of violations despite lacking evidence of separate and independent acts of misconduct for each violation. Rather, for each patient, the Board relied on the same act of misconduct to support multiple violations and

fines. Thus, Dr. Moore hereby incorporates his argument from above herein because the there is no substantial evidence to support the sixty-five separate violations found by the Board.

2. *There is Not Substantial Evidence to Support Counts 21 and 26 Because They Are Grounded Solely in Hearsay Evidence.*

The violations against Dr. Moore that are grounded in nothing more than hearsay must be reversed because they are not supported by substantial evidence. Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Ind. Evidence Rule 801(c). Generally, hearsay is inadmissible in court proceedings absent a specifically-delineated exception. See Ind. Evid. Rule 802 & Rule 803. In addition, when out-of-court statements “involve hearsay within hearsay, which is also known as multiple or double hearsay, the statements are not admissible unless each layer of hearsay qualifies under an exception to the hearsay rule.” *Cook v. State*, 119 N.E.3d 1092, 1097 (Ind. Ct. App. 2019).

For administrative proceedings, however, the Administrative Orders and Procedures Act provides:

Upon proper objection, the administrative law judge shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the administrative law judge may exclude objectionable evidence. The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

Ind. Code § 4-21.5-3-26. The Indiana Supreme Court has previously addressed the admission of hearsay evidence as follows:

The Board can admit all hearsay evidence without fear of automatic reversal. If properly objected to at the hearing and preserved on review and not falling within a recognized exception to the Hearsay Rule, then an award may not be based solely upon such hearsay. *But if not objected to, the hearsay (incompetent evidence) may form the basis for an award.*

Kriss v. Brown, 180 Ind. App. 594, 600 (Ind. Ct. App. 1979) (emphasis in original) (quoting *C.T.S. Corp. v. Schoulton*, 383 N.D.2d 293, 296 (Ind. 1978)).

As noted above, Counsel for Dr. Moore objected to the admission of four affidavits – OAG Exhibits 1-4—on the ground of hearsay (in relevant part). Thus, the affidavits, which constitute hearsay, cannot form the sole basis of the award. Yet, these documents *do* form the sole grounds for the violations found against Dr. Moore relating to these patients and the \$1,000 fine assessed for each.

Nurse M.K.

Nurse M.K. did not testify at either the suspension or the revocation hearing. Instead, the OAG submitted for evidence the Affidavit of Nurse M.K. (EXHIBIT J). Per her affidavit, Nurse M.K. purportedly worked with Dr. Moore for two months in or around 2017. (EXHIBIT J, at pp. 7-9). She also claimed to have witnessed Dr. Moore conduct vaginal exams in a manner that “did not sit well with [her],” massage patients’ breasts during examinations, and take photographs of patients’ genitals and breasts. (See EXHIBIT J). Nurse M.K.’s Affidavit does not specify which patients experienced Dr. Moore’s misconduct or when. In reliance on Nurse M.K.’s affidavit, the Board concluded that Dr. Moore violated Indiana Code § 25-1-9-4(a)(5) (Count 26).

Significantly, Nurse M.K.'s affidavit constitutes an out-of-court statement offered for the truth of the assertions therein. Moreover, her affidavit is the only source of evidence for the Board's determination that Dr. Moore violated a statute by making inappropriate sexual comments. (EXHIBIT A, at pp. 19-20; EXHIBIT J, at pp. 7-9). Because this inadmissible hearsay is the only evidence to support Count 26, and the imposition of the \$1,000 fine associated therewith, **Count 26 and its corresponding \$1,000 penalty should be vacated. Additionally, Findings 146-152 must be stricken from the *Order* because they are grounded solely in inadmissible hearsay.** (EXHIBIT A, at pp. 19-20).

Patient T.G.

Patient T.G. did not testify at the Board hearing. Instead, Detective Josh Maller, of the Indiana State Police, testified about an interview of T.G., which he did not personally conduct. Instead, Detective Maller testified about his observations of another officer's interview of T.G. Detective Maller testified that was conducted by *another* officer and which he merely watched. (EXHIBIT I, at pp. 77-79). In that regard, Detective Maller testified:

So, that individual was – was new to the United States, and their experience –previous country, they thought things might be different when they were experiencing their exam by Dr. Moore.

So, during the exam from Dr. Moore, they described while they were in stirrups on the examination table, there was a nurse present in the room, and Dr. Moore pulled them closer like has been described before, as well as he did a vaginal exam, after which her – prior to putting – prior to this exam, he put his ungloved fingers – used his ungloved fingers to do the exam.

(EXHIBIT I, at pp. 78-79).

Based on Detective Maller's testimony, the Board found that Dr. Moore violated Indiana Code § 25-1-9-4(a)(5) (Count 21). (EXHIBIT A, at p. 27). The Board imposed a

\$1,000 fine for this violation. Yet, no other evidence was provided to support T.G.'s allegations beyond the testimony of Detective Maller. Detective Maller's testimony is quintessential hearsay-within-hearsay. Because it provided the exclusive basis for Count 21, **Count 21 must be vacated due to a lack of substantial evidence. Additionally, Findings 120-123 must also be stricken from the Order as they are grounded solely in inadmissible hearsay.** (EXHIBIT A, at pp. 16-17).

3. *The Remaining Findings Grounded in Hearsay Must Be Stricken and Cannot Support Counts 2-3, 27-29, and 50-52 or the Sanctions.*

In its *Order*, the Board found that Dr. Moore committed the violations listed in Counts 2-3, 27-29, and 50-52, which alleged conduct including taking photographs of patients without consent or a legitimate medical purpose, conducting pelvic examinations of patients less than eighteen years of age, and inserting his fingers into a patient's vagina. Notably, these eight violations were not linked to any specific patient. Thus, it appears that the Board may have issued these generic findings based on the evidence in total. To this end, there are numerous findings in the *Order* which do not support a specific violation but which should nevertheless be stricken on grounds of hearsay because hearsay cannot form the basis of the generic violations.

Patient C.M.

Turning first to Patient C.M. – she did not testify at either hearing. Instead, Detective Josh Maller, of the Indiana State Police, testified that he interviewed C.M. on February 9, 2023. (EXHIBIT I, at p. 77). During the interview, C.M. reportedly complained about conduct by Dr. Moore that took place “*in the 90s.*” (EXHIBIT I, at p. 78). Specifically, Detective Maller conveyed that, several decades earlier, C.M. saw Dr. Moore “for a pap

smear, and Dr. Moore rubbed his hands on the side of her leg during the exam, and before inserting a swab, he inserted his fingers in her vagina. She indicated she left the exam feeling uncomfortable, and she thought that Dr. Moore was trying to arouse her.” (EXHIBIT I, at p. 78). No other evidence was presented pertaining to C.M.

Count 23 is the sole charge relating to C.M., and the Board found no violation. (EXHIBIT A, at p. 18). However, the Board issued Findings 131 through 134, all of which pertain to C.M. and all of which are based exclusively on Detective Maller’s testimony about C.M.’s interview. (EXHIBIT A, at pp. 17-18). This is quintessential hearsay, as C.M.’s statements were offered through Detective Maller for the sole purpose of establishing that Dr. Moore engaged in lewd or immoral conduct during his treatment of C.M. Ind. Evid. Rule 801(c).

While the Board ultimately found no violation specific to C.M. (*i.e.*, Count 23), it is apparent that the evidence was considered and influenced the Board’s decision to revoke Dr. Moore’s license and impose a \$65,000 fine. In the absence of any other supporting evidence of Dr. Moore’s conduct toward C.M., it was improper for the Board to rely on any hearsay testimony about C.M. in issuing its findings or sanctioning Dr. Moore. **As a result, Findings 131-134 must be stricken from the Order.**

Patient A.R.

Next, Patient A.R. did not testify at either hearing. She instead tendered an affidavit setting forth her complaints against Dr. Moore. (EXHIBIT J, at pp. 2-3). Count 22 is the sole charge relating to A.R., and the Board found no violation. (EXHIBIT A, at p. 32). However, in its *Order*, the Board issued Findings 124-130, which pertain to A.R. Each of these findings

is based exclusively on the contents of A.R.'s affidavit. (EXHIBIT A, at p. 17). The affidavit is quintessential hearsay and should not have been admitted to support any finding of misconduct by Dr. Moore. A.R. was not present in court to testify or be cross-examined, and the OAG and Board relied on the contents of her affidavit to prove the truth of Dr. Moore's conduct. Ind. Evid. Rule 801(c).

Given the significant number of violations found, including the general findings not specifically linked with any patient, it was prejudicial to allow hearsay to form the basis of any award. Indeed, as with the findings relating to C.M., it is apparent that the evidence in A.R.'s affidavit was considered and influenced the Board to revoke Dr. Moore's license and impose a \$65,000 fine. In the absence of any admissible evidence of Dr. Moore's conduct toward A.R., the hearsay should not have formed the basis of these findings; thus, **Findings 124-130 must be stricken from the Order.**

Nurse A.M.

Nurse A.M. testified at the January 26, 2023 suspension hearing as to misconduct of Dr. Moore. However, Nurse A.M. was never a patient of Dr. Moore and did not personally interact with him. (EXHIBIT D, at pp. 52-53). Rather, Nurse A.M. testified exclusively as to *rumors* she overheard about Dr. Moore when she was an employee at a hospital where Dr. Moore exercised privileges. (EXHIBIT D, at p. 48). Specifically, Nurse A.M. apparently heard from other nurses that they were uncomfortable working with Dr. Moore for various reasons, although Nurse A.M. could not identify any of these supposed nurses by name. (EXHIBIT D, at pp. 48-51). Furthermore, Nurse A.M. claimed to have been told by

unidentified members of the community that Dr. Moore exhibited inappropriate conduct during examinations. (EXHIBIT D, at p. 49).

During the hearing, Dr. Moore objected to Nurse A.M.'s testimony as it was entirely hearsay-based. (EXHIBIT D, at p. 48). Indeed, Nurse A.M. did not personally witness any of the interactions about which she testified. (EXHIBIT D, at p. 51). Her allegations against Dr. Moore consisted entirely of the out-of-court statements that she heard from other unidentified individuals. Because the OAG elicited Nurse A.M.'s testimony in order to prove the truth of the matter asserted – to wit, Dr. Moore's alleged misconduct – her testimony constituted hearsay. Ind. Evid. R. 801.

Nurse A.M.'s testimony was inherently unreliable and inadmissible. The Board did not find any violations specific to Nurse A.M. but did make specific findings based on her testimony. (EXHIBIT A, at p. 21). Accordingly, Dr. Moore requests that **Findings 153-158 be stricken from the Order.**

4. *There is No Substantial Evidence to Support All Sixty-Five Violations Because the Same Conduct Served as the Basis for Numerous Violations*

The Board's *Order* is not supported by substantial evidence because the Board relied on the same conduct to find multiple violations. Moreover, the Board assessed multiple fines based on the same conduct. Thus,

The evidence does not support relying on the same conduct to penalize Dr. Moore multiple times. The Board's *Order* does not identify separate dates or counts to justify the repetitive violations. Furthermore, it is prejudicial to Dr. Moore to fine him \$1,000 for each violation by relying on the same evidence to support multiple violations. The duplicative

violations cannot be permitted to stand, and this Court must remand for correction of this error.

5. *There is No Substantial Evidence to Support the Board's Order Because There Was No Admissible Evidence as to the Standard of Care*

In relevant part, the Board is statutorily charged with a duty to “adopt rules establishing standards for the competent practice of medicine” Ind. Code § 25-22.5-2-7(a)(8). Additionally, the Board’s *Order* includes a finding of twenty-one violations for Dr. Moore’s purported failure to comply with Title 844 of the Indiana Administrative Code, Article 5-2-5. (Counts 50-59, 61-69, and 71-72). This portion of the Indiana Administrative Code requires practitioners to exercise reasonable care and diligence in the treatment of patients in accordance with generally accepted scientific principles, methods, treatments, and current professional theory and practice. Similarly, the Board found twenty-one violations of Indiana Code section 25-1-9-4(a)(4)(B) for continuing to practice medicine despite being unfit to do so by virtue of a failure to keep abreast of current professional theory or practice. (Counts 27-36, 38-46, and 48-49). To determine that Dr. Moore committed these forty-two violations necessarily required the Board to determine whether Dr. Moore’s care and treatment of his patients fell below the applicable standard of care.

“Because of the complexity of medical diagnosis and treatment, expert opinion is required as to the existence and scope of the standard of care that is imposed on medical specialists and as to whether particular acts or omissions measure up to the standard of care.” *Perry v. Anonymous Physician*, 25 N.E.3d 103, 106 (Ind. Ct. App. 2014). The Board did not include any facts relating to the standard of care (or breach thereof) in their *Order*. Instead, the Board regurgitated the affidavit of Christopher Stroud, M.D. (“Dr. Stroud”), which was

tendered by the OAG as an expert opinion. (EXHIBIT J, at pp. 10-21) Therein, Dr. Stroud opined as to whether Dr. Moore's treatment and conduct of the complaining patients was appropriate.

Dr. Stroud's affidavit must be stricken because its admission constitutes inadmissible hearsay. Dr. Stroud did not appear at the hearing and make himself available for cross-examination. Ind. Evid. R. 801. This, of course, precluded Dr. Moore from any opportunity to vet the opinions and credibility of Dr. Stroud. Furthermore, as discussed above, "an award may not be based solely upon such hearsay" in an administrative proceeding, particularly here, where Dr. Moore objected to admission of the affidavit. *Kriss v. Brown*, 180 Ind. App. 594, 600 (Ind. Ct. App. 1979). Because the Board did not issue findings as to the standard of care or standards of practice independent of Dr. Stroud's opinion, Dr. Stroud's hearsay opinion is the only evidence before this Court as to the standard of care. Yet, the affidavit is clearly inadmissible. Without the affidavit, there is insufficient evidence to support the Board's *Order* – and imposition of sanctions – because there is no other expert opinion as to the standard of care and whether Dr. Moore's conduct was contrary to the same. Thus, Dr. Stroud's affidavit must be stricken, along with the Board's Findings 167-175. (EXHIBIT A, at pp. 23-25).

6. *There is Not Substantial Evidence to Support the Board's Order Because the Alleged Misconduct Is Stale*

Indiana's professional licensing laws do not appear to have a specific statute of limitations for imposing sanctions for physician misconduct. Yet, it cannot be disputed that the majority of the claims asserted against Dr. Moore are stale and would exceed any applicable statute of limitations in a civil lawsuit. Simply, penalizing Dr. Moore for conduct

that occurred years, or even decades, before any complaints were raised is prejudicial. Given the passage of time, the dated allegations lack reliability and certainly fail to demonstrate that Dr. Moore – at the time his medical license was revoked – lacked the professional competency to safely engage in the practice of medicine. Ind. Code § 25-22.5-3-1.

As noted above, the Consumer Complaints were filed between June of 2022 and March of 2023. (EXHIBIT E, at pp. 34-70). However, the conduct alleged within those Consumer Complaints dated back to the late 1990s. More specifically, each of the complainants set forth the following timeframes of alleged misconduct⁵:

- C.C. filed her Consumer Complaint on January 15, 2023 and alleged misconduct by Dr. Moore that occurred between 2016 and 2018. (EXHIBIT E, at pp. 45-46).
- A.F. filed her Consumer Complaint on January 11, 2023, and alleged misconduct by Dr. Moore that occurred between 2006 and 2008. (EXHIBIT E, at pp. 41-42).
- T.G. filed her Consumer Complaint on January 19, 2023, and alleged misconduct by Dr. Moore occurring in 2019. (EXHIBIT E, at pp. 53-54).
- A.H. filed her Consumer Complaint on January 20, 2023, and alleged misconduct by Dr. Moore that occurred between 2013 and 2014. (EXHIBIT E, at pp. 57-58).
- S.H. filed her Consumer Complaint on January 4, 2023, and alleged misconduct by Dr. Moore that occurred between 2016 and 2019. (EXHIBIT E, at pp. 39-40).
- T.H. filed her Consumer Complaint on May 18, 2023, and alleged conduct by Dr. Moore that occurred in 2011, 2017, and 2021. (EXHIBIT E, at pp. 68-70).
- Nurse M.K. filed her Consumer Complaint on January 27, 2023, and alleged misconduct by Dr. Moore that occurred in 2017. (EXHIBIT E, at pp.61-62).

⁵ Because the Counts for C.M., C.H., and A.R. were found not to be a violation, those Consumer Complaints are omitted from this list.

- M.M. filed her Consumer Complaint on February 4, 2023, and alleged misconduct by Dr. Moore that occurred in 2019. (EXHIBIT E, at pp. 63-65).
- S.M. filed her Consumer Complaint on June 27, 2022, and alleged misconduct by Dr. Moore that occurred on April 12, 2022. (EXHIBIT E, at pp. 34-36).
- M.S. filed her Consumer Complaint on January 3, 2023, and alleged misconduct by Dr. Moore that occurred in 2015. (EXHIBIT E, at pp. 37-38).
- W.S. filed her Consumer Complaint on January 19, 2023, and alleged misconduct by Dr. Moore occurring between 2011 and 2012. (EXHIBIT E, at pp. 49-50).
- K.T. filed her Consumer Complaint on January 23, 2023, and alleged misconduct by Dr. Moore that occurred between 2017 and 2022. (EXHIBIT E, at pp.59-60).

Indiana law imposes a two-year statute of limitations to any “action of any kind for damages, whether brought in contract or tort, based upon professional services rendered or which should have been rendered” by a physician. Ind. Code § 34-11-2-3. Similarly, there is a two-year statute of limitation applicable to any action for “injury to person or character.” Ind. Code § 34-11-2-4(a). Even looking to Indiana criminal law’s statute of limitations, the State is generally prohibited from prosecuting a misdemeanor if more than two years have passed since the offense was committed and is barred from prosecuting a felony⁶ if more than five years have passed. Ind. Code § 35-41-4-2.

In sum, any applicable statute of limitation—whether civil or criminal—would serve to bar any claim arising from the conduct alleged by C.C., A.F., A.H., S.H. (in part), T.H. (in part), Nurse M.K., M.S., W.S., and K.T. (in part). Under any civil statute of limitations, the

⁶ This does not include charges for murder or for Class A / Level 1 and 2 felonies. Ind. Code § 35-41-4-2. Notably, the crime of “sexual battery” is typically charged as a Level 6 felony but may rise to a Level 4 felony if committed by using or threatening deadly force or if committed while armed with a deadly weapon. Ind. Code § 35-42-4-8. Thus, even assuming a criminal statute of limitations applied, any claims older than five years would be barred.

allegations raised by T.G., M.M., and S.H. (in part) would also be barred. **As a result, the violations found by the Board as relating to C.C., A.F., S.H., T.H., Nurse M.K., M.S., W.S., T.G., M.M., and K.T. should be vacated.**

VI. PREJUDICE TO DR. MOORE

Despite the insufficiency of the evidence against him, the reliance on inadmissible hearsay, and having been deprived of the opportunity to cross-examine and confront those whose allegations led to the Board's sanctions, the Board revoked Dr. Moore's medical license *and* ordered him to pay \$65,000.

Certainly, there can be no question that the \$65,000 fine – particularly as the Board made no effort to assess Dr. Moore's ability to pay – is prejudicial. Dr. Moore had retired before these proceedings begun, and he is now prohibited from engaging in the practice of medicine (such that he cannot earn income by engaging in his established trade in order to afford the fine).

VII. REQUEST FOR RELIEF

Pursuant to Indiana Code section 4-21.5-5-7(b)(7) and Indiana Code section 4-21.5-5-15, Dr. Moore respectfully requests that this Court remand the case to the Board for further proceedings and to grant relief that includes, but is not limited to, the following:

- Vacate the revocation of Dr. Moore's medical license and grant his request to voluntarily surrender his medical license.
- Re-evaluate the admissible evidence in order to issue an order that is based on rational and just principles and that is in accordance with constitutional and statutory limits.
- Vacate the \$65,000 fine and remand to the Board for a proper consideration of Dr. Moore's ability to pay a fine.

- Vacate Counts 35, 58, and 59 (S.H.) and the corresponding \$3,000 due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Counts 42, 63, 64, and 65 (A.F.) and the corresponding \$4,000 in fines due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Count 54 (A.H.) and the corresponding \$1,000 fine due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Counts 33, 55, 56, and 57 (K.T.) and the corresponding \$4,000 in fines due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Counts 38, 39, 61, and 62 (M.S.) and the corresponding \$4,000 in fines due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Counts 44, 45, 66, 67, and 68 (C.C.) and the corresponding \$5,000 in fines due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Count 69 (W.S.) and the corresponding \$1,000 fine due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Counts 48, 71, and 72 (T.H.) and the corresponding \$3,000 in fines due to a violation of double jeopardy and lack of evidence to support separate violations.
- Vacate Counts 2, 3, 27, 28, 29, 50, 51, and 52 and the \$8,000 in fines associated therewith, because the violations are duplicative / based on the same conduct as other violations with identifiable patients.
- Vacate Counts 7, 8, 32, 33, 34, 55, 56, and 57 (K.T.) and the \$8,000 in fines associated therewith, as inadmissible hearsay.
- Vacate Counts 7-8, 21, 26, 32-34, and 55-57, and the associated \$10,000 in penalties due to inadmissible hearsay.
- Vacate Count 26 (M.K.) and the \$1,000 fine associated therewith, because based on inadmissible hearsay.
- Vacate Count 21 (T.G.) and the \$1,000 fine associated therewith, because based on inadmissible hearsay.

- Vacate Counts 27-36, 38-46, and 48-49, 50-59, 61-69, and 71-72, and the \$42,000 in fines associated therewith, because the Board did not set forth the standard of care, and there was no other evidence as to the applicable standard of care.
- Vacate Count 53 (M.M.) and the corresponding \$1,000 fine due to a violation of double jeopardy and lack of evidence to support two separate violations.
- Vacate Count 54 (A.H.) and the corresponding \$1,000 fine due to a violation of double jeopardy and lack of evidence to support two separate violations.
- Vacate all Counts relating to C.C., A.F., S.H., T.H., Nurse M.K., M.S., W.S., T.G., M.M., and K.T. because any applicable statute of limitations would otherwise bar any claim arising from the alleged conduct.
- Strike the Affidavit of A.R., in the entirety, as inadmissible hearsay.
- Strike the Affidavit of Nurse M.K., in the entirety.
- Strike the Affidavit of K.T., in the entirety, as inadmissible hearsay.
- Strike the Affidavit of Dr. Matthew Stroud, in the entirety.
- Strike Findings 167-175 (Dr. Stroud) from the Board's *Order*, as grounded in admissible evidence.
- Strike the hearsay testimony of Detective Joshua Maller relating to his police investigation interviews of C.M. and T.G., as inadmissible hearsay.
- Strike Findings 120-123 (T.G.) from the Board's *Order*, as grounded in admissible hearsay.
- Strike Findings 124-130 (A.R.) from the Board's *Order*, as grounded in admissible hearsay.
- Strike Findings 131-134 (C.M.) from the Board's *Order*, as grounded in admissible hearsay.
- Strike Findings 146-152 (M.K.) from the Board's *Order*, as grounded in admissible hearsay.
- Strike Findings 153-158 (Nurse A.M.) from the Board's *Order*, as grounded in inadmissible hearsay.

CERTIFICATE OF SERVICE

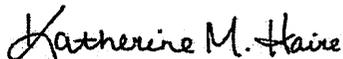
I certify that on February 21, 2024, I served a copy of the foregoing document using the Indiana Electronic Filing System, and I served a copy to the below parties by Certified Mail, Return Receipt Requested, with a courtesy copy via email:

Indiana Professional Licensing Agency
ATTN: Medical Licensing Board of Indiana
402 W. Washington Street, Room W072
Indianapolis, IN 46204
pla3@pla.in.gov

Office of Attorney General
Consumer Protection Division
Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204

John Strobel, M.D., President of Medical Licensing Board of Indiana
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REMINGER CO., L.P.A.
Ronald A. Mingus (#31144-49)
Katherine M. Haire (#31330-49)

WHEREFORE, William David Moore, M.D., by Counsel, respectfully requests that this Court award the foregoing relief, and any other just and proper relief in the premises.

Respectfully submitted,

Katherine M. Haire

REMINGER CO., LPA

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VERIFICATION

I swear, under penalty of perjury, that the contents of this Petition contain facts that are true and accurate to the best of my information and belief.

Katherine M. Haire

Ronald A. Mingus (#31144-49)

Katherine M. Haire (#31330-49)

REMINGER CO., L.P.A.