

**IN THE MATTER OF**  
**WALTER GIANELLE, M.D.**  
**Respondent.**  
**License No. D44413**

**\* BEFORE THE MARYLAND**  
**\* STATE BOARD OF PHYSICIANS**  
**\* Case Number: 2219-0123**  
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\* \* \* \* \*

**FINAL DECISION AND ORDER**

Walter Gianelle, M.D. is a board-certified Emergency Medicine physician who has been licensed by the Maryland State Board of Physicians (“Board”) since 1993. Dr. Gianelle is the President and sole owner of a group of urgent care facilities with six locations on Maryland’s eastern shore (the “Facility”). On January 24, 2019, in a self-report to the Board, Dr. Gianelle acknowledged that he engaged in a romantic and consensual sexual relationship for two years with a female employee<sup>1</sup> while he also treated her in his capacity as an urgent care doctor. On May 25, 2021, following an investigation, Disciplinary Panel B of the Board charged Dr. Gianelle with immoral and unprofessional conduct in the practice of medicine, in violation of Md. Code Ann., Health Occ. §§ 14-404(a)(3)(i) and (ii). Panel B also charged Dr. Gianelle with violating . . . any rule or regulation adopted by the Board, in violation of Health Occ. § 14-404(a)(43), based on his violation of the Board’s sexual misconduct regulations prohibiting a health care practitioner from engaging in sexual behavior with a current patient. COMAR 10.32.17.03D(1).

An evidentiary hearing was held at the Office of Administrative Hearings on March 1, 2022. The State did not present any witnesses. Dr. Gianelle testified on his own behalf. The Administrative Law Judge (“ALJ”) admitted into evidence twenty-nine documentary exhibits submitted by the State and Dr. Gianelle as joint exhibits.

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<sup>1</sup> For purposes of confidentiality, this individual is referred to as “Individual A” in this Final Decision and Order.

In a Proposed Decision issued on May 12, 2022, the ALJ recommended that the charges issued by Panel B be upheld. As a sanction, the ALJ recommended that Dr. Gianelle's medical license be suspended for three years, to be stayed pending completion of: a three-year probation; courses in ethics and professional boundaries within 6 months; and payment of a civil fine of \$15,000 also within 6 months. The ALJ also recommended that Dr. Gianelle be placed in the Board's rehabilitation program and comply with all of the program's rules, referrals and recommendations.

Dr. Gianelle filed written exceptions to the ALJ's Proposed Decision, and the State filed a response to Dr. Gianelle's exceptions. Both parties appeared before Disciplinary Panel A of the Board for an oral exceptions hearing on July 13, 2022. After considering the entire record, including the evidentiary record made before the ALJ, and the written exceptions and oral arguments by both parties, Panel A now issues this Final Decision and Order.

### **FINDINGS OF FACT**

Panel A adopts Findings of Fact 1-12 to which the parties stipulated at the hearing. Panel A also adopts the ALJ's additional proposed Findings of Fact numbered 13-20 with some modifications. The Panel corrects Finding of Fact 13 to state that on November 19, 2015, Individual A completed diagnostic imaging studies ordered by another physician. Jt. Exh. 11, pp. 483-84; Jt. Exh. 23, p. 637. The Panel also corrects Finding of Fact 17 to state that Dr. Gianelle diagnosed Individual A on January 1, 2017 with neuralgia and neuritis. Jt. Exh. 11, pp. 449. The Panel adopts those findings as amended. Consistent with these amendments, the Panel also amends the corresponding sentences in the ALJ's discussion. Prop. Dec. at 15, 16. Otherwise, the Panel adopts the ALJ's discussion and analysis on pages 9-21 of the Proposed Decision. (The ALJ's Proposed Decision of May 12, 2022, is incorporated by reference into this Final Decision

and Order and is appended to this Order as Attachment A). The factual findings were proven by a preponderance of the evidence.

### **CONSIDERATION OF EXCEPTIONS**

First, Dr. Gianelle takes exception to the ALJ's finding that his sexual relationship with Individual A<sup>2</sup> was with a current patient. He contends that Individual A was never a current patient of his because he did not engage in any sexual behavior with her during the times he provided treatment. As he did before the ALJ, he argues that the unique nature of his practice as an urgent care provider means that he does not have continuing physician-patient relationships or patients in the ordinary sense, and that his provider relationship begins when a patient walks into the urgent care exam room and ends when the patient leaves. The evidence in Individual A's medical record, over 5,000 text messages between her and Dr. Gianelle, and his testimony before the ALJ, however, contradict Dr. Gianelle's arguments.

It was undisputed that Individual A was diagnosed with a very serious medical condition in 2013 which required continuing medical and surgical treatment in subsequent years. Dr. Gianelle admits that he engaged in a lengthy romantic and sexual relationship with Individual A from October 2015 to December 2017. Their sexual encounters took place in hotels, her truck, her house, and in some Facility offices. The ALJ found that throughout the duration of that sexual relationship, Dr. Gianelle treated her as a patient in his office six times - on January 2 and 11, 2016, June 8 and 22, 2016, October 12, 2016, and January 1, 2017, Jt. Exh. 11, and gave medical advice on numerous other occasions. Jt. Exh. 23. He also treated Individual A twice in 2014 and early 2015 before they began their sexual relationship, and twice after their sexual

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<sup>2</sup> Dr. Gianelle states, incorrectly, that Individual A is the Complainant in this case. It was Dr. Gianelle, however, not Individual A, who self-reported the information to the Board about his sexual relationship with her on January 24, 2019. In his self-report, he stated that he did so because she filed a public complaint against him with the Equal Employment Opportunity Commission ("EEOC") in October, 2018, and he was concerned that his relationship with her could be considered a "technical" violation of the Board's sexual misconduct regulations. COMAR 10.32.17. Jt. Exh. 1.

relationship ended. The medical care Dr. Gianelle provided to her included prescribing controlled dangerous substances, referring her for diagnostic imaging, and providing continuing medical advice on health care issues related to her underlying medical condition.

Based on the voluminous texts between Dr. Gianelle and Individual A, the ALJ found that on multiple occasions when Dr. Gianelle treated her, and on or around the same day of treatment, they had a sexual encounter or discussed the possibility of one. On November 19, 2015, after Individual A completed diagnostic imaging studies, they had a sexual encounter in Room 5 at the Salisbury office location of Dr. Gianelle's practice. Also, on that day, in a text following their sexual encounter, he advised her how to relax her abdominal wall due to a hernia. The next day on November 20, 2015, he discussed the results of the imaging studies with her.

On January 2, 2016, Dr. Gianelle treated Individual A for symptoms of a urinary tract infection, did a urine culture, and prescribed medication. That same day, the two texted presumably about having seen each other that day, and in response to a text from her after he treated her, he said that he "[w]anted to wrap [her] up as well, but glad to get in a few kisses!" On January 11, 2016, he treated her for hip and leg pain. He x-rayed her femur, removed sutures from her chest and ordered an MRI of her thigh and hip. Later that day, he reported the results of her MRI, and, in a text, told her "[t]he treatment is lovemaking, should be at your house by 5. Love you!" The next day, they texted about their sexual encounter the night before.

On October 12, 2016, he treated her for chills, sweats, and a fever. He drew blood, did a chest x-ray, and flu and strep tests. Before that visit, Individual A texted Dr. Gianelle that she would try to see her primary care physician ("PCP") that day, he told her to let him know, she replied that she had hoped he would say he wanted her to come to him, and he responded "Yes,

I'm your primary, will see you soon!"<sup>3</sup> He later texted that her primary care physician wanted her "to keep up fluids, Tylenol and rest . . . except for Friday!" Individual A texted back that she "[w]ill be healthy and rested for our Friday of loving!!! Glad I came to see you, just don't trust anyone the way I trust you!!!"

On January 1, 2017, Dr. Gianelle treated Individual A for forearm trauma, took x-rays, diagnosed her with neuralgia and neuritis, and prescribed medication. That same day, in sexually explicit text messages to each other, they made plans to arrange a sexual encounter that evening. The next day, Dr. Gianelle texted Individual A with further advice on taking the medication he had prescribed.

The ALJ determined that Dr. Gianelle gave Individual A continuing medical advice throughout their sexual relationship. On November 13, 2015, after a night together, he told her how much he "loves loving" her, and then asked her about her bladder and told her that he would put her on an antibiotic if it was not better. He often reviewed her lab work, called in prescriptions for her, spoke with her primary care physician and kidney specialist, and spoke to her about her diagnoses. Individual A regularly consulted him about a multitude of health issues. On October 27, 2017, she told him that she had seen her primary care physician that day, and "changed my primary to you!!! Looks like you are stuck with me." She asked him for referrals and called him "the best PCP." Although Dr. Gianelle was not officially Individual A's primary care physician, she thought of and relied on him as such, based on his ongoing participation in her medical care.

As the ALJ observed, Dr. Gianelle had sexual encounters with Individual A on days that he treated her and discussed future and past sexual encounters in and around the times he treated

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<sup>3</sup> The texts between Individual A and Dr. Gianelle show that she received primary care treatment from another physician.

her. He oversaw the medical complications that arose from her underlying serious health problems, played a role in her medical health and consulted with her primary care physician and kidney specialist. He reviewed and commented on her lab work and x-rays and prescribed her medication even when she had not come to him for treatment. His intimate sexual relationship with her was completely intertwined with both her medical care and her employment in his practice. Because of his enduring involvement in her health care, she reasonably expected Dr. Gianelle's involvement to continue beyond the duration of any of her office visits, and it did. In addition to the multiple occasions when they had sexual encounters on days that he treated her, his entire association with her throughout the duration of their two-year sexual relationship was inextricably entangled with her medical treatment. Regardless of the urgent care nature of Dr. Gianelle's practice, the ALJ concluded that he stepped out of his normal role as an urgent care physician and took his medical relationship with Individual A many steps outside the scope of that role. In so doing, Dr. Gianelle engaged in sexual behavior with a current patient, in violation of COMAR 10.17.32.03D(1). Prop. Dec. at 18.

The Panel agrees with the ALJ's analysis. Dr. Gianelle's medical treatment of Individual A did not simply consist of random urgent care exam room visits but involved a continuum of medical care that spanned the timeframe of their entire sexual relationship. The evidence shows that he was not only her friend and lover for over two years, but a physician who simultaneously provided ongoing medical opinions, guidance, explanations, and treatment recommendations in response to questions and medical updates from her during acute phases of her illness. She confided her fears about the implications of her underlying medical condition to him and thanked him for taking care of her. Even when not treating her immediate physical ailments in the urgent care setting, he commented on and critiqued various medical and surgical aspects of hospital

treatment related to her condition and established a parallel physician-patient and sexual relationship. Contrary to his exceptions arguments, the evidence is utterly at odds with his claim that she was not a “current” patient and reveals that he indeed treated her as a patient in the ordinary sense even while he eagerly pursued their sexual relationship. Dr. Gianelle’s invocation of the urgent care label of his practice to obscure the continuous and involved nature of his physician-patient relationship with Individual A over the two years of their contemporaneous sexual relationship from 2015-2017 is unavailing. The Panel denies his exception and rejects his attempt to use the nature of his practice as a cover for his unethical conduct.

Second, Dr. Gianelle relies on his claim that Individual A was not a current patient to further argue that his sexual relationship with her did not constitute “immoral” conduct and that generic prohibitions of “immoral” conduct are impermissibly vague without tangible content. In essence, he argues that an urgent care physician is not bound by the ethical obligations that apply to physician practices and is free to engage in sexual encounters with whomever he pleases, whenever he pleases, wherever he pleases, as long as those encounters do not occur in the urgent care setting when the physician is in the immediate process of delivering medical treatment to the patient. Based on the tangible facts and circumstances of Dr. Gianelle’s prohibited dual relationship with Individual A, these arguments are equally unavailing, illogical, and inconsistent with the weight of the evidence. The ALJ justifiably concluded that his conduct was immoral, unprofessional, and occurred in the practice of medicine.

Contrary to Dr. Gianelle’s arguments, the Court of Appeals has held that a statute prohibiting “unprofessional conduct” or “immoral conduct” is not per se unconstitutionally vague. *Finucan v. Md. Bd. of Physicians*, 380 Md. 577, 593 (2004) (citations omitted). As Dr. Gianelle acknowledges in his written exceptions, the Court explained that the term refers to

“conduct which breaches the rules or ethical code of a profession or conduct which is unbecoming a member of good standing of the profession.” *Id.* It is irrelevant that Dr. Gianelle’s sexual relationship with Individual A was consensual or that it arose from her employment at his practice. As a physician who deliberately pursued a two-year sexual relationship with Individual A while repeatedly and concurrently involving himself in her medical assessments and treatments, Dr. Gianelle’s “consensual sexual relationship” demonstrated “moral unfitness . . .” *See Finucan*, 380 Md. at 593-94, quoting *Lugo v. New York State Dep’t of Health*, 306 A.D.2d 766 (2003). Dr. Gianelle knew of Individual A’s underlying serious medical condition and her medical and surgical history. He was singularly aware of her trust in and reliance on him as her medical provider. Her communications to him clearly indicated her health care expectations of him as his patient and her dependence on and confidence in his medical knowledge as a continuous health care provider throughout their prolonged romantic and sexual relationship. The Panel finds that Dr. Gianelle’s conduct not only abused his professional status as a physician and violated the ethics of the medical profession but was immoral within the meaning of Health Occ. § 14-404(a)(3).

Dr. Gianelle also argues that the ALJ used his marital infidelity as a supporting factor for her proposed sanction. Dr. Gianelle is incorrect. Rather, the ALJ determined that Dr. Gianelle utilized his Facility to enable the sexual relationship. He engaged in sexual encounters with Individual A in the office during business hours, the encounters were known to Facility employees, and placed the reputation and professionalism of the Facility in an unbecoming light. Prop. Dec. at 19. The Panel agrees with the ALJ that Dr. Gianelle’s misconduct as a Facility physician and the owner of the practice was “sufficiently intertwined” with patient care and with the operation of the Facility “to constitute misconduct in the practice of medicine.” *Id. Board of*



*Physician Quality Assurance v. Banks*, 354 Md. 59, 76-77 (1999).

Dr. Gianelle's personal marital status is irrelevant. By gratifying his own sexual desires, Dr. Gianelle failed to preserve a professional relationship directed solely on Individual A's health and welfare and risked losing the objectivity required of a physician providing medical care. Additionally, his contention that Individual A was not harmed psychologically or emotionally by his sexual affair with her misses the point. He ignored her obvious emotional reliance on him during complications of her serious illness. He failed to recognize that his dishonorable conduct increased the potential for harm to Individual A's welfare because of the inherent power differential that applies in a physician-patient relationship. In any event, the Board does not have to wait for patient harm to occur. "No proof of injury or harm is required to take disciplinary action against a physician's license." *Pickert v. Maryland Bd. of Physicians*, 180 Md. App. 490, 505 (2008). The Panel rejects Dr. Gianelle's disingenuous, self-serving interpretation of his professional obligations and the statute that applies to his conduct. Dr. Gianelle's conduct was not only immoral and unprofessional, but inimical to ethical medical practice and patient protection. His exceptions are denied.

#### **CONCLUSIONS OF LAW**

Based on the findings of fact and discussion of Dr. Gianelle's exceptions, as set forth above, Disciplinary Panel A concludes that Dr. Gianelle is guilty of immoral and unprofessional conduct in the practice of medicine, in violation of Md. Code Ann., Health Occ. §§ 14-404(a)(3)(i) and (ii). The panel also concludes that Dr. Gianelle violated the Board's sexual misconduct regulations at COMAR 10.32.17.03D(1) by engaging in a sexual relationship with a current patient, in violation of Health Occ. § 14-404(a)(43).

## SANCTION

Dr. Gianelle further excepts to the ALJ's recommended sanction and requests dismissal of the charges against him. Panel A also denies this exception and adopts the ALJ's proposed sanction with some modifications, as set forth below. The Panel has considered applicable mitigating and aggravating factors in its regulations. COMAR 10.32.02.09B. Dr. Gianelle does not have a prior disciplinary history with the Board and cooperated with the disciplinary panel proceedings. COMAR 10.32.02.09B(5)(a) and (c). With respect to his self-reporting and admission of his sexual relationship with Individual A to the Board in January 2019, COMAR 10.32.02.09B(5)(b), the Panel notes that he did so based partially on the public filing of Individual A's EEOC complaint against him in October 2018. Aggravating factors in this case include not only the combination of factually discrete offenses adjudicated in a single action, but Dr. Gianelle's deliberate and reckless commission of repeated sexual offenses over two years, and the potential for harm to Individual A. COMAR 10.32.02.09B(6)(b), (c), and (e).

The Panel is especially concerned that Dr. Gianelle's justifications for his sexual transgressions in this case were not accompanied by any meaningful sense of personal responsibility for or insight into his behavior. He rationalized his immoral and unprofessional conduct and minimized the potential risks that his conduct posed for Individual A. His excuses reveal a profound lack of understanding about sexual boundary abuses generally and betray a troubling dearth of basic knowledge of and appreciation for the crucial physician-patient boundaries that apply to his own practice as a licensed physician in this State. To remediate his ethical and professional deficiencies and deter any future sexual misconduct or adventures by Dr. Gianelle, the Panel will impose a sanction consisting of educational and disciplinary components.

## ORDER

It is, by an affirmative vote of a majority of the quorum of Disciplinary Panel A, hereby:

**ORDERED** that Walter Gianelle, M.D. is **REPRIMANDED**; and it is further

**ORDERED** that the medical license of Dr. Gianelle, License No. D44413, is **SUSPENDED**<sup>4</sup> for a minimum period of **THIRTY (30) CALENDAR DAYS**; and it is further

**ORDERED** that the suspension goes into effect November 15<sup>th</sup>, 2022; and it is further

**ORDERED** that during the suspension, Dr. Gianelle shall comply with the following terms and conditions of suspension:

(1) Dr. Gianelle shall not:

- (a) practice medicine;
- (b) supervise any Physician Assistant or delegate medical acts to a Physician Assistant pursuant to Title 15 of the Health Occupations Article;
- (c) take any actions after the effective date of this Final Decision and Order to hold himself out to the public as a current provider of medical services;
- (d) authorize, allow or condone the use of his name or provider number by any health care practice or any other licensee or health care provider;
- (e) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;
- (f) prescribe or dispense medications;
- (g) perform any other act that requires an active medical license.

(2) Dr. Gianelle shall enroll in the Maryland Professional Rehabilitation Program (“MPRP”) as follows:

- (a) Within **5 BUSINESS DAYS** of the commencement of the suspension period, Dr. Gianelle shall contact MPRP to schedule an initial consultation for enrollment;

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<sup>4</sup> If Dr. Gianelle’s license expires during the period of suspension, the suspension and any conditions will be tolled.

- (b) Within **15 BUSINESS DAYS** of the commencement of the suspension period, Dr. Gianelle shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
- (c) Dr. Gianelle shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
- (d) Dr. Gianelle shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Dr. Gianelle shall not withdraw his release/consent;
- (e) Dr. Gianelle shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Dr. Gianelle's current therapists and treatment providers) verbal and written information concerning Dr. Gianelle and to ensure that MPRP is authorized to receive the medical records of Dr. Gianelle, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Gianelle shall not withdraw his release/consent;
- (f) Dr. Gianelle's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Final Decision and Order; and it is further

**ORDERED** that Dr. Gianelle shall not apply for early termination of suspension; and it is further

**ORDERED** that, after the minimum period of suspension imposed by the Final Decision and Order has passed, and after Dr. Gianelle has fully and satisfactorily complied with all the terms and conditions of suspension, Dr. Gianelle may submit a written petition to the disciplinary panel for termination of suspension. Dr. Gianelle may be required to appear before the disciplinary panel to discuss his petition for termination. If the disciplinary panel determines that Dr. Gianelle has satisfactorily complied with the terms and conditions of suspension, the

disciplinary panel may administratively terminate Dr. Gianelle's suspension through an order of the disciplinary panel. If the disciplinary panel determines that Dr. Gianelle has not satisfactorily complied with the terms and conditions of suspension, the suspension shall be continued through an order of the disciplinary panel, and the disciplinary panel may impose any additional terms and conditions it deems appropriate; and it is further

**ORDERED** that upon termination of the suspension, Dr. Gianelle shall be placed on **PROBATION** for a minimum of **THREE (3) YEARS**.<sup>5</sup> Dr. Gianelle shall comply with the following terms and conditions of probation:

1. Dr. Gianelle shall remain enrolled in the Maryland Professional Rehabilitation Program ("MPRP") as follows:
  - (a) Dr. Gianelle shall continue his Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP, or be entered into an amended Participant Rehabilitation Agreement and Participant Rehabilitation Plan, as determined by MPRP;
  - (b) Dr. Gianelle shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
  - (c) Dr. Gianelle shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Dr. Gianelle shall not withdraw his release/consent;
  - (d) Dr. Gianelle shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Dr. Gianelle's current therapists and treatment providers) verbal and written information concerning Dr. Gianelle and to ensure that MPRP is authorized to receive the medical records of Dr. Gianelle, including,

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<sup>5</sup> If Dr. Gianelle's license expires during the period of probation, the probation and any conditions will be tolled.

but not limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Gianelle shall not withdraw his release/consent;

- (e) Dr. Gianelle's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Final Decision and Order.

2. Within **SIX (6) MONTHS** of the effective date of this Final Decision and Order, Dr. Gianelle is required to take and successfully complete two courses: (1) Ethics; and (2) Professional Boundaries. The following terms apply:

- (a) it is Dr. Gianelle's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the courses before the courses begin;
- (b) Dr. Gianelle must provide documentation to the disciplinary panel that he has successfully completed the courses;
- (c) the courses may not be used to fulfill the continuing medical education credits required for license renewal;
- (d) Dr. Gianelle is responsible for the cost of the courses.

3. Within **TWO (2) YEARS** of the effective date of this Final Decision and Order, Dr. Gianelle shall pay a civil fine of **FIFTEEN THOUSAND DOLLARS (\$15,000.00)**. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate Dr. Gianelle's license if Dr. Gianelle fails to timely pay the fine to the Board; and it is further

**ORDERED** that a violation of probation is a violation of this Final Decision and Order; and it is further

**ORDERED** that Dr. Gianelle shall not apply for early termination of probation; and it is further

**ORDERED** that after a minimum of three years, if Dr. Gianelle has complied with all terms and conditions of probation, Dr. Gianelle may submit a written petition for the termination of probation. After consideration of the petition, the probation may be terminated through an order of a disciplinary panel. Dr. Gianelle may be required to appear before a disciplinary panel to discuss his petition to terminate the probation. The disciplinary panel may grant the petition to terminate the probation through an order of the disciplinary panel, if Dr. Gianelle has complied with all of the probationary conditions, and there are no pending complaints related to the charges; and it is further

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

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

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

**ORDERED** that the effective date of this Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board. The Executive Director signs the Final Decision and Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Order, and it is further

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

## *Signature on File*

11/10/2022

Date

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

### **NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

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

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

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



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

Noreen Rubin  
Assistant Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201

# **Attachment A**

MARYLAND STATE BOARD OF  
PHYSICIANS

v.

WALTER GIANELLE,  
RESPONDENT

LICENSE No.: D44413

\* BEFORE SUSAN A. SINROD,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: MDH-MBP-71-21-25568

\* \* \* \* \*

PROPOSED DECISION

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

STATEMENT OF THE CASE

On May 25, 2021, the Maryland State Board of Physicians issued charges against Walter Gianelle, M.D. (Respondent) for alleged violations of the State law governing the practice of medicine, the Maryland Medical Practice Act (Act). Md. Code Ann., Health Occ. §§ 14-101 through 14-508, and 14-601 through 14-607 (2021). The Respondent is charged with violating section 14-404(a) of the Act. Specifically, the Respondent is charged with the following:

- Immoral conduct in the practice of medicine
- Unprofessional conduct in the practice of medicine

Health Occ. 14-404(a)(3)(i) and (ii) (2021); Code of Maryland Regulations (COMAR) 10.32.02.03E(3)(d).

The Respondent is also charged with violating COMAR 10.32.17.02D(1), which prohibits a health care practitioner from engaging in sexual behavior with a current patient.

The disciplinary panel to which the complaint was assigned held a meeting with the Respondent on September 15, 2021, to explore the possibility of resolution. COMAR 10.32.02.03E(9). The parties did not resolve the issues at that time. The disciplinary panel to which the complaint was assigned forwarded the charges to the Office of the Attorney General for prosecution, and another disciplinary panel delegated the matter to the Office of Administrative Hearings (OAH) for issuance of proposed findings of fact, proposed conclusions of law, and a proposed disposition. COMAR 10.32.02.03E(5); COMAR 10.32.02.04B(1).

On November 30, 2021, I conducted a scheduling conference through the Webex videoconferencing platform. COMAR 28.02.01.20B(1)(b). On February 8, 2022, I conducted a prehearing conference.

I conducted a hearing on March 1, 2022, at the OAH in Hunt Valley, Maryland. Health Occ. § 14-405(a); COMAR 10.32.02.04. Robin Cockey, Esquire, represented the Respondent, who was present. Christopher Anderson, Assistant Attorney General and Administrative Prosecutor, represented the State of Maryland (State).

Procedure is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings Before the Board of Physicians, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 10.32.02; COMAR 28.02.01.

### ISSUES

1. Did the Respondent engage in immoral or unprofessional conduct in the practice of medicine by engaging in a sexual relationship with a patient? If so,
2. What sanctions are appropriate?

## SUMMARY OF THE EVIDENCE

### Exhibits

The parties submitted the following joint exhibits:

- Joint Ex. #1- Self Report email from the Respondent to the Board, dated January 25, 2019; letter from the Respondent to the Board, dated January 24, 2019; Maryland Commission on Civil Rights Charge of Discrimination, dated October 2, 2018
- Joint Ex. #2- Letter from Molly Dicken, Compliance Analyst, Board, to Individual A,<sup>1</sup> dated February 25, 2019
- Joint Ex. #3- Letter from Ms. Dicken to the Respondent, dated February 26, 2019; blank Information Form, undated
- Joint Ex. #4- Subpoena Duces Tecum, dated February 26, 2019
- Joint Ex. #5- Subpoena Duces Tecum, dated February 26, 2019
- Joint Ex. #6- Subpoena Duces Tecum, dated February 26, 2019
- Joint Ex. #7- Your Doc's In Personnel Records of Individual A
- Joint Ex. #8- Your Doc's In Employee Roster; Information Form, dated March 8, 2019; Physician Assistant Provider Roster
- Joint Ex. #9- Addendum to Information Form, undated
- Joint Ex. #10- Transcript of interview with Individual A, dated April 12, 2019
- Joint Ex. #11- Consent for Release of Information, dated October 3, 2018; Your Doc's In medical records for Individual A, varying dates
- Joint Ex. #12- Letter from Ms. Dicken to [REDACTED], dated June 19, 2019
- Joint Ex. #13- Letter from Ms. Dicken to [REDACTED], dated June 19, 2019
- Joint Ex. #14- Subpoena Ad Testificandum, dated June 26, 2019
- Joint Ex. #15- Transcript of interview with [REDACTED], dated June 28, 2019
- Joint Ex. #16- Transcript of interview with [REDACTED], dated July 12, 2019
- Joint Ex. #17- Letter from Ms. Dicken to the Respondent, dated September 17, 2019; Subpoena Ad Testificandum, dated September 17, 2019

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<sup>1</sup> As in the Charges, this individual is referred to as Individual A for confidentiality.

- Joint Ex. #18- Letter from Robin R. Cockey, Esquire, to the Board; dated September 17, 2019; letter from the Respondent to the Board, dated January 24, 2019
- Joint Ex. #19- Email from Ms. Dicken to Mr. Cockey, dated September 20, 2019
- Joint Ex. #20- Subpoena Duces Tecum, dated October 3, 2019
- Joint Ex. #21- Letter from Jennifer G. Harrison, Hills Drug Store, Inc., dated October 8, 2019; Subpoena Duces Tecum, dated October 3, 2019; prescription orders from Your Doc's In, varying dates; Property Loss Notice, dated December 14, 2017
- Joint Ex. #22- Transcript of interview with the Respondent, dated October 15, 2019
- Joint Ex. #23- Text messages between the Respondent and Individual A, varying dates
- Joint Ex. #24- Letter from Mr. Cockey to Ms. Dicken, dated December 4, 2019; Memorandum Opinion of the United States District Court for the District of Maryland, dated December 2, 2019
- Joint Ex. #25- [Board] Report of Investigation, dated March 4, 2020
- Joint Ex. #26- [Board] Physician Profile Portal, undated; Endorsement/Flex Application, dated March 8, 1993; Checklist for Processing Initial Application to Practice Medicine in Maryland, received March 11, 1993; Certificate of Preliminary and Medical Education and Identification, received March 23, 1993; copy of envelope from the University of Missouri-Columbia, addressed to the Board,<sup>2</sup> postmark date March 16, 1993; Certificate of Physicians, received March 11, 1993; letter from Mark Zwanger, MD, MBA, FACEP, Residency Director, Emergency Medicine, Thomas Jefferson University Hospital, to the Board, dated April 13, 1993; Consent to Release Information, received March 11, 1993; Demonstration of Oral Competency in the English Language, received March 11, 1993; Federation Disciplinary Information, received March 9, 1993; National Board of Medical Examiners Endorsement of Certification, received March 22, 1993; Commonwealth of Virginia Bureau of Professional and Occupational Affairs letter addressed "To Whom It May Concern," dated March 9, 1993; University of Missouri diploma, received by the Board on March 11, 1993; letter from Mr. Zwanger to the Board, dated March 2, 1993; letter from Neva Mattheiss, Licensure Analyst, Board, to the Respondent dated April 3, 1990; letter from Israel H. Weiner, MD, Chairman, Board, to the Respondent, dated May 17, 2019; License, Registration, or Certification Renewal, expiration September 30, 1994; three copies of a letter from the Respondent to the Maryland Department of Health (MDH),<sup>3</sup> dated June 18, 1993; Renewal application, dated September 8, 2018; American Medical Association Physician Profile, dated February 5, 2019;

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<sup>2</sup> Some of the documents contained in the Joint Exhibits date back to when the Board was known as the Board of Physician's Quality Assurance.

<sup>3</sup> Some of the documents contained in the joint exhibits date back to when the MDH was known as the Department of Mental Health and Hygiene. For consistency, I will refer to the agency as the MDH throughout this decision.

Board Practitioner Profile System, dated January 30, 2019; Drug Enforcement Administration Datafiles for the Respondent, data file release date September 24 2020; two MDH CDS searches, expiration May 31, 2020, undated; Advisory Letter from the Board to the Respondent, dated January 5, 2018; Advisory Letter from the Board to the Respondent, dated May 10, 2019; Advisory Letter from the Board to the Respondent dated July 3, 2019

Joint Ex. #27- Affidavit of Individual A, dated April 24, 2020

Joint Ex. #28- Letter from [REDACTED], to Ashley A. Bosche, Esquire, dated August 28, 2019

Joint Ex. #29- *Curriculum Vitae* of [REDACTED], dated July 2, 2018

Neither the State nor the Respondent offered any additional exhibits for admission into evidence.

#### Testimony

The State did not present the testimony of any witnesses.

The Respondent testified in his own behalf.

#### PROPOSED FINDINGS OF FACT

The parties stipulated to the following facts:

1. The Respondent has been licensed to practice medicine in the State of Maryland since May 13, 1993. He has been licensed at all times relevant to this matter. His license is active and scheduled to expire on September 30, 2022.
2. At all times relevant hereto, the Respondent owned and primarily practiced at a group of urgent care facilities with six locations in Maryland (Facility). The Respondent is board-certified in emergency medicine and holds privileges at several Maryland hospitals.
3. On or about January 25, 2019, the Board received a letter (Complaint) from the Respondent, self-reporting that he had engaged in a "romantic and consensual sexual relationship" with an employee of the Facility (Individual A). The Respondent reported that the relationship began in late 2015 and lasted approximately two years. The Respondent

acknowledged that before, during and after their relationship, he also treated Individual A as a patient at the Facility.

4. Based on the Complaint, the Board began an investigation.

5. In furtherance of the investigation, the Board obtained relevant documents from the Respondent, including, but not limited to, Individual A's employment records at the Facility, records documenting Individual A's medical treatment as a patient at the Facility, a record of text messages between the Respondent and Individual A spanning the period of the relationship, and records from the Prescription Drug Monitoring Program documenting prescriptions written by the Respondent to Individual A. The Board's investigator also conducted sworn interviews with relevant witnesses including the Respondent and Individual A.

6. According to the investigation, Individual A was hired as a medical assistant at the Easton, Maryland location of the Facility in March 2011. She was promoted to manager of the location shortly thereafter. In August 2016, she was terminated by a colleague of the Respondent. She was rehired in June 2017 but again terminated in May 2018. The Respondent denies that he was involved in the personnel decisions.

7. The medical records indicate that the Respondent treated Individual A at the Facility for various indications on the following dates: February 14, 2014, November 7, 2014, January 2, 2016, January 11, 2016, June 8, 2016, June 22, 2016, October 12, 2016, January 1, 2017, and January 9, 2018.

8. In addition, the Respondent referred Individual A for diagnostic imaging on January 11, 2016 and June 15, 2016.

9. The records indicate that in two of the visits, the Respondent prescribed Individual A controlled dangerous substances.



10. In 2013, Individual A was diagnosed with a serious medical condition. In late 2015, she and the Respondent developed a friendship, and began texting each other regularly. The text messages were often sexual in nature, including during the time period when the Respondent was treating Individual A as a patient. Many of the messages discuss Individual A's medical condition and treatment. Many others were work-related.

11. According to both the Respondent and Individual A, beginning in October 2015, the pair met regularly to engage in sexual activity, including at the premises of the Facility.

12. Both the Respondent and Individual A report that their sexual relationship continued intermittently until it ended in December 2017.

After considering the evidence presented, I find the following additional facts:

13. On November 19, 2015, Individual A had an MRI, through a referral by the Respondent. That same day, she and the Respondent had a sexual encounter in Room 5 of Facility's Salisbury location. He also gave her advice that day as to how to relax her abdominal wall due to a hernia. On November 20, 2015, the Respondent and Individual A discussed the results of the MRI.

14. On January 2, 2016, the Respondent treated Individual A for symptoms of a urinary tract infection. He did a urinalysis and prescribed medication. That same day, the two texted about seeing each other that day, and the Respondent said, in response to Individual A's text, that he "[w]anted to wrap [her] up as well, but glad to get in a few kisses!"

15. On January 11, 2016, the Respondent treated individual A for hip and leg pain. He x-rayed her femur, removed some sutures from her chest and ordered an MRI of her thigh and hip. Later that day, he texted her regarding the results of her MRI, and he told her "[t]he treatment is lovemaking, should be at your house by 5. Love you!" The following day, they texted about their encounter the night before.

16. On October 12, 2016, the Respondent treated Individual A for chills, sweats, and a fever. He drew blood, did a chest x-ray, an influenza test, and a strep test. That same day, the following conversation ensued by text:

Individual A: Will try to see my primary today. Don't want to take advantage of you or your clinic. Thanks.

Respondent: Ok! Let me Know!

Individual A: Wow, really hoping that you would say that you wanted me to come to you.

Respondent: Yes, I'm your primary, will see you soon!

...

Respondent: [REDACTED]<sup>4</sup> wants you to keep up fluids, Tylenol and rest...except Friday!!! :))))

Individual A: That is a deal!! Will be healthy and rested for our Friday of loving!!! Glad I came to you, just don't trust anyone like I trust you!!! Wish we could have had a few private moments today because you know what would have happened...Love you!!!

Jt. Ex. #23, p. 856-857.

17. On January 1, 2017, the Respondent treated Individual A for forearm trauma. He took x-rays, prescribed medication, and diagnosed her with neuropathy. On that same day, they discussed arranging a sexual encounter.

18. The Respondent gave Individual A continuing medical advice throughout their relationship. He regularly read her lab reports, prescribed her medication, and consulted with her primary care physician and her kidney specialist. The Respondent and Individual A regularly discussed her medical conditions.

19. At some point, staff at the Facility began to suspect that the Respondent and Individual A were in a relationship. Someone had seen them come out of a hotel next to the

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<sup>4</sup> [REDACTED] is either Individual A's primary care physician or her kidney specialist.

Easton office. Others overheard telephone conversations between the Respondent and Individual

A. Some noticed that the two would go into an office or a room together and stay for about a half hour.

20. The Respondent's wife is the chief financial officer for the Facility.

## DISCUSSION

### LEGAL FRAMEWORK

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). The State bears the burden of establishing that the Respondent violated the Act by a preponderance of the evidence. COMAR 28.02.01.21K(1)-(2)(a).

The grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act include the following:

(a) *In general*. – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(3) Is guilty of:

- (i) Immoral conduct in the practice of medicine; or
- (ii) Unprofessional conduct in the practice of medicine...

Md. Code Ann., Health Occ. § 14-404(a)(3)(i) and (ii) (2021).

The Board also charged the Respondent with a violation of COMAR 10.32.17.03D(1), which prohibits a health care practitioner from engaging in sexual behavior with a current patient.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:

(i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:

1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or
2. By appliance, test, drug, operation, or treatment[.]

Md. Code Ann., Health Occ. § 14-101(o)(2) (2021).

Maryland courts in recent years have consistently expanded the definition of what constitutes "in the practice of medicine." In *McDonnell v. Comm'n on Med. Discipline*, 301 Md. 426 (1984), the court concluded that the legislature did not intend for a physician's general moral character to be subject to sanction, thus, "in the practice of medicine" "is directly tied to the physician's conduct in the actual performance of the practice of medicine, *i.e.*, in the diagnosis, care, or treatment of patients." *Id.* at 436-437 (attempt by physician to intimidate witnesses scheduled to testify against him at a medical malpractice trial). However, in *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59 (1999), the court rejected Banks' argument that his sexual harassment of co-workers during the hours of employment was not immoral or unprofessional conduct in the practice of medicine. The *Banks* court found the physician's behavior "sufficiently intertwined with patient care to constitute misconduct in the practice of medicine." *Id.* at 76-77.

In *Finucan v. Maryland Bd. of Physician Quality Assurance*, 380 Md. 577 (2004), the court affirmed the Board's action against Finucan for having "used the physician-patient relationship for purposes of facilitating the engagement of current patients in sexual activities."

The court in *Finucan* held that a physician's sexual relationship with a patient constituted unprofessional conduct in the practice of medicine. *Id.* at 595-596.

In *Cornfeld v. State Bd. of Physicians*, 174 Md. App: 456 (2007), a physician was found to have committed unprofessional conduct in the practice of medicine when he made false statements to the hospital and Board regarding his conduct during a surgical procedure. Finally, in *Kim v. Maryland State Bd. of Physicians*, 423 Md. 523 (2011), the court found that false information by a physician on his renewal application constituted unprofessional conduct in the practice of medicine. *Id.* at 547-548.

Applicable regulations prohibit a health care practitioner from engaging in sexual misconduct. COMAR 10.32.17.03A. In pertinent part, COMAR 10.32.17.03C provides that sexual misconduct includes, but is not limited to:

(1) Engaging in sexual harassment of a patient, key third party, employee, student, or coworker regardless of whether the sexual harassment occurs inside or outside of a professional setting;

...

(5) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship;

(6) Engaging in a dating, romantic, or sexual relationship which violates §D of this regulation or the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other professional code of ethics;

(7) Participating in any form of sexual contact with a patient or key third party;

...

(9) Causing a patient or key third party to touch the health care practitioner's breasts, genitals, or any sexualized body part;...

### THE POSITIONS OF THE PARTIES

The State argued that the Board's investigative findings established that the Respondent engaged in a sexual relationship with Individual A during a time when he was treating her as a patient, which constituted immoral and unprofessional conduct in the practice of medicine, in violation of the Act and COMAR 10.32.17.03D(1).

The Respondent argued that the State failed to establish that the Respondent engaged in sexual activity with Individual A while she was his patient. He maintained that an urgent care physician does not have an ordinary relationship with a patient. An individual comes to the Facility for an illness or injury, but the urgent care physician does not provide any continuing medical care. The urgent care physician may send a patient for testing, or to the patient's primary care physician, or even to the hospital, but there is no expectation that the urgent care physician will provide any continuing care. The Respondent said that he did Individual A's lab work in his office a few times, and he referred her for tests or to her other doctors after he examined her, but he was not her primary care physician. Therefore, the crux of the Respondent's argument was that Individual A was only a patient of the Respondent's during the time when she was at the Facility receiving treatment.

At the conclusion of the State's case, the Respondent moved for judgment, arguing that the State failed to establish that the Respondent violated the Medical Practice Act or COMAR 10.32.17.03D(1). I informed the parties that I would address the Motion for Judgment in this decision. After reviewing the joint exhibits, I conclude that the State presented sufficient evidence to establish its prima facie case, and the Motion for Judgment is denied.

### THE RESPONDENT'S TESTIMONY

The Respondent started the Facility in 2005. He is Board certified in emergency medicine. The Facility treats individuals for unscheduled illness or injury. According to the Respondent, for the time he is with a patient, there is a doctor/patient relationship; however, ordinarily, the patient is discharged to the patient's primary care physician for follow-up.

The Respondent treated Individual A nine times and referred her for diagnostic tests twice. Their romantic relationship began in 2015. They were both married at the time; each was having marital problems. Individual A was promoted to manager of the Easton office of the Facility. She developed some serious health problems, and the Respondent maintained that as a friend, she would talk to him about those. There was a hiatus in her employment with the Facility; a colleague of the Respondent fired her in August 2016; she was re-hired in June 2017. She came to the clinic for treatment during that time, and the Respondent and Individual A's relationship continued.

The Respondent addressed each of the occasions he treated Individual A. There were two occasions that he treated her in 2014, prior to the time that they began their romantic relationship. Thereafter, on January 2, 2016, he treated her for a urinary tract infection. On January 11, 2016, she came in with severe pain in her legs and hip. The Respondent sent her for an MRI, which later came back normal. On June 8, 2016, Individual A came in for abdominal pain after eating. The Respondent did lab work, and even though the lab work came back normal, he referred her to the emergency room because she was on immunosuppressant medication. On June 22, 2016, Individual A came in with a cyst on her leg that she had for a long time. She wanted the Respondent to remove it. The Respondent wanted her to go to a dermatologist, but she refused so the Respondent removed it and sutured it. On October 12, 2016, she came in with a fever and cold symptoms during flu season. At the request of her

nephrologist, the Respondent did bloodwork, a chest x-ray and a flu test, and Individual A followed up with that nephrologist. On January 1, 2017, she came in with severe pain in her wrist. There was no fracture, but he gave her 12 pills of Narco, a Vicodin generic pain medication. On January 9, 2017, at a point after their relationship ended, Individual A came in after slipping on the ice. She had pain in her ribs and lower back. He gave her Narco at that time as well. On March 17, 2018, she fell down the stairs and hurt her shoulder and ankle. The Respondent did x-rays, which were negative, and treated her for a sprain. Tr. 28-32.

The Respondent denied that Individual A was ever his patient. He treated her on occasion as an urgent care patient. He insisted that she was never dependent upon him for medical care in any sense. He denied that they ever had a sexual encounter when he was treating her and said that their relationship was consensual and not exploitative.

The Respondent explained that at the end of 2017, Individual A started to want more than the Respondent could give to the relationship. As a result, he ended the relationship. After that, Individual A threatened that he would "feel the wrath of a woman scorned," and began to make false accusations against him regarding sleeping with other patients and prescribing controlled dangerous substances without seeing patients. Tr. 35. The Respondent said that he has spent four years defending himself against her unfounded accusations.

The Respondent argued that an urgent care provider's relationship begins when the patient walks into the exam room and ends when the examination is finished, with the exception of providing referrals for lab work, an imaging test, to the emergency room, or to the patient's primary care physician. He maintained that the State presented no evidence of a sexual encounter during the times that he treated Individual A. He cited two out-of-state cases, *Dayley v. United States of America; Intermountain Health Care, Inc.*, 2018 WL 1590254, from the United States, District Court, D., Utah, Central Division, and *Nickler v. Mercy Medical Center*,



2003 WL 139791 from the Court of Appeals of Ohio. In *Dayley*, the court discussed the state's Statute of Repose, and cited *Nickler*, in its holding that "an urgent or stat care physician, who is treating a patient for an urgent problem, does not have an ongoing relationship with the patient and is not expected to see the patient again. *Dayley*, at \*3.

#### ANALYSIS

I reviewed over five thousand text messages between the Respondent and Individual A. Joint Ex. 23. Their sexual relationship lasted from October 2015 until late 2017/early 2018. Throughout the duration of the relationship, the Respondent treated Individual A as a patient six times (January 2, 2016, January 11, 2016, June 8, 2016, June 22, 2016, October 12, 2016, January 1, 2017). Joint Ex. #11. He treated her two times in 2014 and early 2015, before they began their relationship, and twice after their relationship ceased. He wrote her prescriptions and referred her for CT scans and other testing several times.

There were multiple occasions where the Respondent treated Individual A, and, on or around that same day, they had a sexual encounter or discussed the possibility of one. On November 19, 2015, Individual A had an MRI, through a referral by the Respondent. Jt. Ex. #11, p. 243. That same day, they had a sexual encounter in Room 5 of the Facility's Salisbury location. Jt. Ex. #11, pp. 638-639. That day, he also gave her advice as to how to relax her abdominal wall due to a hernia. Jt. Ex. #23, p. 638. The next day, on November 20, 2015, the Respondent discussed the MRI results with Individual A. Jt. Ex. #23, p. 641. On January 2, 2016, the Respondent treated Individual A for symptoms of a urinary tract infection. Jt. Ex. #11, p. 461-462. He did a urinalysis and prescribed medication. That same day, the two texted, presumably about having seen each other that day, and in response to a text from Individual A after he treated her, the Respondent said that he "[w]anted to wrap [Individual A] up as well, but glad to get in a few kisses!" Jt. Ex. #23, p. 676. On January 11, 2016, the Respondent treated

individual A for hip and leg pain. Jt. Ex. #11, p. 459-460. He x-rayed her femur, removed some sutures from her chest and ordered an MRI of her thigh and hip. Later that day, he reported the results of her MRI, and told her “[t]he treatment is lovemaking, should be at your house by 5. Love you!” Jt. Ex. #23, p. 683. The following day, they texted about their sexual encounter the night before. Joint Ex. #11, p. 684. On October 12, 2016, the Respondent treated Individual A for chills, sweats, and a fever. Jt. Ex. #11, p. 450-453. The Respondent drew blood, did a chest x-ray, a test for influenza and a strep test. Prior to her visit, the following conversation ensued by text:

Individual A: Will try to see my primary today. Don't want to take advantage of you or your clinic. Thanks.

Respondent: Ok! Let me Know!

Individual A: Wow, really hoping that you would say that you wanted me to come to you.

Respondent: Yes, I'm your primary, will see you soon!<sup>5</sup>

....

Respondent: [REDACTED] wants you to keep up fluids, Tylenol and rest...except Friday!!! :))))

Individual A: That is a deal!! Will be healthy and rested for our Friday of loving!!! Glad I came to you, just don't trust anyone like I trust you!!! Wish we could have had a few private moments today because you know what would have happened...Love you!!!

Jt. Ex. #23, p. 856-857.

On January 1, 2017, the Respondent treated Individual A for forearm trauma. He took x-rays, prescribed medication, and diagnosed her with neuropathy. Joint Ex. #11, p. 448-449.

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<sup>5</sup> The Respondent testified that he knew that comment did not look good for this case, but insisted he only said it to calm her down because she kept pushing for him to be her primary care physician, but he continually refused. Tr. 39-40.

On that same day, they discussed arranging a sexual encounter, but it was unclear from the text messages whether it actually occurred. Jt. Ex. #23, p. 905.

The Respondent also gave Individual A continuing medical advice throughout their relationship. For example, on November 13, 2015, after a night together, the Respondent told her how much he “loves loving” her, and then asks her about her bladder and said he would put her on an antibiotic if it was not better. Jt. Ex. #23, p. 630.<sup>6</sup> He often reviewed her lab work. Jt. Ex. #23, pp. 693, 874, 890, 978. He called in prescriptions for her. Jt. Ex. #23, pp. 706, 716. He spoke with her primary care physician and her kidney specialist.<sup>7</sup> Jt. Ex. #23, pp. 735, 756. He spoke to Individual A about her diagnoses. Jt. Ex. #23, p. 716, 735, 978. She regularly consulted him about a multitude of health issues. Jt. Ex. #23, p. 793. On October 27, 2017, Individual A told the Respondent that she saw [REDACTED] that day, and “changed my primary to you!!! Looks like you are stuck with me.” Jt. Ex. #23, pp. 871. She asked him for referrals. Jt. Ex. #23, p. 885. She called him “the best PCP.”<sup>8</sup> Jt. Ex. #23, p. 885.

#### THE CHARGES

##### COMAR 10.32.17.03D(1)- Sexual relationship with a current patient

I agree with the Respondent that the nature of an urgent care practice is different from that of a primary care physician’s practice or that of a specialist. An urgent care doctor treats an

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<sup>6</sup> These citations to the text messages between the Respondent and Individual A are examples only. There are many more text messages with similar content which are not listed herein. Joint Ex. #23:

<sup>7</sup> The record reflects the names of two of Individual A’s doctors with whom the Respondent coordinated and consulted on Individual A’s behalf, [REDACTED] and [REDACTED]. The Respondent testified that he spoke on occasion to both Individual A’s primary care physician and her kidney specialist; however, it is not clear from the record which doctor was the primary and which doctor was the kidney specialist.

<sup>8</sup> Presumably, primary care physician.

immediate medical need, and then will generally refer the patient elsewhere, either to a hospital, an imaging test or to the patient's primary care physician. However, as set forth above, the Respondent and Individual A had sexual encounters on days that he treated her, and discussed future and past sexual encounters, in and around the times he treated her. Regardless, in this case, I do not think it is even necessary to find that their sexual encounters matched up in certain instances with the days he treated her. The Respondent took the medical relationship with Individual A many steps further than that of an ordinary urgent care doctor. His sexual relationship with Individual A was completely intertwined with both her medical care, and her employment with the Facility. Throughout their relationship, Individual A had some serious health problems. Despite some of their text message conversations that seem to imply otherwise, I do not believe that the Respondent was ever Individual A's primary care physician. However, the Respondent oversaw Individual A's medical complications. He played a role in her medical health and consulted with her primary care physician and kidney specialist. The Respondent often reviewed and commented on Individual A's lab work. He prescribed her medication even when she had not come to him for treatment. Regardless of the urgent care nature of the Respondent's practice, he took his medical relationship with Individual A outside of the normal scope of an urgent care physician's role. By virtue of his involvement in her health care, she reasonably expected that involvement to continue, and it did. With Individual A, the Respondent stepped out of his role as an urgent care physician. Thus, in addition to the fact that there were multiple occasions when the Respondent and Individual A had sexual encounters on days that he treated her, his entire involvement with her throughout the duration of their two-year sexual relationship was entangled with her medical treatment. Thus, I conclude that the Respondent engaged in sexual behavior with a current patient in violation of COMAR 10.17.32.03D(1).

Md. Code Ann., Health Occ. 14-404(a)(3)(i) and (ii) Immoral and Unprofessional Conduct in the Practice of Medicine

The Respondent's sexual relationship with Individual A also constituted immoral and unprofessional conduct in the practice of medicine. Although their relationship was consensual, it occurred in conjunction with his treatment and consultation regarding her medical care. Additionally, Individual A was his employee. They had sexual encounters in their office in the middle of the day, during business hours. They worked their schedules so that they could be together. From the Board's interview of [REDACTED], a former employee of the Facility, it was clear that co-workers were aware of their relationship. Joint Ex. #15. They overheard phone conversations, noticed that the Respondent would go into Individual A's office and come out a half hour later. Jt. Ex. #15, p. 495. Co-workers had seen them coming out of a hotel near the Facility's Easton office. Jt. Ex. #15, p. 495. The Respondent's wife was an instrumental part of the Facility, and she and Individual A were friends. Although the Respondent cannot be sanctioned by the Board for infidelity, his infidelity in this case involved, and affected, the professionalism of the Facility. The Respondent and Individual A utilized the Facility to enable their sexual relationship. Further, as set forth above, the Respondent took his medical relationship with Individual A far beyond that normally experienced in an urgent care scenario, thereby extending that relationship to a continuing doctor/patient relationship. It was not possible, under these circumstances, for the Respondent to remain objective where Individual A's medical care was concerned. His actions placed the medical profession, and the reputation of the Facility, in an unbecoming light. By this behavior, the Respondent's actions were "sufficiently intertwined" with patient care, and with the operation of the Facility to constitute misconduct in the practice of medicine." *Banks* at 76-77. As such, his conduct, both immoral and unprofessional, occurred in the practice of medicine, in violation of Section 14-404(a)(3)(i) and (ii) of the Act.

## SANCTIONS

The Board may impose disciplinary sanctions for violations of Section 14-404, including a reprimand, period of probation, suspension, or revocation. Md. Code Ann., Health Occ. § 14-404(a) (2021); COMAR 10.32.02.09A; COMAR 10.32.02.10. The Board also may impose conditions related to the offense or rehabilitation of the offender. COMAR 10.32.02.09A(5). In addition, the Board may impose a fine instead of or in addition to disciplinary sanctions. COMAR 10.32.02.09D.

The Board considered some of the mitigating and aggravating factors set forth in COMAR 10.32.02.09. As mitigating factors, the State noted that the Board has never before disciplined the Respondent. COMAR 10.32.02.09B(5)(a). Additionally, the Respondent self-reported his relationship with Individual A to the Board. COMAR 10.32.02.09B(5)(b). However, the State suggested that this mitigating factor was quelled by the fact that the Respondent only self-reported after Individual A filed a lawsuit and an EEOC complaint against him for sexual harassment; he did so because he knew the Board would become aware of the relationship. Nevertheless, the Respondent was cooperative in the Board's investigation, which I also find to be a mitigating factor.

The Board also found that there were aggravating factors. The State argued that the Respondent's actions were deliberate, or with gross negligence or reckless, by having sexual relations with a patient, knowing the medical profession's prohibition against doing so. COMAR 10.32.02.09B(6)(b). Also, the State argued that the Respondent committed a combination of factually discrete offenses adjudicated in a single action. COMAR 10.32.02.09B(6)(e). The State argued that the Respondent crossed many boundaries and noted that a physician can be prosecuted for only one sexual encounter with a patient. His violations continued repeatedly for over two years.

The Board recommended that the Respondent serve a thirty-day suspension, suspended pending completion of the following terms: 1) Within six months, pay a civil fine of \$25,000.00; 2) Be placed on probation for three years; 3) Within six months, complete a course in ethics and a course in professional boundaries; 4) Within fifteen days, enter into a participant rehabilitation agreement and plan with the Maryland Physician Rehabilitation Program and comply with all of the program's rules, referrals and recommendations; and 4) Sign all disclosures necessary to allow the Board to monitor his participation.

I found the Board's recommendations to be mostly reasonable and appropriate for the Respondent's violations. A deferred suspension and probationary period are reasonable so that the Board can ensure that the Respondent is rehabilitated through participation in the recommended courses and participation in the Physician's Rehabilitation Program. The Respondent engaged in behavior that he knew to be in violation of the Act, in favor of his own interest and desires. There is nothing in the record before me to indicate that the Respondent has done anything to rehabilitate these behaviors. However, regarding the fine, the State did not explain its rationale or provide any breakdown of its recommended \$25,000.00.<sup>9</sup> While this fine is within the range allowed for his violations, I found it to be high under the circumstances. The Respondent did not cause any public harm. He has never been disciplined previously. Nevertheless, I conclude that a fine is warranted to deter the Respondent from ever engaging in this behavior again, and because his behaviors damaged the integrity of the profession. I recommend that the Board impose a fine of \$15,000.00.

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<sup>9</sup> The minimum fine for this violation is \$10,000.00 and the maximum is \$50,000.00. COMAR 10.32.02.10B(3)(b).

### PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Section 14-404(a)(i) and (iii) by engaging in immoral and unprofessional conduct within the practice of medicine, by having sexual relations with a patient. *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59 (1999); *Finucan v. Maryland Bd. of Physician Quality Assurance*, 380 Md. 577 (2004); COMAR 10.32.17.03D(1). As a result, I conclude that the Respondent is subject to disciplinary sanctions. COMAR 10.32.02.09A-B.

I further conclude that the Respondent is subject to a fine of \$15,000.00 for the cited violations. COMAR 10.32.02.10B(3)(b).

### PROPOSED DISPOSITION

I **PROPOSE** that charges filed by the Maryland State Board of Physicians against the Respondent on May 25, 2021 be **UPHELD**; and

I **PROPOSE** that the Respondent be sanctioned by a three-year suspension, to be stayed pending completion of the following:

- 1) Within six months, pay a civil fine of \$15,000.00;
- 2) Be placed on probation for three years;
- 3) Within six months, complete a course in ethics and a course in professional boundaries;
- 4) Within fifteen days, enter into a participant rehabilitation agreement and plan with the Maryland Physician Rehabilitation Program and comply with all of the program's rules, referrals, and recommendations; and



- 5) Sign all disclosures necessary to allow the Board to monitor his participation.

May 12, 2022  
Date Decision Issued

*Susan Sinrod*

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Susan A. Sinrod  
Administrative Law Judge

SAS/emh  
# 197372

#### NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216(a) (2021); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2021); COMAR 10.32.02.05C. The OAH is not a party to any review process.

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