Certified True Copy
Delaware Division of Professional Regulation

BEFORE THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

In the Matter of:	)
	) **Case Nos.: 10-56-15, 10-17-17 and 10-83-19**
Karl W. McIntosh	)
License No. C1-0004762	)

PUBLIC ORDER

Pursuant to 29 *Del. C.* §8735 (v)(1)(d), a properly noticed hearing was conducted before a hearing officer during the week of October 30, 2023, to consider the above referenced complaint filed by the State of Delaware against Dr. Karl W. McIntosh ("McIntosh"), with the Board of Medical Licensure and Discipline.

The hearing officer has submitted the attached recommendation in which the hearing officer found as a matter of fact and submitted recommendations regarding the law and proposed disciplinary sanctions.

The above-captioned Complaint numbers 10-56-15, 10-17-17, and 10-83-19 have been shown by a preponderance of the evidence presented to establish unprofessional conduct by McIntosh in violation of the Medical Practice Act.

The Board was and is bound by the findings of fact made by the hearing officer. 29 *Del. C.* §8735(v)(1)(d). These findings are set forth on pages 115-127 of the hearing officer's recommendation.

The Board may affirm or modify the hearing officer's conclusions of law and recommended penalty. The hearing officer's recommended conclusions of law are set forth on pages 128-137 of the recommendation.

The hearing officer recommended that the Board hold that McIntosh has violated 4

provisions of the Medical Practice Act, prohibiting unprofessional conduct as follows:

- 24 *Del. C.* §1731(b)(1) defines as unprofessional conduct the "use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with a certification, registration, or licensing requirement of this chapter, or in connection with the practice of medicine or other profession or occupation regulated under this chapter." McIntosh pled guilty to and has been criminally convicted of forgery pursuant to 11 *Del. C.* §861 and falsifying business records pursuant to 11 *Del. C.* §871. In addition, the hearing officer's findings independently support a violation of this section based on his review of evidence demonstrating that McIntosh overbilled 3 families hundreds of times and also prescribed medication to his children without proper record keeping procedures.
- 24 *Del. C.* §1731(b)(2) defines as unprofessional conduct that which "would constitute a crime substantially related to the practice of medicine." McIntosh pled guilty to and was convicted of violating 11 *Del. C.* §871 related to falsifying business records. This is a crime substantially related to the practice of medicine. 24 *Del. Admin. Code* §1700-15.3.33. In addition, the evidence adduced by the State indicated to the hearing officer that McIntosh engaged in the commission of theft, identity theft, and healthcare fraud (24 *Del. Admin. Code* §1700-15.3.16, 15.3.29, 15.3.55).
- 24 *Del. C.* §1731(b)(3) defines as unprofessional conduct "dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public." McIntosh unethically prescribed medications to his own children without

maintaining records, violating 24 *Del. Admin. Code* §1700-8.1.13. In addition, McIntosh's serial overbilling of Highmark regarding services to 3 families is dishonorable and unethical.

- 24 *Del. C.* §1731(b)(11) defines as unprofessional conduct "incompetence, or gross negligence or pattern of negligence in the practice of medicine or other profession or occupation regulated under this chapter." McIntosh's overbilling and prescriptions to his children establish violations of this section.[1]

As provided by 29 *Del.C.* §§8735(v)(1)(d) & 10126(b), the parties were given 20 days from the date of the hearing officer's proposed order to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty.

McIntosh submitted written exceptions to the hearing officer's recommendations in which he raised several arguments, however, conceded that discipline was warranted for his actions, but that such discipline should not include a period of actual suspension of practice. McIntosh urged the Board to consider, among other things, that his patients will have difficulty obtaining alternative treatment providers, his extensive history of *pro bono* services, and the fact that he no longer accepts insurance as payment for his professional services.[2] McIntosh was represented at the Board's meeting on March 5, 2024 by attorney Charles Slanina.

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[1] The Hearing Officer does not recommend a conclusion of law that McIntosh violated 24 *Del. C.* §1731(b)(6). The Board concurs.

[2] The hearing officer's recommendation describes his having weighed the aggravating and mitigating factors set forth in the Board's regulations 24 *Del. Admin. Code* §1700-17.14 & 17.15. Those factors were incorporated in the recommended discipline. The discipline recommended by the hearing officer, and that ultimately imposed by the Board in this Order is guided by 24 *Del. C.* §1713(f) ("The Board shall promulgate rules and regulations establishing guidelines for the imposition of disciplinary sanctions against persons certified or licensed to practice medicine or other professions or occupations regulated by this chapter."); and 24 *Del. Admin. Code* §1700-17.0.

Delaware submitted written exceptions to the hearing officer's recommendations in which it argued that the discipline imposed should include additional conditions on McIntosh's probationary period, assuming his suspension is lifted. The State of Delaware was represented by Deputy Attorney General Kemba Lydia-Moore.

The Board deliberated on the hearing officer's conclusions of law and recommendations on March 5, 2024. The Board affirms the conclusions of law made by the hearing officer for the reasons set forth in his recommendation.

The Board also considered the exceptions submitted by McIntosh and the State regarding the terms of the disciplinary order to be imposed. Based upon the nature and extent of McIntosh's violations of the Medical Practices Act, the Board rejects the exceptions taken by McIntosh. A suspension of practice is appropriately included in this matter based on the extent of illegal, unethical, and unprofessional conduct. The Board agrees with the State's exceptions that additional provisions should be included in the terms of eventual probation. To that end, this Order incorporates those aspects of the State's exceptions, including auditing and monitoring of McIntosh's practice if his suspension is lifted in favor of probation. These terms are in addition to the discipline recommended by the hearing officer.

NOW THEREFORE, by majority vote of the members of the Board of Medical Licensure and Discipline, the Board enters the following disciplinary Order:

1. The Board holds McIntosh has violated 24 Del. C. §1731(b)(1), §1731(b)(2), 24 Del. C. §1731(b)(3) and 24 Del. C. §1731(b)(11).
2. The Board Orders as follows:
    a. McIntosh shall be issued a letter of reprimand;

b. McIntosh's license shall be suspended for 2 months from the date of this Order followed by it being placed on probation for 3 years with the conditions of the probation being that:

  i. McIntosh is barred from accepting insurance payment for services until he obtains Board permission to do so which shall only be granted if he supplies to the Board proof of sufficient office practices accurately electronically to bill the particular insurance company;

  ii. Within 180 days from the date McIntosh is placed on probation, he shall have an audit of his practice performed by an expert pre-approved by the Board. The auditor shall ascertain, if applicable, whether McIntosh:

    a. Timely and accurately bills patients and insurance companies;

    b. Complies with usage of Current Procedural Terminology ("CPT") codes;

    c. Properly maintains patient records which shall include, without limitation, progress notes for each encounter, medications prescribed, and documentation expressing the medical necessity for any prescribed medications; and

    d. A written report of the auditor's findings shall be prepared by the auditor and submitted to the Board. Upon receipt of the written report, the Board may impose additional conditions of probation deemed necessary to protect public health, safety, and welfare.

McIntosh shall be responsible for the costs associated with the audit and any subsequent costs arising therefrom.

iii. 180 days after the auditor's report is prepared and submitted in compliance with the above paragraph 2(b)(ii)(d), McIntosh shall provide documentation that his practice continues to timely and accurately bill patients or insurance companies, comply with usage of CPT codes, and properly maintain patient records which shall include, without limitation, progress notes for each encounter, medications prescribed, and documentation expressing the medical necessity for any prescribed medication.

iv. McIntosh shall continue to use electronic billing and prescriptive services for patients;

v. McIntosh shall not be found by this Board to overbill any of his patients;

c. McIntosh shall complete, within 60 days of the Board's entry of this Order, continuing education consisting of 3 hours in ethics. This is in addition to the hours required for licensure renewal;

d. McIntosh shall pay a fine of $2,000 payable to the State of Delaware within 120 days of this Order.

e. If McIntosh violates any of the conditions of probation, the Board may suspend his license without notice or hearing for the balance of the probation period.

f. Pursuant to 24 *Del. C.* § 1735 a copy of this Order shall be served personally or by certified mail, return receipt requested, upon McIntosh. This is a public disciplinary action reportable to the national practitioner databank pursuant to 24 *Del. C.* § 1734(i). It also may be considered as an aggravating factor in any future disciplinary matter before this Board.

g. A copy of the hearing officer's recommendation shall be attached hereto and is incorporated herein except that the recommended penalty is modified as indicated in this Order.

IT IS SO ORDERED this _14th__day of May, 2024.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

_*/s/ Joseph Rubacky, D.O.*_____
Joseph Rubacky, D.O, President
Pursuant to 29 *Del. C.* § 10128(g)

BEFORE THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

In the Matter of:	)	
	)	Case Nos.: 10-56-15,10-17-17 and 10-83-19
Karl W. McIntosh	)	
License No. C1-0004762	)	

RECOMMENDATION OF HEARING OFFICER

Nature of the Proceedings

On October 2, 2018, the State of Delaware filed a Complaint against Dr. Karl W. McIntosh, M.D. (hereinafter " Respondent"). This was duly served on Respondent. On September 19, 2022, the State filed an amended consolidated complaint. This also was duly served on Respondent. The amended consolidated complaint alleged:

(1) From 2011 to 2014 Respondent fraudulently billed Highmark Blue Cross and Blue Shield over $100,000 for services to the 4 members of the G family.
(2) From 2012 to 2015, Respondent fraudulently billed Highmark for other patients in addition to the G Family $751,301;
(3) Due to (1) and (2) above Respondent was criminally charged with 14 counts of felony level offenses, but pled guilty to 2 misdemeanors: Forgery in the 3rd degree, a misdemeanor violation under 11 Del. C. Sec 861 and Falsifying Business Records, a misdemeanor violation under 11 Del. C. Sec. 871. For these 2 misdemeanors, Respondent received a sentence of 1 year detention suspended for Level II probation.
(4) Additionally, it was alleged that Respondent wrote fraudulent prescriptions for 2 schedule II-controlled substances Adzenys XR ODT 18.8.mg, and Vyvanse 70 mg but did not provide them to the individuals proscribed them and fraudulently submitted claims for these prescriptions.

This matter was originally scheduled on April 10, 2023 but was continued as Respondent's then attorney indicated they were withdrawing. It was not rescheduled until August 30, 2023, after informing Respondent there would not be further delay and allowing Respondent the amount of time he had represented as sufficient to obtain a replacement attorney. August 30, 2023 it was rescheduled for October 30, 2023 through November 3, 2023.

Less than a week prior to the hearing on October 24, 2023, Respondent requested a continuance indicating he had found an attorney who would take the case and a third-party

source of funds to pay for that attorney. The State opposed. That continuance request was denied. The public's need for prompt resolution of offenses allegedly committed over 8 years previously where Respondent had 3 years notice of them in the original Complaint outweighed Respondent's basis for continuance due to the prior continuance, warning of no further delays and this hearing only being scheduled after lapse of the amount of time that Respondent previously indicated as sufficient to get a replacement attorney.

Testimony of various witnesses was presented by the State October 30, 2023, October 31, 2023, November 2, 2023 and by Respondent, November 1, 2023, and November 2, 2023.

November 3, 2023, the parties came to a private agreement. The undersigned and parties agreed that this private agreement could be presented to the Board for consideration **without the undersigned seeing it** with agreement if it was rejected, this matter would proceed to closing arguments. Respondent had indicated that he would not be testifying and had no additional witnesses. The Board rejected the consent agreement presented **which the undersigned has not reviewed** . **This was done so that the undersigned was not exposed to settlement negotiations and could render his recommendation with a "fresh set of eyes".**

At the zoom conference of November 15, 2023, Respondent confirmed that he would not be testifying and the parties agreed to zoom closing arguments December 4, 2023. The parties made their closing arguments then. This is the recommendation of the undersigned after due consideration of all relevant testimony, exhibits, evidence, arguments, and legal matters.

TABLE OF CONTENTS

I. Summary of Proceedings……………………………..……….......p. 4-p. 114

A. Opening Arguments ……………………………………………p.4 – p.8
1. State's Opening……………………………..………………p.4 – p.5
2. Respondent's Opening………………………………..……..p.5 - p.8

B. States Witnesses and Evidence……………………..……………p.8 – p.67
1. Ron Ferguson, Investigator DPR…………………..………………..p.8-p.12
2. Investigator Stephen Kutch Delaware Dept. of Insurance)…………..p.12-p.25
3. J.G. son from the G family……………………………………....p.25-p.27
4. L.G. daughter from the G family…………………...……,...…p.27-p.30
5. Mark Hawk Dept. of Justice Investigator………………....……...…p.30-p.38
6. M.G. Father in the G Family……………………………...……p.38- p.45
7. A,G. Mother in the G Family……………………………...…p. 45-p.49
8. Earl Bock (Highmark's Special Investigation Unit)…………......…p.49- p.60
9. State's Motion for Exhibits…………………………………..……..p.60-p.60
10. Dr. LaShauna McIntosh (Respondent's Ex Wife)…..………………p.60 -p.67

C. Respondent's Witnesses and Evidence……………..……..………….p.67- p.102
1. David Doty, Analysis of Impossible Day Date……………………..…p.67-p.86
2. D.L. Respondent's Patient……………………………......……..p.86-p.88
3. B.D Respondent's Patient……………………………..………..p.88-p.90
4. Respondent Testimony and Exhibits……………………,,,……..p 90-p.92
5. S.B. Respondent's Patient's Mother …..………..…..……………..p.92-p.93
6. C.C. Respondent's Patient…………………………..…...………p.93-p.96
7. F.N. Respondent's Patient………………………….….……..p.96-p.98
8. Dr. J. Ge. Former director of school in Delaware…………………p.99-p.101
9. W.H. Respondent's Patient…………………………………..…p.101-102

D. Closing Arguments………………………………….…..……p.103-p.114
1. State's Closing Argument_………..…………………….……....p.103-p.109
2. Respondent's Closing Argument.……………..………………....p109-p.114

II. Findings of Fact………………………………………….....….p.115 -p.127

III. Conclusions of Law…………………………………………….…p.128-p.137

IV. Imposition of Appropriate Discipline…..…………………,,.………p.138-p.142

V. Recommendation……………………………………………………..p.143

I. Summary of the Proceedings

The hearing started 9:05 a.m. October 30, 2023 when the public line was unmuted.

A. Opening Arguments

The parties made the following opening arguments.

1. State's Opening

The State argued there were 3 cases before the undersigned: (1)10-56-15 (hereinafter referred to as the "2015 case"), (2) 10-17-17 (hereinafter referred to as the "2017 case"), and (3) 10-83-19 (hereinafter referred to as the "2019 case").

In the 2015 case, the DPR received a complaint that Respondent overbilled Highmark for hundreds of services he did not provide to the 4 members of the G family[1]. Ultimately, Highmark and Respondent entered a settlement agreement where Respondent reimbursed Highmark, $132,526. The Delaware Department of Insurance obtained documents from the G family proving they were on vacation on some dates Respondent billed Highmark for services.

Highmark further investigated Respondent overbillings for patients besides the G family. They found that between 2012 – 2015 Respondent billed Highmark an average of 18.9 hours per days. On many of these days, Respondent billed Highmark in excess of 24 hours (hereinafter referred to as an "Impossible Day" and referred to as the "2017 case")

The DPR, the Delaware Department of Insurance and the Delaware Department of Justice each conducted investigations which substantiated the Highmark findings in the 2015 and 2017 case. The Delaware Department of Insurance determined that as a part of the 2017 case,

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[1] The undersigned has redacted the name of the families to protect any concerns they may have as to privacy..

Respondent was billing Highmark for services to patients when Respondent was attending events sponsored by Otsuka and Takeda pharmaceutical companies. The Department of Justice's (DOJ) investigation revealed 2 additional families referred to as the N and R families who Respondent billed Highmark in excess of the services provided.

As a result of the 2015 and 2017 cases, criminal charges were brought against Respondent who was arrested leading to the 2019 Case being brought. In April 2017 the DPR received notice of the criminal charges and waited for resolution of those charges. Respondent was convicted of falsifying business records which is identified as a crime substantially related to the practice of medicine and on September 2019, the DPR filed a Complaint that Respondent never informed the Board or DPR of his arrest or his conviction. That was the 2019 Case.

Regarding the 2017 Case (Case No. 10-17-17), the DPR received a complaint from Respondent's ex-wife, Dr. LaShauna McIntosh, M.D. that Respondent filled prescriptions for controlled substances in their 3 children's names when the children were not on these medications. The DPR's investigation revealed that Respondent did not have medical records for the children and did not document medical justification for the prescriptions and the children never received the prescriptions that he obtained in their names. Respondent was separately criminally charged and arrested for those allegations. Ultimately, these charges were dismissed as a part of a plea for the first set of criminal charges.

The State argued by the conclusion of this case, it will show by a preponderance of the evidence that Respondent in the above actions violated the laws and regulations that govern the medical profession as alleged in the State's amended consolidated Complaint.

2. <u>Respondent's Opening</u>

Respondent first relayed he was not an attorney and had found one Charles Slanina, Esq.

who could have represented him if this hearing was continued. He has not had legal counsel review previous consent agreements offered by the State and formally objected to being denied the right to representation by counsel.

Respondent stated he did not have electronic medical records ("EMR") prior to his criminal indictments and feels this contributed to inconsistencies in his documentation and billing dates. Due to the overwhelming number of patients in his practice, he was often behind in documenting office visits which contributed to inconsistencies between the date a patient was seen, the date a note was made, and the date a patient may have been billed. He now has an EMR system to avoid these problems. He readily admits to "sloppy record keeping" and "poor administrative oversight", but **not fraud.**

Respondent argued the State will present a Highmark document that merely adds hours billed per day and lacks any forensic analysis. He will produce an expert witness David Doty who has performed an "appropriate, detailed forensic audit". In this audit, Mr. Doty discovered a number of fatal errors including but not limited to:

(1) Highmark's failure to consider other providers in his Concord Behavioral Health's billings in calculating his hours of service.

(2) There was no accounting for the difference in the date of service and date billed.

(3) Assessing him of billing for an insertion of a pacemaker in a patient that was not his patient.

(4) HIPPA violations in the data Highmark sent;

(5) As of the early 2000s he had a special agreement with BC/BS of Delaware before it became Highmark which allowed him to bill if he saw a Family of 5 in 1 hour, he was permitted to bill 5 separate individual hours. This will be explained by Mr. Doty in his

forensic evaluation that after considering this, there were no Impossible Days.

The G family reported to Highmark they never saw him after 2011. However, in the State's amended complaint the date was changed to 2013,

As to Respondent's prescriptions for his children, these were for ADHD medications and the criminal charges were dropped by the State. He is painted as a substance abuser. He is not. He is a skilled child psychiatrist. He did homework with his children. He also has ADHD and felt he was in a unique position. When the complaint was made to the Board he did not "seek legal counsel", he merely responded and accepted responsibility that although not illegal it was not "an idea clinical situation because of the tension between his ex-wife and himself". After obtaining the medications, he decided not to have his children take the prescriptions as it would cause additional difficulties between him and his ex-wife. He destroyed the medications. He has 2 boys and a girl. Both boys are currently prescribed ADHD medications by physicians other than himself.

He does not deny the failure to report matters, but this was not intentional. He was distressed at the highly publicized criminal charges and suffered Lyme disease and was not handling these stressors well.

He said there were no allegations in the complaint that he did not deliver appropriate care to his patients. He is noted in the community. He will present letters and witnesses that as a psychiatrist he has always gone above and beyond standards. He does a lot of lab work to ensure their care. His approach to psychiatric care was one of the reasons he had a special arrangement for billing with BC/BS of Delaware. He was going to resign from the panel of psychiatrists authorized to deliver services by BC/BS of Delaware in the early 2000s when BC/BS had hired him as a consultant. The State objected as Respondent was testifying. The undersigned

indicated that at this juncture what he presented was not evidence since he had not been sworn in. Respondent stopped at this juncture. The undersigned indicated there was a denial of the continuance for the reasons set forth in the emailed Order.

B. State's Witnesses and Evidence

1. Ron Ferguson – Investigator from the State of Delaware Division of Professional Regulation ("DPR")

a. State's Questioning on Direct Examination of Investigator Ferguson

Investigator Ron Ferguson was sworn in. Additionally, Respondent was sworn in. Investigator Ferguson testified live under oath as follows. He had been a licensed investigator for 10 ½ years who investigates professional conduct. He is familiar with Case Nos. 10-56-15,10-17-17 and 10-83-19 as he reviewed those cases, but did not investigate them. He received documents provided by the State's attorney, Ms. Lydia-Moore, which were the same as those in the State's data base (which he reviewed about a month ago). Respondent objected as Mr. Ferguson had not performed the investigation. This was overruled.

Investigator Ferguson reviewed the database previously as the case had previously been assigned to a different attorney general who had left. He described the database is where the investigative unit keeps records, complaints and is only accessible to the investigative unit at the DPR. Respondent objected as Investigator Ferguson stated he reviewed it not as a part of an investigation, but in preparation for a case. This objection was overruled as Respondent could ask about any bias in his cross examination of Investigator Ferguson.

Investigator Ferguson testified that the records he reviewed in the database were part of those ordinarily kept in the course of DPR investigation and kept as a part of DPR's regularly conducted business activities. They are created by either a person with personal knowledge or a result of an investigator speaking to such an individual. They are kept indefinitely currently as a

part of the DPR's duties. He can tell when records are created in the database area and stored. The information in these records was created around the time the information was received.

The investigator in the 2015 case was Craig Brady. The investigator in the 2017 case was Craig Brady until Mr. Brady retired and then the investigator became Martin MacMicking. Investigator MacMicking. The 2019 case was investigated by Investigator Supervisor Jeff Ward who has since retired.

Investigator Ferguson determined Respondent was an active Delaware licensee by checking his license status in the database. Investigator Ferguson identified State Exhibit 2/ SX 2 as the license check for Respondent. It said his license was active on Page 1 of SX 2. His license was issued May 7, 1996 and expires March 31, 2025 (Page 4 of SX 2).

Investigator Ferguson identified Page 1 - 2 State Exhibit 3/ SX 3 as the Complaint from the 2015 Case. The matter was originally reported by Carolyn Bastien of Highmark who relayed she had received a phone call from a patient who alleged Respondent had billed hundreds of times without seeing patients. Respondent agreed to pay restitution for all but 25 of these. Highmark reported expanding its investigation to Respondent billing for other patients for services from 2012 to February 2015. Highmark alleged from 2012 to February 2015 Respondent billed them about 20 hours a day including more than 24 hours some days.

Investigator Ferguson identified State Exhibit 4/SX 4 as the subpoena sent to Carolyn Bastien of Highmark for records pertaining to Respondent and Concord Behavioral Health and the records Highmark produced for this subpoena. Concord Behavioral Health was where Respondent practiced.

Investigator Ferguson identified State Exhibit 25/ SX 25 as the complaint in the 2017 matter filed by Respondent's ex-wife, Dr. LaShauna McIntosh. M.D. It stated she received a

letter from her pharmacy that Respondent and her daughter's prescription for Adzenys XR-ODT was approved. Her daughter was not under psychiatric care or prescribed any medications. She additionally complained in SX 25 that her sons were not on medications prescribed and filled.

Investigator Ferguson identified State Exhibit 26/ SX 26 as the memorialization of Respondent's statement in his interview by Investigators MacMicking and Investigator Brady. Investigator Ferguson identified State Exhibit 27/ SX 27 as a written response from Respondent concerning the 2017 case. Investigator Ferguson identified State Exhibit 28/ SX 28 as the memorialization of the ex-wife Dr. LaShauna McIntosh's statements to Investigator MacMicking's in her interview. Investigator Ferguson identified State Exhibit 31/ SX 31 as a subpoena to Dr. Richard Kingsley, M.D. for the medical records of Respondent's and Dr. LaShauna McIntosh's 3 children, I.M.(daughter), M.M. (son) and N.M. (son) and those documents Dr. Kingsley produced pursuant to this subpoena. Investigator Ferguson identified page 5 of State Exhibit 31/ SX 31 as concerning M.M. Investigator Ferguson identified page 5 of State Exhibit 32/ SX 32 as concerning N.M. Investigator Ferguson identified State Exhibit 33/ SX 33 as a subpoena of Walgreens CVS Pharmacy for the prescription records and controlled substance forms for the 3 children of Respondent I.M, N.M., and M.M. and the records Walgreen produced pursuant to this subpoena. All of the Exhibits identified in this paragraph concern the 2017 case file.

Concerning the 2019 case Investigator Ferguson identified State Exhibit 34/ SX 34 as the Complaint to the DPR authored by Investigator Jeffrey Ward. The substance of the Complaint was that Respondent had entered a guilty plea of Falsifying Business Records which is a violation of the Medical Practice Act. Investigator Ferguson further testified that Respondent had been arrested in the 2015 Case file. It concerned a DOJ Investigation.

b. Respondent's questions on cross examination and the undersigned's questions to Investigator Ferguson and the State's questions on rebuttal

In response to Respondent's questions, Investigator Ferguson testified as follows. He reviewed the complaint files at the request of the Attorney General's office. He had received the exhibits from DAG Lydia Moore about 3 or 4 days ago. Investigator Ferguson spent about 15 hours reviewing the records. He was not the original investigator on the complaints. He was testifying the records were authentic that the investigators from the DPR investigated the complaints in good faith who received the information set forth in them as a result of a due diligent investigation, The records for the case files he testified about were kept in a secured location and not tampered with. His answers to all of the DAGs questions was based in his acceptance as true of statement in these records.

To the undersigned's questions, Investigator Ferguson answered he reviewed the records off of the database before he received them separately from DAG Lydia Moore a few days before the hearing. The records presented by DAG Lydia Moore were the same as those in the data base. He did no independent investigation. Nothing from what he reviewed indicated the records he testified about were not the sort kept in the ordinary course of business. In response to Respondent's further question, Investigator Ferguson testified he spent about 15 hours reviewing the records in the last few days. He had spent additional time previously.

In response to Respondent's additional questions about previously looking at the records, Investigator Ferguson indicated he did so when a different DAG not DAG Lydia Moore had the case. Investigator Ferguson could not recall precisely when he reviewed the files but it could have been up to a year before.

To the State's questions on rebuttal, Investigator Ferguson testified the DAG he previously worked with was DAG Daniel Mullaney and the hearing previously continued was to

take place in April 2023. His prior review of the database and communication with DAG Daniel Mullaney was in preparation for the continued hearing shortly before April 2023. He reviewed the database again for the present hearing. Respondent had no further questions.

2. **Investigator Stephen Kutch (Delaware Department of Insurance)**

Investigator Stephen Kutch testified live under oath as follows.

a. **State's Direct Examination Questioning of Investigator Kutch**

Investigator Kutch identified himself as an investigator at the Delaware Department of Insurance who was involved in the investigation of Respondent. The referral for the investigation was emailed from Carolyn Bastien from Highmark to Investigator Kutch's supervisor Frank Pyle. Investigator Kutch identified State Exhibit 16/ SX 16 as this referral.

Investigator Kutch called Carolyn Bastien and asked what she had done. She sent numerous documents from Highmark's investigation including SOAP notes, some billing Respondent submitted to Highmark and a document concerning Highmark's discussions with the G family. Ms. Bastien indicated that its review indicated an Impossible Day Scenario where Respondent billed them for over 24 hours in a day. The highest total Respondent billed them daily was 56 hours and the daily average was 18-19 hours for the time period examined. At the time, Respondent was represented by Adam Balick, Esq.

Investigator Kutch identified page 54 -58 of State Exhibit 24/ SX 24 as a crime report from the Delaware Department of Insurance that he wrote but was submitted by Detective Donophan where he worked. Investigator Kutch was not authorized at the time to submit it to the database DELJIS so Detective Donophan submitted it for him. SX 24 was submitted to create a complaint number for the AGs office which was needed as his investigation concerned a criminal matter. SX 24 stated what his investigation had uncovered as of June 26, 2016, the

start of the investigation. Investigator Kutch identified State Exhibit 19/ SX 19 as a summary of his report to the Department of Justice (DOJ). It was a part of what is sent for the DOJ to prosecute a crime.

Investigator Kutch reviewed the documents from Ms. Bastien and he started to look at the Impossible Days. For example, they reviewed how many folks worked in the office, did the provider go on vacations, did the provider work multiple different jobs. He went to the State of Delaware Division of Finance to determine how many people were working for Respondent. Respondent objected stating nobody worked for him. They were all independent contractors. It was through an S Corp. This objection was overruled as Respondent was free to testify in rebuttal. Investigator Kutch answered he found what Respondent just said as accurate. Respondent was the only Tax ID number that was billing Highmark. There were other persons like Ms. Trueblood who were renting office space and were not billing under Respondent at all. Respondent was a sole proprietor and only 1 person was billing. This was indicative of an Impossible Day Scenario.

Then Investigator Kutch interviewed following members of the G family whose call started Highmark's investigation: the husband M.G. , his wife A.G. and the son J.G. M.G. said he did an evaluation with Dr. Finkelstein (this was 2 days). He saw Respondent 3-5 times and ended seeing Respondent in 2011. The Wife A.G. related the same thing. J.G. advised he went twice to Respondent in the 2011-time frame and also went to Dr. Finkelstein. He also asked about L.G the daughter. The evaluation was around the same time period and she had gone to Respondent 25-30 times, typically after school. Investigator Kutch then spoke to L.G. by phone who told him she had gone to Respondent 25-30 times. She was on medication. She would go once a month to pick up her prescription from Respondent. The prescription typically would

be in an envelope on a board outside the office with her initials on it and she would take it. Her mother A.G also relayed her picking up the prescriptions.

Investigator Kutch spoke to the Mother A.G. a second time. He had wanted to review the days in 2011- 2014 where the family were out of town and could not have met with Respondent. He identified State Exhibit 12 / SX 12 as a spreadsheet he received from Carolyn Bastien that lists days that Respondent billed Highmark for each of the 4 members of the G family. Pages 1-5 of SX 12 listed the dates Respondent billed for the Father M.G. Pages 6-8 of SX 12 listed the dates billed by Respondent for the Mother A.G. Pages 9-12 of SX 12 listed the dates billed by Respondent for the daughter, L.G. Pages 13-14 of SX 12 listed the dates billed by Respondent for the Son, J.G. This was assembled after Highmark received the Notes Respondent sent. Respondent did not send all of the notes for all visits with the G family.[2] At the 2d interview of mother A.G , Investigator Kutch showed her the spreadsheet listing the dates of treatment of the G family member as SX 12.

Investigator Kutch identified State Exhibit 6/ SX 6 which contained Dr. Finkelstein's 6-page report for the son J.G and SOAP Notes from Respondent's treatment of the son J.G. The SOAP notes for J.G. totaled 137 pages[3]. Investigator Kutch identified State Exhibit 7/ SX 7 as Dr. Finkelstein's report for the Mother A.G. and SOAP Notes for his treatment of A.G. The SOAP Notes for A.G. totaled 168 pages. Investigator Kutch identified State Exhibit 8/ SX 8 as Dr. Finkelstein's report for the father M.G and SOAP notes for Respondent's treatment of M.G. The SOAP Notes for M.G. totaled 363 pages. Investigator Kutch identified State Exhibit 9/ SX 9

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2 For other families, Investigator Kutch found that in the 348 patient bills sampled there were 48 where there were bills with no SOAP notes. Also, as to the # of the SOAP notes for the G family, the undersigned counted them after the hearing.

3 Investigator Kutch did not testify as to the number of SOAP notes for the G family. The undersigned did the math to calculate their number after the hearing.

as Dr. Finkelstein's report for the daughter L.G. and SOAP notes for Respondent's treatment of her. L.G.'s SOAP Notes totaled 412 pages.

Investigator Kutch identified State Exhibit 10/ SX 10 as the bills from Respondent for the G Family. Page 66 of LX 10 was for the treatment for L.G. The undersigned's post hearing review of SX 10 revealed that pages 1-44 to SX 10 listed and described Respondent's bills for treatment of the Mother A.G. Pages 25-84 of SX 10 listed and described Respondent's bills for treatment of the daughter L.G. Pages 86- 131 of SX 10 referred to bills for M.G.

When Investigator Kutch interviewed Mother A.G. the second time, initially they spoke about a few of Respondent's SOAP notes. One stated A.G. was on medication. A.G. told Investigator Kutch she was prescribed this. She took it twice and stopped taking it. However, it was mentioned in several notes and A.G. said that that was inaccurate. The undersigned's review of A.G.'s SOAP notes after the hearing revealed 16 notes spanning from February 16, 2011 through March 11, 2011 (p. 23, SX7- p. 39, SX 7) where Respondent described A.G. taking Abilify.

Investigator Kutch went through dates from 2011 -2013 when A.G. said the notes and bills were incorrect as the family was on vacation or otherwise were away from Delaware. Investigator Kutch identified State Exhibit 18 as documents A.G. gave him that showed this. Pages 1-6 of SX 18 showed the entire G family was in Aruba from April 22, 2011 to April 28, 2011 and could not have gone to any appointments with Respondent those dates. Page 93 of SX 10 shows Respondent billed Highmark for treatment of M.G. on April 25, 2011 and April 27, 2011. Page 8 of SX 10 shows Respondent billed Highmark for treatment of A.G. on April 25,2011 and April 27, 2011. Page 52 of SX 10 shows Respondent billed Highmark for treatment of L.G. on April 25,2011, April 26, 2011, and April 27, 2011. All of them were in

Aruba these dates.

The issuance of bills while the G family was on vacation is corroborated by Highmark's spreadsheet of the Bills for the G family in SX 12. [4] Page 2 of SX 12 showed bills from Respondent to Highmark for his treatment of the Father M.G. on 4/25/11 and 4/27/11. Page 6 of SX 12 shows bills from Respondent to Highmark for his treatment of Mother A.G. on 4/25/11 and 4/27/11. Page 10 of SX 12 shows bills from Respondent to Highmark for his treatment of the daughter L.G. on 4/25/11, Page 13 of SX 12 shows bills from Respondent to Highmark for treatment of the son, J.G. on 4/25/11 and 4/27/11.

Page 8 of SX 18 listed G family's cruise to Puerto Rico from April 8-15, 2012 when none of them could have seen Respondent. However, Page 24 of SX 10 describes a bill from Respondent for A.G. 's(Mother's) treatment on 4/9/12 and 4/13/12. Page 108 of SX 10 shows a bill to M. G. for his treatment on 4/9/12 and 4/13/12. They were on a cruise then. These are supported in SX 12.

Investigator Kutch relayed that the Mother A.G. told him that she and the daughter L.G took a trip to New York City from 4/2/13 through 4/4/13. Pages 17-20 of SX 18 were receipts for this trip. Page 71 of SX 10 was evidence of Respondent's bill for treatment of L.G. on 4/2/14 while L.G. was in New York with A.G. on their trip. Similarly, there was a bill for A.G. 4/3/12 when she was away with L.G. in page 8 of SX 10.

Investigator Kutch identified State Exhibit 15/ SX 15 as a document he was given by Highmark's Carol Bastien concerning the number of hours Respondent billed Highmark daily for services to all patients. It did not include any hours Respondent billed other insurance

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[4] SX 12 may not have been a list of all the bills to the G family but may have only included those bills where Highmark had the SOAP note corresponding to the bill.

carriers. It gave them a snapshot to the DOI and the DPR. For example, Page 3 of SX 15 showed that on 3/25/14 Concord Behavioral Health / Respondent billed Highmark 54.52 hours for patient services. Similarly, Page 4 of SX 15 on 2/11/14 Concord Behavioral Health / Respondent billed Highmark 56.38 hours for patient services.

Investigator Kutch then looked at these documents to determine if Respondent was out of town at any of the times set forth on the days set forth in SX 15. Investigator Kutch identified State Exhibit 20/ SX 20 as a printout from an OpenPayments website that list payments from pharmaceutical companies to Respondent. Page 1 of SX 20 listed Takeda Pharmaceuticals America as paying Respondent $22,287.44 in 2014. Page 2 through 4 of SX 20 described when these payments were made and what they were for. Where they listed travel, they used the date of travel to determine if Respondent billed patients to Highmark on those dates. Investigator Kutch identified State Exhibit 22/ SX 22 as listing dates where Respondent worked for a different pharmaceutical company , Otsuka America Pharmaceutical, Inc. and travelled. This similarly was compared for common dates where Respondent billed Highmark. For these companies receipts for Respondent were subpoenaed. Investigator Kutch identified State Exhibit 21/ SX 21 as receipts that he received for the subpoena to Takeda and State Exhibit 23/ SX 23 as receipts related to the Otsuka payments to Respondent.

Page 2 of SX 15 showed a date of 9/11/14 where Respondent billed 29.82 hours for his Highmark Patients. Investigator Kutch compared this with page 4 of SX 20 which indicated that respondent also billed Takeda for food and beverage and travel and lodging this same date. Similarly pages 2-4 of SX 21 were receipts for Respondent for pickup and drop off on 9/11/14 at a conference at the Buck Hotel in Feasterville PA on 9/11/14 when Respondent billed 19.82 hours for services to Highmark that date.

Pages 6-8 of SX 21 were receipts for reimbursement to Respondent from Takeda for a dinner in Center City Philadelphia 9/23/24. Page 4 of SX 20 shows Takeda paid for these receipts. Page 2 of SX 15 shows Respondent billed Highmark 22.04 hours for patients services 9/23/14. Respondent objected to the relevance of testimony. This was denied as it seemed relevant, not duplicative, or privileged. Page 9-10 of SX 21 were receipts from Takeda for an event in Wilmington, Delaware on 9/25/14 that they paid or reimbursed Respondent. Page 20 SX 4 shows these payments from Takeda to Respondent for these receipts and on 9/25/14 and page 2 of SX 15 shows that on this same date Respondent had billed Highmark 25.44 hours for patient services. Pages 18-19 of SX 21 were receipts he received from Takeda for items it reimbursed for Respondent for food and beverages in Center City Philadelphia, 11/18/14. Page 20 of SX 2 was the record of Takeda payment of these items that date. Page 1 of SX 15 showed Respondent Highmark insured patients 22.38 hours on that date.

Investigator Kutch testified about the conflict of times set forth with Otsuka as follows. He identified pages 7-12 of State Exhibit 23 /SX 23 as receipts that Otsuka provided for or on behalf of Respondent on 10/15/13. He identified page 3 of State Exhibit 22 / SX 22 where Otsuka made payment to or behalf of Respondent in 10/15/13. The undersigned post hearing reviewed the limousine receipt which Otsuka paid for Respondent's trip this day and it shows 12 hours between his pickup and drop off from Havre De Grace and Baltimore Maryland. Page 5 of SX 15 shows Respondent billed Highmark 32.66 hours for patients on this same date of 10/15 13. Page 13-17 of SX 23 were receipts he received from Otsuka for payments made to or on behalf of Respondent for service to them on 11/14/13. Page 2 of SX 22 lists Otsuka's payments to Respondent for food and beverages on 11/14/13. Page 5 shows on this same date 11/14/13 Respondent billed Highmark 22.3 hours of services for patients. Pages 21-23 of SX 23

were receipts he received from Otsuka for payments made to or on behalf of Respondent for 12/3/13. SX 22 shows payment to Respondent for 12/3/13. Page 4 of SX15 shows Respondent billed Highmark 32.56 hours for patients on 12/3/13.

Investigator Kutch interviewed Ms. Trueblood who rented space from Respondent, and he interviewed Respondent's office manager. At the completion of his Investigation, Investigator Kutch concluded Respondent billed Highmark and received funds for services that were not rendered. The matter was referred to the DOJ for prosecution. The DOJ did additional investigation before charges were filed. Criminal charges were filed against Respondent.

a. Respondent Cross Examination questions to Investigator Kutch and Hearing Officer Questions to Investigator Kutch

1. Hearing Officer's questions for Investigator Kutch

Investigator Kutch to the undersigned's questions testified as follows. He attempted to interview Respondent through his then attorneys Adam Balick, Esq., and Beth Moskow Schnoll, Esq. They never responded to his request so he did not interview Respondent. Investigator Kutch asked Ms. Hesse who billed for Respondent about a special agreement that Respondent allegedly had with BC/ BS. Ms. Hesse responded she would just get a list of names each morning she came in to bill. He replied that there were a few days when Respondent was not even in the office and asked her how she explained it if for example she got a list of 22 names for a day when Respondent was not in the office. Ms. Hesse answered that she had concerns about this and she asked Respondent who replied that he had an understanding with the insurance company and it was OK. Respondent did not provide her details. Investigator Kutch also asked her about billing for an entire family when Respondent only saw 1 person and she said she did not get into details. She asked Respondent as issues as to how they billed, but when Respondent told her that was how it was, she stopped talking as it was her job and she had 2

family members working there as well. He did ask if any documents were sent to Mr. Bock and Ms. Bastien for Highmark concerning the special billing arrangement with Blue Cross Blue Shield and they were aware of nothing that said Respondent could bill for example 4 hours if he saw 1 patient for an hour.

2. Respondent's questions/ cross examination of Investigator Kutch

Respondent asked about Investigator Kutch's education and qualifications to investigate fraud. Investigator Kutch answered he has a Bachelor's in Behavioral Science, a Master's in counseling, a J.D. and is barred to practice law in PA and New Jersey. He is a retired Wilmington Police Officer. In 2013, when he became employed at the Department of Insurance, he went to numerous health care fraud conferences. He is a certified health care fraud investigator and has to do 36 hours continuing education for this each year.

As to whether all he received from Highmark[5] was the hours per day, Investigator Kutch testified Highmark sent the fraud referral form along with their contact to their consumer protection unit. Respondent rephrased the question and asked whether Highmark sent him raw data regarding all of his billing. Investigator Kutch replied they sent the spreadsheet discussed from 2011—2014 for the G family. He also received the SOAP notes for the G family. He got another spread sheet for the dollar amount billed and then ended his answer at Respondent's request to ask a different question. Respondent asked whether the Highmark investigation started with one family and then expanded. Investigator Kutch indicated that was correct. Highmark did not send him the raw data for every patient bill to support their "Impossible Day" allegation. He

[5] At times this was referred to as Blue Cross and Blue Shield. However, at all times, it was understood to be Highmark and not BC/BS of Delaware and for purposes of demarcating the 2 companies Highmark refers to Highmark Blue Cross Blue Shield Delaware. Whereas Blue Cross Blue Shield of Delaware is the company that merged with Highmark that was approved by Delaware Insurance Commissioner January 3, 2012.

did not review the raw data or SOAP NOTES to do an independent analysis that Respondent had worked all dates set forth on SX 15 , the Impossible Day spreadsheet. Instead, they did a sampling. They obtained a straight week of all data for all patients Respondent billed Highmark for every 6-8 months of the time span investigated. He did not review all of the raw data from 2011-2015. Investigator Kutch admitted he cannot state that Highmark's spreadsheet of SX 15 listing the hours he worked each day was accurate for every day as he merely checked some of them in the sampling above. He did not merely accept Highmark's spreadsheet. He confirmed that no representative of Highmark mentioned any special arrangement Respondent had. He asked whether he was ever aware that his assessment was limited as he would not know errors where Highmark did not provide all the raw data, such as a patient being incorrectly counted as his patient but was not his patient. Investigator Kutch answered that while he was the provider but he was given was Concord Behavioral Health's billing. So, he could not say if there was another person at Concord Behavioral Health that was billing under his tax identification number or if that was even possible.

Respondent then stated Concord Behavioral Health was established as a run through corporation with Dr. Finkelstein as a psychologist. Each person in CBH had their own IDs to bill Highmark BC/BS.

Investigator Kutch explained that Highmark can run the data "numerous ways". They can run it by the business or the provider. What he got had Respondent as the Provider. The check may have gone to Concord Behavioral Health but the Provider was Respondent. He only received the bills from Highmark for the families and dates he requested. He did not use any formulas for the Impossible Days. As to Investigator Donophan, Investigator Kutch indicated he was an investigator like him with the Department of Insurance, However, he had clearance to

make a Complaint on DELJIS which he lacked at the time. Investigator Donophan input his information on DELJIS.

Respondent asked Investigator Kutch whether the other providers at Concord Behavioral Health were "Parsed out"? Investigator Kutch indicated they were. All information he received from Highmark was his billings and was true and correct. He did request other information from Highmark BC/BS. He did request information specific to one family. He also got information for the 4 weeks he sampled as a "snapshot". He was aware that Highmark had indicated he had billed for a pacemaker. He was not aware that during that time period Highmark BC BS had a policy after each encounter with a patient to mail a letter informing them, they were billed that patient, an Explanation of Benefits ("EOB"). Investigator Kutch stated he was not aware of what policy Highmark had concerning mailing the EOBs. At one point he did interview the mother A.G. alone. He did ask about whether the G Family received the EOBs and he did see an email from A.G. to Carolyn Bastien sending some EOBs. He could not say if they were all the EOBs that were sent or not though. He was asked what year it was or was it around when the investigation was started. Investigator Kutch testified the EOBs he referenced were from 2010-2011.

Investigator Kutch said the G family first complained to Highmark in 2014. The G Family told him Respondent did not provide services after 2011 except for the medication being picked up by L.G. Investigator Kutch said they were getting EOBs and filed them without review.

Respondent asked didn't the SOAP note dated 1/17/11 at the end of the Note in the Plan mentioned that because of time constraints he met with the Father to get health care clinical information about other family members. Investigator Kutch answered that father told him there

were times Respondent would show up at his business and speak to him and at no time did he think he was being charged or that that was a session and they were not long meetings. He would ask questions such as "how are you and how the family was?" not anything that would lead him to believe it was part of a therapy session. The discussions were short and questions general.

Respondent asked about providers who prescribe controlled medications, aren't they required to meet. Investigator Kutch thought but was not certain that in 2014, a provider who prescribed schedule 2 medications was required to meet patients every 6 months. It changed in 2016. Investigator Kutch was not aware of what the general standard of care was regarding that.

Investigator Kutch could not answer what insurance companies Respondent was regarded as "in network ". He received no complaints of fraud from other insurance companies.

Investigator Kutch answered he knew of no other family between 2011-2015 that complained to the Delaware Department of Insurance about insurance fraud other than the G family. He said he could not say whether any other family besides the G family complained of insurance fraud to Highmark, but that Highmark never told him about one.

When the investigation expanded, he expanded it to examine billing patterns for similarities to that with the G family for about 11 other families besides the Gs (all with at least 2 children). He selected this 11 or so families from the snapshots where 4 separate times he got a weeks' worth of data from Highmark for all persons Respondent billed Highmark for seeing that week. He could not say if there were more families. Investigator Kutch testified the investigation was narrowed to focus on a few families when his office referred the matter to the Department of Justice. He did not interview members of these other families after the matter was referred. The only family he directly dealt with in his investigation was the Gs. The reason for this was when he referred the matter to the DOJ for prosecution, he was comfortable he had

an adequate basis from what he found with the Gs alone. It was the DOJ assigned investigator who determined they wanted to examine other avenues and he facilitated that.

Investigator Kutch interviewed L. G. He did not recall the rough date of L.G.'s last appointment. He only knew that the prescriptions L.G. picked up went for about a year after L.G.'s sessions with Respondent stopped.

Respondent stated that he never in his 25-year practice just handed out prescriptions. Respondent asked whether he requested Lab work that Respondent ordered? Investigator Kutch answered he did not recall whether he specifically requested lab work but asked for Highmark's complete file regarding L.G. Investigator Kutch did not know if it was part of what Highmark delivered to him per the subpoena. Investigator Kutch was asked whether he queried the LabCorp system. The State objected as to relevance. Respondent stated the relevance is that ordering labs is another part to consider in determining the dates of the Dr. patient relationship. Respondent rephrased the question before the undersigned could rule on the objection and Investigator Kutch answered that if the G family had mentioned lab work was done, he would have requested it, but he did not recall any G family member mentioning lab work was done. He did not recall whether it was ever billed from the records he received.

Investigator Kutch to Respondent's question as to whether he came to the G family house 2 or 3 times because of their family difficulties answered: he could not recall the Gs telling him Respondent ever went to their house for a counseling session. He did recall that the father M.G. told him that Respondent and he went to D.C. for an inauguration or something like that. Respondent asked whether when Investigator Kutch interviewed J.G., did J.G. indicate Respondent ever saw him at the house. Investigator Kutch mentioned he only recalled J.G. the son saying he saw Respondent about twice for an issue with school or a bully or something like

that. Respondent indicated he had no other questions, but the undersigned informed him he could ask additional questions if the State had questions on redirect.

The state had no questions on redirect for Investigator Kutch and his testimony ended.

3. J.G.–Son in G Family

J.G. testified by zoom under oath as follows.

a. State's Direct of J.G. -Son in G Family

J.G. is the son of M.G., his father and A.G., his mother. He saw Respondent once when he was 9 years old. Respondent was providing therapy to his then 13-year-old sister L.G. The purpose of the visit was to make certain he was fine and determine what he saw concerning his sister, L.G. Most of the questions concerned him. He did different psychological tests and then left. His parent was parked outside of the office and he left with them. He never went after that. He testified that his time was consumed during the school year with sports and in the summer with summer camp. He was pulled out of school for this one appointment. At the hearing, J.G. was 23 years old.

The State asked J.G. questions about SX 12, the spreadsheet listing the dates Respondent billed Highmark for him and his family. J.G. answered he had been sent this by the State. Prior to the hearing, he had reviewed pages 13-14 of SX 12 that referred to Respondent's appointments with him. J.G. denied meeting Respondent those dates. During the school year he was playing basketball in February 2011 and February 2012 and then baseball and football in the fall. From ages 9-13, he was in sleepaway camp for 7 weeks during the summer from June to August. He stopped going to summer camp at age 12-13 to do travelling baseball. By February 1, 2011, the date p.13 of SX 12 says he first visited Respondent he was 10 years old. J.G. further emphatically stated to knowing he did not go to Respondent on 10/27/2011 because that was the

day before his birthday. He would remember it because " that would have sucked". He did not do testing on 11/23/2011 . He did testing the first day he went to Respondent. He did not recall going back for a second visit on 2/4/13. He only went once.

b. Respondent's cross-examination of J. G.

Respondent asked J.G. whether he recalled Respondent coming to his home to talk to him. J. G. denied this. Respondent asked J.G. when he was 9 or 10 years' old, did he ever feel any difficulties with anxiety or being bullied? J.G. answered that he switched schools at age 9 due to bullying but he did not discuss that with Respondent. He started treatment for anxiety 4-5 years later.[6] He did recall a time when he was 12 years old when his parents were concerned because they did not know where he was after he left the house in the middle of the night. He did not recall Respondent coming to his house and having a conversation with him about it though. J.G. did recall discussing some anxiety he had with his Dad, M.G. not Respondent. It was about his performance in baseball. He was at Tower Hill and then went to St. Edmonds and then to Archmere. Respondent asked whether he felt comfortable at Archmere. The State objected as to relevance. Respondent then changed the question before the undersigned could rule on the objection and asked whether J.G. was 100% certain that he did not talk to him in the house and J.G. testified he was 100% certain and testified that he saw Respondent in his office and described the office furnishings.

c. State's redirect/ questioning of J. G.

The state asked J.G. whether he told Respondent about the bullying in school. J.G. answered he may have in response to a question if Respondent asked. However, he had

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[6] From the undersigned review of SX 12 after the hearing, it appears J. G.'s treatment for anxiety was with a different provider than R. G. as it would have been in 2015 or 2016 after Respondent ceased billing Highmark for services to J.G.

switched schools 4-5 months before ever going to Respondent. J.G. just didn't think it was a basis for their appointment because when he first met Respondent he was in a different school and having a good year. It may have been mentioned but his appointment was about other personal things and his sister. He did not tell Respondent about when he was 12 years old and he left the house in the middle of the night. He did not tell Respondent about his sports anxiety as his anxiety was over pitching and he was not a pitcher when he saw Respondent. He knew his Dad and Respondent were friends before he saw him.

Respondent had no further questions and J.G. was excused.

4. <u>L.G.– Daughter in G family</u>

L. G. testified under oath by zoom as follows.

a. <u>States Questioning on Direct Examination of L.G.</u>

L.G. is the daughter of M.G. (Father) and A.G. (Mother) and the sister to J.G. She was born in late 1996. In response to the State's questions, she testified to the following. Respondent was her therapist for about 8 sessions when she was in 8th grade. She originally answered she was in the 7th grade but corrected this and said she recalled his office was near to where she had switched schools to Ursuline and she switched in the 8th grade. She went to see him as she was having trouble focusing in school, questioned whether she had ADHD and additionally had problems in her relationship with her Dad. Her Mom and Dad recommended she see Respondent. She knew that her Dad had a prior relationship with Respondent but did not know how close they were.

She remembered it was cold when she first saw Respondent and was not certain whether her first appointment was with Respondent or his associate Dr. Finkelstein. However, she did recall that Dr. Finkelstein did the testing. She thought that her sessions started with Respondent

after the testing. L. G. defined a session as her being in Respondent's office discussing issues with Respondent. She did not count as a session when she went to the office to pick up a prescription as she did not spend any time then talking to Respondent. She recalled her first session being a week or 2 after the testing. Her parent(s) may have come in her first session with Respondent at some point, but the majority was with her alone. Some of the other sessions may have included her Dad or Mom. Maybe one or two had both her Mom and Dad and one included her brother. She could not recall if all 4 family members were at one session but if it happened at all, it occurred only once.

Her sessions with Respondent ended in February of her 8th grade year as she went to her Dad's jewelry store and saw Respondent sitting in the back with her Dad. This made her uncomfortable. As the sessions proceeded with Respondent, they were less about what was going on with her family and more about the effect of her medications. She was prescribed medications from Respondent when she was in sessions. After the sessions ended, Respondent continued to proscribe for her. The prescriptions were placed on the front window of Respondent's receptionist area and she picked them up[7]. When she picked up the prescriptions, Respondent did not check with her how she was feeling. She referred to pickups of prescriptions as "Transactional".

As those pages of the spreadsheet of G family that concerned her visits to Respondent, pages 9 through 12 of SX 12, L.G. testified she reviewed them and those pages includes times where she had not had sessions with Respondent or even went to his office to pick up a prescription. Pages 9-12 of SX 12 purported that she saw Respondent 3 or 4 times weekly and

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[7] Her school was near/ walking distance to Respondent's office.

she was too busy with extracurriculars during the school year for this to even have been possible. Pages 9-12 of SX 12 listed dates when she was actually in mock trials and did Lacrosse. She did Lacrosse from about 2:45 to about 5:30 daily in spring. She stopped seeing Respondent in 2011 because she felt he had been discussing her conversations with her Dad. Pages 9-12 of SX 12 even had dates in the summer when she was at Camp Nockamixon (outside of Delaware with no phone access to anyone other than Family). She went to Camp Noxamixon through 2013 in the summers. She left for the camp around June 22-25 each summer and returned August 10-14. She was at that Camp June 22, 2011 and July 27, 2011 as set forth on page 10 of SX 12. Page 11 of SX 12 also indicated she saw Respondent when she was in London on December 21, 2012.

About Lacrosse, L.G. testified it occurred March through May yearly and she could not have gone to Respondent those months in 2011 as set forth on page 9 of SX 12. She did not recall when she no longer was prescribed medications by Respondent.

b. <u>The Hearing Officer's Questioning of L.G.</u>

To the undersigned questions, L.G. answered, her prescriptions were in envelope with either her name or initials on it. She stopped seeing Respondent for talking sessions in February when she was in 8th grade at Ursuline in 2011. SX 12 seems to show she saw Dr. Finkelstein 1/12/2011 and that may have been wrong. The 8 sessions lasted about 2-3 months. She was not ordered to get any blood tests when she was prescribed medications by Respondent.

c. <u>Respondent's Questioning Cross-examination of L.G.</u>

To Respondent's questions, L.G. answered she started wearing eyeglasses when she was in 5th grade and wore them while she was at Ursuline. She first went to Ursuline in the 2010-2011 school year. She may have changed eyeglass frames a few times in high school. She recalled a day when she was at Respondent's Office when she was in high school and

Respondent asked if she could see her with her new frames on.

She remembered her brother sitting in on one of the sessions with her. When asked if she had any difficulties in summer camp. L.G. answered overall it was one of her happiest life memories. She recalled seeing Respondent in her father's store twice. L.G. testified that her issues with her father were not resolved after she stopped seeing Respondent. In fact, it led to a new source of argument about her unwillingness to go back to Respondent.

Neither Respondent nor the State had any further questions for this witness.

5. Special Investigator Mark Hawk (Department of Justice)

Mr. Mark Hawk testified live under oath as follows.

a. State's Questioning on Direct of Special Investigator Mark Hawk

Mr. Hawk identified himself as an investigator for the Department of Justice. He is assigned to the White-Collar Crimes Unit and his responsibilities include coordination of financial crimes with the various police departments across the State. In 2016, he was assigned this investigation by his supervisor Craig Weldin.

He identified State Exhibit 24 /SX 24 as including his investigative report. Pages 54-58 of SX 24 was Investigator Kutch's investigation and a part of Investigator Kutch's referral of this matter to the Department of Justice. On 12/15/16 when Investigator Hawk was assigned this matter, he met with the attorneys assigned to the case and reviewed Investigator Kutch's case file. He discussed the case with Investigator Kutch on 12/19/16. On 12/20/16, he contacted Highmark's investigator Carolyn Bastien. He received a spreadsheet of billing Respondent submitted to Highmark. SX 12 was such a spreadsheet. On 12/21/16 Carolyn Bastien identified numerous other families that had similar profiles to the G family. The referral he received from the DOI concerned the G family. He found other families that had a similar billing as the G

family. Page 42 of SX 24 is a redacted list of some of those families.

At some point criminal charges were filed against Respondent. These charges concerned the following victim families, the G family, the N family and the R family.

Investigator Hawk did not receive additional information concerning the G family. Concerning the N family, he obtained additional information. He interviewed the parents of the 3 children in the N family. R.T. was the father. T. N. was the mother. They had 3 children. B. N. is the elder son and there are twins K. N. and G. N. He subpoenaed the medical records for all 5 members of the N family and all other families that fit the same pattern. This included the R family.

Investigator Hawk testified to the grand jury and understood he was the only one that testified. The grand jury indicted Respondent in State Exhibit 35/ SX 35.

As to the N family, Investigator Hawk felt they should be included in the criminal charges because of the unusual pattern of billing, his interview of R.T. the Father of the N family and T. N., the mother. He did not interview the 3 children. He asked R.T. and T. N as to when they felt they went to the Drs. and towards the end showed them the billing. They told Investigator Hawk the billing was inaccurate. They felt that the 2 younger children G.N and K.N. had not seen Respondent after 2011 and had only seen Respondent 3 times, but were billed for 47 times for the period ending 2014.

The 5 members of the R family were: D.R. (Dad), K.R.(Mom), D.W.R. (son), D.J.R. (son), and K.R (daughter) (listed on page 42 of SX 24). He got records and spreadsheets from Highmark for the R family. He interviewed all 5 members of the R family.

The Father D.R. told him he had seen Respondent at most 15 times and some of these times he was there just to support his wife or other family members. He was billed 126 times.

The daughter K.R. was a soccer player and coach and only was in town during holidays as she lived in South Carolina, then Colorado and then Dover, Delaware. She told Investigator Hawk she went to Respondent approximately 5 times. She was billed for 40 visits. She looked at the dates of the visits and indicated for many she was out of the State.

Mother K.R. told him that her billings appeared appropriate but that her sons D.J.R. and D.W.R. were not. Her sons D.J.R. and D.W.R went to Respondent about once a month. When Investigator Hawk told her they were billed 73 times, she said that did not appear to be correct . When Investigator Hawk told her the billings indicated her and her husband were there the same day 49 times. She told him she and husband were almost never there the same day. Once the kids started driving, she did not take them to the appointments. She had records of being out of state when billed on 3-7-2015 to 3-9-2014. D.J.R. was away at a soccer event in Rhode Island but was billed. D.W.R. was on a layover flight in Indiana and was billed on 6-27-2014.

D.J.R told Investigator Hawk he went to Respondent approximately once a month from 11/27/12- 11/07/14 for about 24 visits and Respondent billed for 73 visits.

D.W.R, said he went to Respondent at most 10 times from 11/27/12- 11/07/14 and he was billed for 73 visits.

The outcome of the criminal charges were that Respondent pled guilty to forgery 3d and falsification of business records. He identified State Exhibit 36/ SX 36 as the Plea agreement for those charges signed on 8/27/19.

Investigator Hawk learned that Highmark and Respondent entered a settlement agreement for the G family and subpoenaed the settlement agreements from Highmark. (State Exhibit 14) His understanding of the settlement agreement for the G family was that Respondent agreed to pay Highmark $132,526.04 (Pages-8-12 of SX14 .) There was a second settlement where

Respondent agreed to repay Highmark for overbillings 2012-2015 $450,000(Page 13-18 of SX 14).

Investigator Hawk testified he arrested Respondent on July 25. 2017 (page 49 of SX 24) He was aware Respondent was also arrested a second time.

b. Respondent's cross-examination of Special Investigator Mark Hawk

This cross examination took place on the second day of the hearing October 31, 2023. Special Investigator Hawk answered Respondent's questions as follows. He interviewed a number of families in relation to alleged overbilling to Highmark. He works for the Attorney General's Office. Respondent asked regarding the family whose last name is hyphenated and begins with an "N", was there a reason that B.N. was not included in the indictment. Investigator Hawk did not know. Respondent asked Investigator Hawk if he was aware that he had a special arrangement with Highmark and Investigator Hawk answered no. Respondent asked Investigator Hawk when he meant in his direct examination when he referred to a person in a similar type of practice to Respondent's. Investigator Hawked answered he meant the unusual billing per day. He was shown a spreadsheet from Highmark that he billed more than 24 hours one day.

In response to Respondent, Investigator Hawk admitted he had never investigated a Child Psychiatrist before his investigation of Respondent. Investigator Hawk was unaware of that according to Respondent parents often give clinical information about their children to a Child Psychiatrist because they did not want to take their children out of school.

Respondent asked Investigator Hawk about the R family and the mention of a physical examination of the father. When asked Investigator Hawk testified, he was aware that Respondent made a house call on that patient where he did a physical examination concerning

that patient being off from work or changing work duties, but stated, that it had nothing to do with what he found concerning the billing. Investigator Hawk agreed that that could have been appropriately billed, but that he did not look into that date. He was not certain if the appointments billed matched Mother in the R family's calendar of appointments as the Mother in R thought her billings were appropriate.

Investigator Hawk was not aware of any practice where the father in the R case gave permission for other persons to inform Respondent about his issues and for Respondent to make clinical judgement based on this third-party relay of information without the father's presence. Respondent asked Investigator Hawk whether he was aware that his visit with the Mother in R situation lasted between 1-2 ½ hours because Mother was relaying clinical information about other family members and was representing them in those meetings. Investigator Hawk answered that Mother never expressed that to him.

Respondent then asked about the N again. Investigator Hawk confirmed that there was a statement that Respondent had not seen the 2 younger boys of the N family since 2011. Respondent asked Investigator Hawk whether he was aware that Respondent was meeting the Mother and Father in the N family both separately and in couples counseling and the Mother and Father in many instances were giving him clinical information about the 2 younger boys of the N Family. Investigator Hawk answered that he was aware that Respondent had met with the parents individually and as couples counseling, but he was unaware that Respondent was obtaining clinical information about the minor children as it was never expressed to him.

Returning to the R family Investigator Hawk testified he was unaware that Mother was giving clinical information on other family members. Investigator Hawk answered that he did not request any pharmacy records in his investigation of the R family. Investigator Hawk did

request information as to physical examinations as to the R family when Respondent in his billing indicated some sort of physical examination such as taking blood pressure and "on the whole" he found no such physical examinations. He asked whether Respondent touched the family member to determine whether they were physically examined. For the R family, the mother indicated she had been physically examined. The other members of the R family were not physically examined. The members of the N family had not been physically examined. Respondent asked Investigator Hawk whether he was aware that an inquiry as to mental status was part of a physical examination. Investigator Hawk answered he was not aware of this.

Investigator Hawk did not make his own investigation about Impossible Days but relied upon the information from Highmark and presumed it was accurate. He was not aware of any error in Highmark's data set.

Investigator Hawk did not review why Highmark wanted the amounts it settled for. He was aware that the amount they accepted was much less than Highmark's original demand.

Respondent asked whether there was a reason why he was not allowed to turn himself in? Investigator Hawk answered that was done because he felt the allegations concerned serious crimes. Respondent asked whether Investigator Hawk considered him a flight risk and he answered "possibly." Respondent asked Investigator Hawk whether he had arrested others accused of White-Collar crimes rather than allowing them to turn themselves in. Investigator Hawk answered yes. Respondent asked Investigator Hawk whether any of the person who he allowed to "turn themselves in" rather than arrest for white collar crimes were African American or minorities. The State objected and the undersigned allowed the question. Investigator Hawk answered the reason Respondent was arrested was the severity of the crime not because he was African American. The undersigned in an attempt to clarify so Investigator

Hawk would answer asked how many people Investigator Hawk had arrested for White Collar crime including home improvement crimes. Investigator Hawk answered probably less than 10. He has arrested both African American and white persons for white collar crime including crimes for home improvement rather than allow them to turn themselves in. Respondent then withdrew the question.

Investigator Hawk testified he did not know why the other families investigated for overbilling mentioned in SX 24 were not included in the indictment. This included the family with the last name C, the head of the family was B.

Respondent asked about why E.B. and M.S. were interviewed by Investigator Hawk. Investigator Hawk answered: E.B. was Respondent's employee (part time) and he wanted to know what she (E.B.) knew about Respondent's billing. Investigator Hawk then read into the record that E.B. " had no firsthand information reference to the billing at Respondent's office or any information pertaining to the investigation." Investigator Hawk testified he did not interview M.S. because he was hostile and he did not know he had anything to do with Respondent's work. Investigator Hawk started to ask M.S. questions but he was hostile. So, he stopped. Investigator Hawk never told E.B. or M.S. that their boss was going to jail. He started to ask M.S. questions because he was on the list from Highmark where there were patterns about the families' billing. Respondent stated he was perplexed because M.S. father told him he never used insurance for M.S.'s care. Investigator Hawk said his records differ. He has no estimate as to how many times Respondent saw the family of M.S. He had information about the father of this family where the Father said he went once or twice a month to Respondent for the period from 12/2/13 to 12/1/14 (Page 15 of SX 24) 12-24 sessions but Respondent billed for 84 sessions or overbilling of an estimated $9,621.

Respondent then asked about the B family referred to in pages 24-25 of SX 24. He went to the residence to speak to S.B. but S.B. was hostile to him. He never told S.B. that his Dr. was going to jail. The father C.B. met with Investigator Hawk at Troop 2 because when Investigator Hawk initially met S.B. at their home, the son S.B. threatened to kill him.

With the R family he was not aware the Husband D.R. gave consent for his Wife to discuss his clinical symptoms. He did notice the billing dates for the Mother of the R were similar to the billing dates of various family members. In most cases the dates were not similar. However, Mother did not recall the other family members being at those visits. Respondent stated they wouldn't be as they had consent for the mother's discussion of them.

Respondent asked Investigator Hawk whether regarding the N family, whether he knew that more than several of his visits with the Mother and Father lasted 2-3 hours. Investigator Hawk answered he could not recall. His office billed for B.N. during that time but was not aware why B.N. was not included in the indictment.

Respondent had no further questions.

c. <u>The State's redirect questioning of Special Investigator Mark Hawk</u>

Investigator Hawk testified he asked M.S. about E.B. (M.S.'s ex-girlfriend) because the address he had for E.B. who he went to interview was M.S.'s residence. He did not discuss the substance of the investigation with M.S.

Investigator Hawk was asked about his discussion of the B Family on Pages 24-25 of SX 24. This prompted Investigator Hawk to correct that when he said that M.S. family was on the list of questionable families, he was wrong. M.S. and his family were not on his list of questionable families.

d. **<u>Respondent's additional questions to Special Investigator Mark Hawk</u>**

In his answers to Respondent's additional question, Investigator Hawk said he thought M.S. was billed but that wasn't part of the investigation. He did not ask M.S. about any billing or therapy sessions with Respondent. He was only asked about E.B. his ex-girlfriend.

6. M. G. – Father (G family)

M. G. testified under oath by zoom as follows on October 31, 2023. M.G.'s testimony preceded Respondent's cross examination of Investigator Hawk by the parties' agreement.

a. State's Direct Examination/ Questioning of M. G.

Respondent and M.G. met about 12-14 years ago through a mutual friend. Respondent was a client at M.G.'s jewelry store. M.G. guessed he knew Respondent about 2 years before he became a patient. They were friendly acquaintances. His family consists of J. G.(his son), L.G. (his daughter) and A.G. (his wife). There was a brief time period when he, his 2 children and Wife saw Respondent. It started when L.G. was in 7th or 8th grade. They were experiencing family issues and he spoke to Respondent about treating L.G. his daughter. He felt at that time Respondent was his friend and he was comfortable enough to "reach out to him." He thought he, his Wife and L.G. first went together to see Respondent. First the 4 members of the G family were tested by Dr. Finkelstein. He and A.G. went maybe 2 more times. L.G. went maybe 8 -10 times and J.G. went once or twice. He was estimating as it was 12 years ago.

It started with an evaluation. All G family members got the evaluation about the same time. He couldn't specifically state for example whether he and his Wife were tested on the same or different days but they were tested in the same general period of time. Dr. Finkelstein was some sort of child psychiatrist/psychologist. He did not know whether Dr. Finkelstein and Respondent were in the same practice or just sharing rental space.

None of the 4 G family members continued services with Respondent long after they

began. He estimated they ended in 2011. They started taking L.G. there when she was in 8th grade. His friendship with Respondent continued after he and his family stopped seeing Respondent professionally.

M.G. was asked when his friendship with Respondent ended. Respondent objected on relevance grounds. This was denied. M.G. answered while he could not remember the date his friendship with Respondent ended, it happened on a Friday when he and his family were slated to go to Florida for the weekend for his father's 80th birthday party. That Friday Respondent came to his jewelry store. Previously, M.G. had made a telephone call to Respondent where he referred an employee's brother to see Respondent. M. G. had seen the brother recently and told Respondent that the brother seemed well. Respondent replied that "you had a lot to do about that" referring to M.G. M. G. replied to Respondent all he did was call Respondent and ask him to be seen. Respondent replied again: No, you had a lot to do with that. M.G. told Respondent he was busy and Respondent left.

After Respondent left the store M.G. pulled out his information for Highmark, called Highmark and asked in the last calendar year what were the payouts on his account to Concord Behavioral Health. They told him some "ung-dly" number. He then asked for the same information for the calendar year prior and Highmark told him another "ung-dly" number. He thought he had not been to Concord Behavioral Health for about 4 years. He later clarified that it was at least 3 years. He told Highmark that he had to tend to business and would call them back Monday.

M.G. went home to get his Wife and kids to travel to Florida, and he texted Respondent "blasting him" for what he just learned from Highmark. While he was on the plane with his Wife to Florida, he asked her what she did with the things she got in the mail for health insurance. She

told him she filed them. He stopped discussing it with his Wife on the plane since he was visiting his father for his birthday. When they got home Sunday night his wife asked him about why he asked. He told her what he knew. His Wife pulled out their EOBs from her files and started to cry hysterically as she started to review them.

The State then stopped his answer and asked M. G. what about the conversation with Respondent in his office led him to call Highmark. M.G. replied: something was wrong about what he said. Something just didn't seem right to him.

In response to the State's question, M.G. identified page 5 of State Exhibit 17/ SX 17 as the email or text M.G. sent to Respondent on the day he called Highmark. M.G. explained he sent it because he was shocked. He trusted Respondent and he violated that trust. Respondent replied on March 28, 2014 about 3 hours after he texted or emailed him. Respondent objected on the grounds of relevancy. That objection was denied. He referred to Respondent's response to M.G.'s email or text as "BS " and he got played. The text or email M. G. sent to Respondent is bold faced and italicized below and Respondent's response is underlined below.

On Mar 28, 2014, at 6:05 PM, karl mcintosh <karl.
mcintosh@verizon.net> wrote:
\> Hi I, Sorry for any misunderstanding I will straighten out any billing errors with my office manager. I don't want you to worry about anything affecting your family. We will make sure any billing mistakes are returned to your insurance company. I value your friendship more than you will ever know. And want you to have a great time with your father on his birthday Karl
\>
On Mar 28, 2014, at 3:22 PM, M.
wrote:
\>> ***Well, needless to say, you caught me completely off guard today. I was completely unaware of the compensation situation for K***
\>>
» ***I randomly checked w Highmark of Delaware and they confirmed an approximate payout to your offices for $37,000 over the last year - 365 days (March 2013 - March 2014).***
\>>
\>> ***I assumed your work was pro bono - I assumed wrong.***
\>>
» ***Undoubtedly, this too will go on my kids permanent record - the quantity and detail of their (fictitious) visits.***
\>>
» ***You definitely knocked the wind out of my sails with these unsanctioned transactions against my insurance policy without my knowledge.***
\>>

>> ***I've always considered you a close and trusted friend. I must admit, I am utterly speechless as I scripted this email.***
>>
» ***Additionally, while I am really looking forward to this weekend ahead for my dad's 80th bday - my mind and heart are now heavy.***

{K's name was redacted by the undersigned who added the underlining, italicization and bold face}

M. G. identified another email or text to him from Respondent on March 30, 2014 where, in relevant part, Respondent said:

"It turns out that there where several mistakes in our system that was sending out bills in some cases several a week. Cindy………… started the process of returning funds back to the company….."

M. G. testified this as Respondent trying "to cover his trail" as he got caught with his "hand in the cookie jar." M.G. on March 31, 2014 at 11:32 p.m. replied to Respondent's email or text and in the 3rd paragraph of Page 3 of SX 17 told Respondent why a visit which he billed Highmark could not have occurred. Respondent replied to this email on March 31, at 11:56 a.m. indicating the issue stemmed from mistakes, misunderstandings, and computer issues and Respondent said:

" I believe part of what may have happened is you guys were billed as a family as each one signed in as a patient."

At some point his wife, A.G. took over the communications with Respondent.

Highmark had M.G. and his Wife A.G. come into the office and "grilled them". He did not recognize State Exhibit 2/ SX 2. M.G. assumed SX 2 was the official complaint made to Highmark. Highmark when he initially presented the situation told him that there is no way this could have ever occurred. Our forensic accounting would have picked it up. M.G. told them their forensic accounting did not pick it up. Then they asked him if he colluded with Respondent and M.G. "blew a gasket" and reminded Highmark that he was bringing the information to them. At some point Highmark responded that maybe he was telling the truth. Then Highmark found other people Respondent had done this to.

M. G. testified he was worried for his kids as it concerned psychiatric care and fraudulent diagnoses. His wife had kept and produced 373 EOBs that she received from the Insurance Company. He expressed he did not look at these and should have. Once they did, they uncovered this issue. M. G testified the person he met at Highmark was Carolyn Bastien. He identified an email from Carolyn Bastien indicating Carolyn Bastien sent a spreadsheet.

M.G. testified he recalled meeting with Investigator Kutch and disclosed all the information they had. They discussed the EOBs.

M.G. identified SX 12 (The State's spreadsheet as to when Respondent billed each member of the G family) as a document the State's attorney had sent him in preparation for this hearing and he had reviewed it. He reviewed pages 1-5 of SX 12 and testified about some the dates where he could categorically state he did not have an appointment with Respondent as:

(1) July 6 , 2011, he knows he went away with friends to Vegas,

(2) around August 24, 2011 his son J.G. had a surgery,

(3) April 22, 2011 to May 2d, 2011 they were somewhere for spring break which his Wife A.G. could clarify,

(4) March 14, 2012 he was in Vail Colorado,

(5) the beginning of April 2012 the whole Family was on a cruise,

(6) May 30, 2012 he was in Vegas at a jewelry show,

(7) July 16, 2012 he was at a house evaluating an estate,

(8)August 22, 2012 he had a beach rental and was away,

(8) March 20-25, 2013 he was in Los Angeles,

(9)April 3-10,2013 the Family was in the Bahamas,

(10) June 4, 2013 he was in Vegas for a jewelry show,

(11) January 12, 2013 he and Respondent were at the inauguration,

(12) On many of the other days billed in SX 12, he was probably working and at his store. He owns a retail store where he works 6 days a week and does not take lunch outside of the store.

b. <u>Respondent's cross examination of M. G.</u>

M.G. answered questions from Respondent as follows. When he first came to see Respondent professionally all of the family members were evaluated by Dr. Finkelstein. Originally, he sought help for his daughter L.G. Respondent continued to prescribe medications for L.G. without evaluation so he was not certain as to the accuracy of any diagnoses that Respondent made for L.G. When asked about whether M.G. was aware Respondent's diagnosis had been confirmed by another professional, M.G. said he did not see any confirmation of diagnoses from Dr. Finkelstein and M.G. then asked Respondent why Dr. Finkelstein left the practice. The undersigned instructed M.G. he was required to answer questions, not there to ask them. Respondent asked a different question rather than require an answer.

Respondent asked whether he offered due to M.G.'s family's schedules to come to his business to discuss issues. M.G. answered that Respondent, as a friend. would come to his business to say hello and hang out and that this was not the same as a professional visit. Neither he nor Respondent ever scheduled these visits. M.G. denied Respondent ever telling him he would be billing him for visits at his store. M.G. did meet with Respondent at his store and discussed himself, his family and life. They were friends. He does this with other people as well. He was never told he was being billed for something like that. M.G. guessed he had these sorts of meetings with Respondent at least 8-10 times. When Respondent asked, M.G. answered Respondent never came to his house. When Respondent asked, he did not recall Respondent coming to the house when his son J.G. was upset.

M.G. answered that while Respondent stopped by his business frequently, he did not stop by 2 or 3 times a week where they would discuss things. M.G. did admit on at least one of the visits to his store he and Respondent did discuss his stressed relationship with different family members but it was in the conversational manner and not in depth. M.G. admitted to being concerned about his family. When asked by Respondent, M.G. did not recall during one of Respondent's visits to his store discussing a particular sort of surgery his wife was going to have and its effect on their sex life. M.G. said it may have occurred, but felt it was irrelevant. He "100% did not" recall Respondent ever telling him he would be billed for conversations in the store.

In response to Respondent's question as to M.G. and his families' health, M.G. answered he and his family enjoyed good physical health during this time period. Respondent asked then whether he was ever curious about the numerous EOBs he was receiving monthly from Highmark. M.G. answered he didn't think about it, but was glad they saved them. M.G. further said: when he read through the EOBs he did note the disproportionality of EOBs from Respondent as compared with other providers.

Respondent asked M.G. about Respondent going to M.G.'s house. M.G. answered that to the best of his recollection, Respondent did not come to the house to speak to his son. M.G answered when asked that he probably did tell Respondent about his son leaving in the middle of the night without telling anyone, but does not specifically recall this discussion. He guessed his son was 11 or 12 when it occurred. He said he did not recall Respondent coming to his house to talk to his son. He acknowledged that it may have happened, but that he could not recall it. M.G. recalled Respondent being at his home 1 time and was there for 30-45 minutes. He did not recall discussing family matters during this visit. When Respondent asked, M.G. did not recall

Respondent ever dropping off a prescription for his daughter L.G. at his store.

c. State's redirect of M.G.

M.G. answered the state's questions. He testified he had a friendship with Respondent 2 years prior to he or his family seeing Respondent for treatment that continued throughout the time he or his family were treated by Respondent. He went with Respondent to the inauguration and went to his Wife's art showing in Kennett Square. When Respondent went to M.G.'s store sometimes, he went there to patronize the store. Other times he just hung out. Respondent never made appointments when he came to M.G's store. When M.G. went to Respondent's home it was not for a professional visit. There were times when Respondent came to his place of business where they discussed personal family information. Some of it concerned L.G and her sessions with Respondent.

d. Respondent's re cross of M.G./ Statements

Respondent testified rather than ask questions. Respondent said his Wife never had a gallery in Kennett Square. Outside of twice and his son's bar mitzvah, M.G. and he did not go to social events together.

7. A.G. – Mother (G family)

The State called A.G., the Mother of the G family. She testified under oath by zoom as follows on October 31, 2023.

a. State's Direct Examination/ Initial Questioning of A. G.

A.G. responded to the State's questions by testifying to the following. She first met Respondent at her husband's store. L.G. her daughter, J.G., her son and M.G., her husband, came to be treated by Respondent after her Husband spoke to Respondent about his families' issues with their daughter, L.G. First Respondent saw L.G. (after being introduced by her

parents and L.G. gained a comfort level) and then her and her husband went with L.G. to an appointment. Respondent had them all do testing and then Respondent had the son J.G. come in with her and her husband. She later clarified that it may have only been her who went initially with her son J.G. After the initial visit, the son J.G. went alone once and she waited downstairs. She recalled it all started around 2011. Her daughter may have been in middle school. In 2011, they all went for testing and were tested separately for ADD and or ADHD.

The son, J.G. went once to Respondent with her and her husband (or her alone). J.G. went alone, once and she was in during part of the appointment. There was testing for all 4 family members. It was done on computer. Then there was a follow-up with Dr. Finkelstein concerning the results of the testing. In 2013, J. G. was supposed to go back for an unrelated situation that J.G. had at school. J.G. may have gone once to Respondent for this. A.G. testified that Dr. Finkelstein worked with Respondent. Totally and including the testing and Dr. Finkelstein's appointment there were 5 appointments for J.G., all at Respondent's office.

The daughter, L.G., had at most 12 appointments with Respondent. L.G. also was busy with sports. She would have an appointment and there would be constant rescheduling with enough notice so that it did not count as an appointment. She always sat in the lobby waiting for L.G. as she did the driving. She knows L.G. stopped before going to summer camp. They had suggested to L.G. that she have a final appointment with Respondent upon her start of the following school year in September of 2011, but L.G. refused and it was not scheduled.

A.G. alone with Respondent had 2 testing plus 1 text appointment with Respondent. Before A.G. went on a family vacation for a Spring Break, A.G. asked if she should see Respondent. Respondent answered that she should go away with a positive attitude. M.G. maybe had a few appointments alone with Respondent. M.G. generally never left work.

A.G. was aware of the conversation that M.G. had with Respondent that aroused his suspicions. She was not a participant in that conversation. They were going away for his father's birthday. On the flight home, he asked about documents (EOBs) from Highmark and asked her to look for anything related to Concord Behavioral Health. She asked M.G. what it was about. He said he was not sure, but there was documentation of some family members seeing Respondent until 2014.

She found over 300 pages. She called Highmark the next day. She asked for a diagnosis and was told they were all diagnosed with some type of mental condition and some had suicidal ideation. A.G. replied she did not know what they were talking about and wanted to complain. A.G. became upset and told her Husband she wanted to file a lawsuit as it would affect her children's records. She offered to send the EOBs to Highmark.

About pages 3-24 of State Exhibit 4/ SX 4, those were the initial EOBs A.G. faxed to Carolyn Bastien at Ms. Bastien's request on May 14, 2014. They were sent after they had lodged a complaint to Highmark. Highmark interviewed her and her Husband separately. Highmark asked them to start looking for documents as to when they went on vacation or anything to show they could not have been to appointments on the dates set forth in the EOBs. She emailed Highmark dates when the family were away. She had reviewed State Exhibit 13 prior to the hearing which were emails between her and Ms. Bastien of Highmark where she lists some dates when there could not have been appointments between Respondent and her family.

She met with Investigator Kutch who interviewed her Husband and her separately. They were more detailed as to the relationship that each of them had with Respondent. She told him they had dates where they could not have seen Respondent.

A.G. answered that she had reviewed State Exhibit 18 prior to the hearing. It was the

proof of the family vacations when they could not have seen Respondent. Page 1 of SX 18 indicates when they went to Aruba on April 22, 2011. Page 2 of SX 18 shows they stayed for 6 nights or until April 28, 2011. They went on a cruise to Puerto Rico from April 8, 2012 to April 15, 2012, (Page 8 of SX 18). Pages 17 and 18 of SX 18 are receipts when she and L.G. went to New York City from April 2,2013 to April 4, 2013. A.G. supplied the documents in SX 18 to Highmark to show it was impossible to have appointments on those dates. Additionally, A.G. further testified about additional dates where no family member could have seen Respondent including: the date of her son J.G.'s baseball tournament from 5/25/11 - 5/26/11,a bris on March 20, 2013 when the entire G family went to a bris in Gaithersburg Maryland, a wedding April 13, 2013 which they all went to. A.G. added on President's Day (2/18/13 and 2/20/12), she assumed Respondent's office was closed. . A.G. testified there was never a time when all 4 family members saw Respondent together at a session or appointment.

b. Respondent's cross examination/ questioning of A.G.

A.G. answered Respondent's questions as follows. A.G. confirmed that she was the person who kept the families' records. Between 2011-2014, she recalled receiving several Explanation of Benefits (EOBs) monthly from Highmark. While she opened them, she did not read them. The number of EOBs she received did not arouse her suspicion such as to cause her to review them. They usually came in bunches and she did not have a lot of time.

As to why Respondent referred her for testing, A.G. answered she thought it was to determine if she (as well as other family members) had ADD or ADHD but was not certain as to his reasons. A.G. answered Respondent's question as to whether or not there was other testing besides ADD or ADHD that there was an occasion where the family members were separately asked to look at pictures and describe them. After the testing was completed, A.G. testified they

went over the results. A.G. did not recall what were her results but did not recall them as finding anything significant. She did not recall what the reports said as to assessments or diagnoses.

She did recall Respondent after the testing suggest A.G. try Abilify. He also suggested it to her Husband. He told her she could take it if she felt a need to relax from what was going on with their daughter L.G. When Respondent said this, A.G. recalled replying she generally did not take medications. She never took this medicine because when she looked at the side effects and the reason patients took the medicine, she did not feel the necessity as she did not have a diagnosis. Respondent stated that Dr. Finkelstein had a different opinion as to that. A.G. testified she had no follow-up with Dr. Finkelstein after Respondent's recommendation as to Abilify.

Respondent asked A.G. about meeting with their son J.G. in 2013. A.G. answered that they asked him to meet J.G. because something happened at J.G.'s school. A.G. did not remember if an appointment was ever made or Respondent spoke to J.G. by phone or text in 2013. Respondent asked whether they asked that Respondent come to the house to speak to J.G. about his significant anxiety. A.G. indicated if she were there, she would remember it and she did not recall such a meeting.

A. G. testified the testing was done first on computer and then with Dr. Finkelstein at his office. Not including the testing, Respondent interacted with J.G. about 3 times, 2 times in 2011 and 1 time in 2013 (and she is not even certain if there was an interaction between them in 2013). As to her calling in 2013, A.G. said she called to get a meeting with J.G. about bullying or antisemitism (a swastika was written in the dirt). J.G. changed from Tower Hill to St. Edmonds. Respondent was not involved in this switch.

Respondent had no further questions for this witness. Neither did the State. A.G. was excused.

8. <u>Earl Bock (Highmark's Special Investigation Unit)</u>

Earl Bock testified live under oath as follows.

a. States Direct of Earl Bock

Mr. Bock answered the State's questions and testified to the following. He is the Senior Investigative Consultant for Highmark Blue Cross/ Blue Shield ("Highmark"). He has held this position for about 5 ½ years. He either directly or indirectly investigates cases assigned to his office and is Highmark's liaison with law enforcement. He was originally hired by Highmark as their Director of Special Investigations from 2010 until 2015 or 2016. There he had investigative teams assigned to him from Pennsylvania, West Virginia, and Delaware. He supervised and or assisted the investigation of Respondent. He supervised Carolyn Bastien who was assigned to the investigation. Carolyn Bastien has since retired from Highmark. He was involved in planning how to investigate Respondent and conducted some of the interviews with the G family.

There is a case file for this. There are 2 areas of this case file. One is the Case Management System where they enter all of their activities, copies of documents etc…. Second, each investigator keeps their own electronic case file where all relevant documents are placed. All the investigators in his unit and himself have access to the Case Management System which tracks any changes to information in that system. He has reviewed both the Case Management System and Carolyn Bastien's electronic case file in this case.

The Case Management System is kept as a regular part of his unit's business activities and is part of his regular duties. The investigator who put information in the Case Management System either has personal knowledge of that information or it is derived from someone with personal knowledge. Entry of information into the Case Management System is required at or near the time when the information is received.

The information in the electronic case file for Respondent was mostly generated from

Ms. Bastien as a part of her investigation and was created by a someone with personal knowledge or derived from someone with personal knowledge. It is regular part of his units business activities to keep these electronic case files. The records are input into the electronic case file at or near the time the information is received. Files that contained a large amount of data were kept in the individual electronic case file and not the Case Management System due to the Case Management System's data limits.

Ms. Bastien received the complaint from M.G. or A.G. that Respondent billed Highmark for a large number of services concerning the G family that did not occur. Based upon his review of the electronic case file, the Case Management System and his personal involvement, a data report was run for the time frame encompassing the Complaint. That information was shared with the G family and used to determine what dates Respondent billed Highmark for services for the G family which were not done. Personal interviews were done of the parents of the G family, M.G. and A.G., where he attended. The parent (s) relayed one of the G children had been seen by Respondent a "handful of times". The conclusion was made services were billed for the G family that had not taken place. The claims data reports were shared with the G parents. They calculated an amount for the services that the G s had said had not taken place.

The data information was run through another system they use known as "At Web" to generate an "At Web" report. They can do "Impossible Day "reports from the "At Web" report which can state the number of hours a practitioner bills per day. This information was reported to the Delaware Department of Insurance.

There were settlement negotiations that were handled by a V.P. not himself concerning the G family. However, he does realize there was a release where Respondent was responsible to

pay amounts to Highmark for his overbilling of the G family.

Highmark wanted to see if the situation with the G family occurred with other patients. They ran another claims data report for all Highmark members billed. They looked at the 5 or 10 members with the highest utilization of Respondent.

Investigator Bock testified that Claims Data reports are done the following way. All claims the come to Highmark daily were run though a Vendor called EDI. They can run reports using different parameters. Most times they use the dates of service and the billing provider's tax ID # as parameters. That allows for production of an Excel Spreadsheet for all of those claims billed to Highmark. There are typically 25-30 different columns in this Spreadsheet. The columns list one sort of data. As examples, one column list the member's name. Another column provides the billing provider. Still others provide the performing provider etc…

To the best of his knowledge the accuracy of EDI reports has never been questioned. When they run an EDI report, they get a unique SAS # and when the put the SAS # into "At Web" they get the ability to run different reports. One such report is how many hours services were billed daily or as he termed them "Impossible Day" Reports. The SAS # is unique for that specific data set. The CPT Code is a standard set of codes used by all practitioners.

The G family had a claims data report just for them. There was a separate claims data report when the investigation was expanded and there was a separate Impossible Day data report.

SX 15 was extrapolated from the Impossible Day report generated from At Web for the G family and all Highmark Insured patients billed by Respondent. Page 1 and 13 of SX 15 show the data was run from 1/15/12 to 2/12/15. He knows of no errors from At Web reports. SX 15 indicates the Number of hours billed daily. He regards as an Impossible Day as an unreasonable number of hours totally billed daily by practitioner. For example, on 11/11/14, 23.48 hours was

billed so he regarded that as questionable. Investigator Bock explained there may be days that a practitioner bills over 17 hours but it becomes questionable when it consistently occurs.

He recognized SX 12 from his Case Management Files and from Ms. Bastien's electronic case file. SX 12 was from EDI and was generated just for the G family. When he ran such a report, he used the parameters of dates of service and their member ID number. That would produce all claims for that subscriber and the subscriber's dependents. SX 12 was copied from the claims data report. It may have been part of the normal report generated and was compressed as to the number of columns.

The parameters he would have used to generate a data report that led to the Impossible Days information would have been Respondent's Tax ID number and the dates of service. That would bring in everyone that was billed.

Investigator Bock identified pages 8-11 of SX 14 as the settlement and release of Highmark and Respondent for the G family. It indicates Respondent agreed to pay Highmark $132,526.04. Page 13-18 of SX 14 were the settlement and release of Highmark and Respondent for the extended investigation for overpayment made by Highmark. Paragraph 5 in that agreement mentions using the appropriate CPT Codes.

Based on review of the records, Ms. Bastien concluded that Respondent had overbilled Highmark in relation to the G family and with other Highmark members and Highmark requested reimbursement from Respondent. The matter was referred to the Delaware Department of Insurance. He identified State Exhibit 16/ SX 16 as the referral to the Delaware Department of Insurance.

Investigator Bock was employed by Highmark before the merger with Blue Cross/ Blue Shield of Delaware.

The undersigned asked whether Investigator Bock has ever known or heard of an agreement where a psychiatrist could bill if they saw 1 patient for an hour who discussed other family members, they could bill the patient seen and other family members the time. Investigator Bock answered no and explained there are separate CPT codes for group and family sessions that are billed differently. If 4 persons from a family were treated in a session for an hour, there would be 1 hour billed under the group Family CPT code. He could not tell just from looking at SX 12 whether Respondent used CPT code for the individual or group/family code. Investigator Bock further testified that he could not imagine any insurer would ever tell a provider to bill in contravention to the CPT codes.

Investigator Bock testified about SX 12 as follows. Page 2 of SX 12 shows Respondent billed Highmark for M.G. for April 25, 2011. Page 6 of SX 12 shows Respondent billed Highmark for A.G for April 25, 2011. Page 10 of SX 12 shows Respondent billed Highmark for L.G for April 25, 2011. Page 13 of SX 12 shows Respondent billed Highmark for J.G. for April 25, 2011. Based on this, Investigator Bock concluded that each family member was billed separately by Respondent to Highmark.

b. <u>Respondent's Cross Examination Questioning of Investigator Bock</u>

Investigator Bock in answer to Respondent's questions testified to the following. He was unaware of any special agreement Respondent had with Blue Cross and Blue Shield of Delaware. He was aware though that Blue Cross and Blue Shield of Delaware hired Respondent as a consultant. Respondent asked whether Investigator Bock was aware that he had threatened to resign and that was why the special agreement was entered between him and Blue Cross Blue Shield of Delaware. Investigator Bock answered he was unaware of that. Respondent asked Investigator Bock whether he was aware that he had to contact the head of the IT Department of

Blue Cross and Blue Shield of Delaware to go into the system and make changes to get his invoices processed. Investigator Bock answered he was unaware of that.

Investigator Bock answered that he had the same access to Data that Carolyn Bastien did. Respondent asked whether he or his department combed data to ensure it was free of errors and accurate. Investigator Bock answered yes. Respondent asked whether he was aware at the beginning of the expansion of the investigation, Highmark sent him data that was supposed to be just his data, but wasn't. Investigator Bock answered that he knew Respondent had communicated, but was not aware of what Ms. Bastien sent. Investigator Bock testified he did not create any documents. He took them from Carolyn Bastien's records. Respondent asked whether he was aware that amongst the data that indicated he inserted a pacemaker. Investigator Bock answered that he was not aware of this.

The undersigned asked whether he could have used the parameters of Respondent's tax ID # and the dates of service from the G family and the undersigned asked if a different provider incorrectly input Respondent's Tax Id # would that have been included. Investigator Bock indicated it could have. However, Investigator Bock explained that if they saw CPT Codes different than those typically billed by a psychiatrist, they would have likely caught that before payment and kicked the bill back to the provider. The CPT codes are associated with diagnoses and if there was no such association it would be kicked back to the provider with a rejection code to indicate why there was no payment and the provider would have to resubmit the claim. There are some edits in preprocessing. A lot of what his Department does is after the fact as they rely upon the integrity of the provider.

To Respondent's question, Investigator Bock answered he did not know whether Respondent was submitting claims electronically or by paper for the period investigated.

Respondent asked what happened to his claims after they were faxed in by his office manager? Investigator Bock answered: The paper claims form would be submitted electronically. He had not worked in the claims department so he was not certain how the information of the paper faxed was transferred to an electronic format, but that he believed that the information on the paper forms would have to be manually input into the system. Respondent asked whether there was any process at Highmark for the detection of outliers for example from the number of claims submitted by him? Investigator Bock answered that they did education with the various departments in Highmark including claims processing to look for indicators concerning potential fraud. However, he could not say that the number of claims would be a "red flag" to the claims department because they would not be familiar with the number of providers at Concord Behavioral Health or how busy the office was. Respondent then asked whether if his office manager submitted the claims electronically did Highmark's system automatically prompt a red flag. Investigator Bock said there was nothing that he was aware of that did this.

Respondent asked whether Highmark every 6 months or yearly did a report what every provider in a specialty was paid by them and then what all physicians were paid (stating that Blue Cross Blue Shield of Delaware did so). Respondent then asked whether Investigator Bock was aware during the time, he was consulting with higher management levels at Blue Cross Blue Shield that Respondent was the highest compensated physician in their network? Investigator Bock answered no. Respondent asked did Highmark have chart reviews, or a manner of comparison of physicians as to how often a provider ordered lab work? Investigator Bock says he did not know what Delaware Blue Cross Blue Shield did prior to Highmark but that Highmark had an internal audit division that does things such as Respondent was asking about. The provider relations personnel at Highmark do routine visits with providers.

When there are investigations in his department peer comparisons are done to see how a provider compares with other specialist providers in the geographic region. However, he was not aware of any current automated process.

Respondent asked whether Investigator Bock was aware of a distinction between himself and Concord Behavioral Health which had its own Tax ID # as a "run through" corporation and had individual tax id for its individual billing? Investigator Bock answered that he did not recall offhand whether Respondent had his own Tax ID # or everything was billed through the practice Concord Behavioral Health. He went on to explain if Respondent was billing with his own Tax ID # the data set pulled was his information only. However, conversely if Respondent was billing using Concord Behavioral Health's Tax ID #, the data set pulled provided that information. Respondent asked what elements are included in the EDI data set? Investigator Bock answered: subscriber id #, social security #, patient name, patient date of birth, date of service, diagnosis code, procedure code, modifiers, amount billed, amount paid…. and then Respondent cut off Investigator Bock's further answer but he went on to say there were probably between 25-30 columns of information. Respondent asked and Investigator Bock testified he was confident that the data set was accurate with the claims submitted by the provider.

Respondent asked whether the data set sent to him was the same as that sent to the Insurance Commissioner? Investigator Bock answered he could not say they were the exact same document. Respondent asked when the investigation expanded beyond the G family, did he know the definition of overpayment mentioned in the settlement agreement? Then without allowing Investigator Bock to answer, Respondent asked a different question whether the CPT code was mentioned in the settlement agreement. Investigator Bock answered it was. Respondent

asked whether Investigator Bock was aware that Respondent resigned from accepting reimbursement from Highmark the day he signed the 2d settlement agreement and that Highmark representatives from Provider relations called Respondent's attorney the very next day and asked why did he do that? Investigator Bock indicated he was not aware of this.

When Respondent asked whether the primary focus of the investigation of him was the Impossible Day scenario or was that just one small part of it. Investigator Bock answered the Impossible Day was one part of the focus. Another part was the G family. Still another part was the interviews done with the other Highmark families.

Respondent asked Investigator Bock how Highmark arrived at the amount it thought it overpaid him ? Investigator Bock answered he believes but was not certain the amount requested by Highmark for overpayment was based upon information received from the Highmark members so they could distinguish and compare dates of service that were legitimate from those that were not legitimate and Highmark presumed Respondent worked 10 hours a day and anything he billed above 10 hours was presumed to be overpayment.

Respondent asked whether Investigator Bock was aware that the only health insurance he accepted during his career was Blue Cross Blue Shield. Investigator Bock answered no. Respondent asked again whether Highmark did anything like Blue Cross and Blue Shield of Delaware did comparing providers with peers and Investigator Bock answered he did not know. Previously he had stated he was not aware of what Blue Cross Blue Shield of Delaware did. The undersigned asked when did Highmark take over Blue Cross Blue Shield of Delaware? Investigator Bock answered it wasn't long after he started in December 2010. Once the transition completed it was Highmark's judgement as to claims and he could not recall that date.

c. <u>Redirect Questioning by State of Investigator Bock</u>

The State asked why Highmark would run a claims data report from an NPI # instead of Tax ID #s. Investigator Bock explained if he were looking at specific information for a provider for a date range, that he would run a report off of the dates and the tax id #. However, if the practitioner worked at a number of different practices, and they wanted to know all of the services the particular provider billed in all of those practices, they would run the report with the dates and the NPI #. The NPI # would pull in all services performed whether it was at Concord Behavioral Health or another provider such as Christiana Care. The NPI# is the National Provider Identification. If the practitioner is an employee of a hospital system, they are probably not using a unique tax id # for that practitioner. Someone in their own practice who was billing insurance for services would have to have their own Tax ID #. They would also have to have their own NPI # if they had their own practice. Respondent to bill for services would have his own Tax ID # and NPI #. If Concord Behavioral Health was owned by someone else and he/Respondent were merely an employee performing services and getting a paycheck from Concord Behavioral Health he would not have to have his own Tax ID #. The NPI# tells him who the performing provider is and is one of the columns that comes in the data set.

d. Recross Questioning by Respondent of Investigator Bock

Investigator Bock answered Respondent's question that he was looking at his data set it used Respondent's Tax ID #.

e. Hearing Officer questions to Investigator Bock

Investigator Bock answered State Exhibit 12 / SX 12 was a summary where it did not show the 30 odd columns of data as that would be too small for viewing. It is a redacted version of an excel spreadsheet where not all the 30 columns are shown. He has the excel spreadsheet. The State's attorney confirmed this and stated that it was just too big. The entire spreadsheet was

provided to Respondent previously. The State's attorney had the spreadsheet on her computer showed it to Investigator Bock and identified in as State Exhibit 38/ SX 38 but did not introduce it into evidence. Investigator Bock also corrected his testimony that the company is EDW not EDI. Respondent asked whether the spreadsheet had only the G Family and not all of the families. The state volunteered it did not have the other EDW data set for all of the families. No party requested to ask additional questions to Investigator Bock.

9. State's Motion for Admission of Exhibits.

At the initiation of the 3rd day of trial, November 1, 2023, the State moved for the admission into evidence of State's Exhibit 1 through 37 (SX 1-37) except for State's Exhibit 11 and 29 (SX 11 and SX 29). Respondent did not object to admission of these exhibits which were admitted . Respondent though did reserve his right if he so chose to move for the admission of SX 11 and SX 29.

Since the state had already been granted the application to present the testimony of Dr. LaShauna McIntosh on November 2, 2023, the 4th day of hearing, the undersigned indicated to the parties the record would remain open until the start of closing arguments. The State and Respondent had no applications. Respondent started his case November 1, 2023 by calling David Doty as his first witness. Mr. Doty's testimony is described in C 1 hereof not immediately flowing this to keep the evidence for Respondent and State separate.

10. Dr. LaShauna McIntosh(Respondent's Ex Wife)

Dr. LaShauna McIntosh, M.D. was the State's 9th and final witness and was called by the State November 2, 2023, the 4th day of hearing . Her testimony by agreement was after Respondent's presentation of his witnesses: Mr. Doty. D.L. and B.D.

Dr. LaShauna McIntosh, M.D. testified by zoom under oath as follows.

a. **State's Direct Examination of Dr. LaShauna McIntosh(Respondent's Ex Wife)**

Dr. LaShauna McIntosh answered the State's initial questions on direct examination. She was married to Respondent from 1995 to 2008 and have 3 children together: N. M. (a son born in 2000), M.M.(a son born 2003) and I.M. (a daughter born 2006),

After the divorce, all the above children primarily resided with Dr. LaShauna McIntosh and visited their father Respondent 3 hours every Wednesday night and every other weekend from Friday at 6 p.m. to Sunday at 6 p.m. and ½ the summer.

In 2017, Dr. LaShauna McIntosh filed a complaint with the DPR against Respondent. Dr. LaShauna McIntosh filed the complaint to protect her license. There was a prescription sent in for her daughter I.M. for an ADHD medication. This led Dr. LaShauna McIntosh to call the pharmacist to inform them she and Respondent were not a couple and that Respondent was not entitled to fill prescriptions using her insurance and that she would not be able to pick up the prescription. The pharmacist responded that there were additional prescriptions written for her other children from Respondent. The pharmacist said they were going to call the State police. Dr. LaShauna McIntosh responded that there was another way of dealing with it and told the pharmacist she would report it to the Medical Board. She understood that she was required to report any inappropriate behavior to the Board as a physician. She was not familiar with the prescription for her daughter and she had to look it up and learned the prescription was to treat attention deficit disorder.

The State asked and Dr. LaShauna McIntosh answered that she recalled reviewing certain exhibits the State emailed her before the hearing. She had reviewed State Exhibit 25/ SX25 before the hearing. She described SX25 as her complaint to the DPR. SX 25 said that she received a letter from CVS that her daughter's prescription was approved. It relayed that the

medication prescribed to her daughter (that she complained about) was " ADZENY'S XR-ODT" . It stated her daughter was not under psychiatric care or on any medications and when she called the pharmacy, they relayed there were recent medication filled under her sons' names when they were not on any medications[8]. SX 25 her complaint was accurate at the time. It was dated February 9, 2017 when Dr. LaShauna McIntosh presumed she filed it.

Dr. LaShauna McIntosh answered she recalled a phone call from someone from the Medical Board concerning the Complaint referenced in SX 25. She recalled investigators (3-4 of them) asking her questions about the complaint. She recalled another call from another investigator who she believed was from the AG's office asking her about the case.

Dr. LaShauna McIntosh identified State Exhibit 28/SX 28 as one of the documents the State sent her that she reviewed before the hearing. Dr. LaShauna McIntosh testified SX 26 was an accurate summary of a discussion she had with a DPR investigator.[9] She testified that this was what she referred to in her previous testimony when she said that someone called her from the Medical Board.

Dr. LaShauna McIntosh reviewed p.8 of State Exhibit 33. It was a 1/9/17 prescription from Respondent for ADZENYS XR ODT for the daughter I.M. As to whether it was appropriately issued Dr. LaShauna McIntosh testified I.M. has not been diagnosed by ADD by anyone other than Respondent who had not informed her about it. I.M. had not been prescribed

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[8] Dr. LaShauna McIntosh added that there were times when her sons were on medication but during this time they were not.

[9] SX 28 indicated that she and Respondent had been divorced for about 10 years and prior to the divorce Respondent had diagnosed both their sons with ADHD and were prescribing medication for them. Their daughter had never been diagnosed with ADHD and never received medications for it. After divorce Respondent became uninterested in their sons care which was taken over by Dr. Richard Kingsley who continued their prescription for ADHD medications. The medications had stopped for 2-3 years before she first learned of this issue. She asked her children who told her Respondent had not administered the medications to them while they were with him.

any medications for any physician besides Respondent at the time. The State asked if the daughter I.M. took the medications referring to SX 28, Dr. LaShauna McIntosh answered no.

Dr. LaShauna McIntosh identified p.3 of State Exhibit 33/ SX 33 as a 1/19/17 prescription of Vyvanse by Respondent for his son M.M. When Dr. LaShauna McIntosh initially talked to the pharmacy, they did not tell her what prescriptions were issued for her sons. The State asked her whether this prescription should have been issued. Dr. LaShauna McIntosh answered this was where it gets a "little tricky." Respondent is a Board-certified Child Psychiatrist. When they were together and even in the beginning years of their separation and divorce, Respondent expressed input into how to manage their sons' ADHD. He is an expert in the area and she deferred to him. At a later juncture, but well before these prescriptions, since all the children were with her most of the time, she felt it best that an outsider Dr. Richard Kingsley[10] handle their sons' care. That is, it is possible that Respondent had intended to put M.M. on this medication and had not communicated it to her as had been the pattern in their relationship. However, M.M. was not under Respondent's care. M.M. started under Dr. Richard Kingsley's care in 2013. Dr. LaShauna McIntosh referred to page 21 of SX 31 a 4/21/14 note from Dr. Richard Kingsley referring that Respondent started M.M. on Prozac in 2014 and relays she wanted Dr. Kingsley to prescribe it. She referred this as refreshing her memory as to when the transfer to care of M.M. to Dr. Kingsley occurred. The transfer occurred because Respondent was not giving her clarification about changes in medications. Dr. Kingsley took over the care of both sons N.M. and M.M. then.

Dr. LaShauna McIntosh testified that at times the sons were off medication. In October

[10] Dr. Kingsley is a psychiatrist who at the time practiced with Nemours.

2013 she supported M.M. being taken off Focalin (P.11 of SX13). Her sons did not like taking medication. There were times when they were taken off and times, they needed it. For example, there was a time when M.M. was washing his hands 20-30 times at school and he needed to be put on medication, not ADD medication at that time but something else. From 2013-2014 onwards, primarily Dr. Kingsley was the physician that prescribed medications for her sons.

Dr. LaShauna McIntosh identified p.6 of SX 33 as a prescription by Respondent for the other son N.M. in April or September 24, 2016 for ADZENYS XR ODT. Dr. LaShauna McIntosh testified from her review of State Exhibit 32/ SX 32 this was not during a time when N.M. was prescribed medications from Dr. Kingsley. She reinitiated N.M.'s treatment in March 2017 after a gap because he was not eating normally and was concerned. He was off medication at the time Respondent made the prescription at issue.

Dr. LaShauna McIntosh, M.D. testified she was an OB/GYN practicing since 1998. She is familiar with controlled substances. She is familiar with Vyvanse and assumed it was an ADHD medication but does not prescribe it in her practice. Dr. LaShauna McIntosh testified that M.M. was in the care of Dr. Kingsley from February 27, 2013 going forward(P.5. SX 31). N.M was in the care of Dr. Kingsley at least from February 27, 2013 going forward (P.5. SX 32). **I.M. was never in the care of Dr. Kingsley as she did not need his services.** Dr. Kingsley was a psychiatrist and worked at A.I. Dupont. There was never any need for him to treat the daughter I.M. because she was not diagnosed with ADD or ADHD to her knowledge.

b. **Respondent's Cross-examination/ Questioning of his Ex-Wife**

Respondent asked Dr. LaShauna McIntosh whether in the time prior to and during their marriage, did she ever have a concern about him having a substance abuse problem? She answered: no. Respondent asked whether she would have allowed visitation if she thought he

had a substance abuse issue? Dr. LaShauna McIntosh answered: it would not have been her preference and she probably would have taken him to court. Respondent asked if there was better communication particularly on his side could a lot of this been avoided? Dr. LaShauna McIntosh answered yes communication is always better. Respondent asked Dr. LaShauna McIntosh about his skills as a clinician. Respondent answered that he had a great reputation especially for ADHD and eating disorders. Respondent asked whether their sons were taking ADHD medication presently as needed? Dr. LaShauna McIntosh answered: M.M. was and N.M. wasn't as he was not in school.

Respondent asked if he had communicated his concern to her or Dr. Kingsley about N.M.'s ADHD and his starting to drive when he prescribed N.M., was that something she would have considered? Dr. LaShauna McIntosh answered: yes. To Respondent's questions to compare their present communication with that which was occurring when the prescriptions were written: Dr. LaShauna McIntosh answered: currently their communication has improved from when Respondent wrote the prescriptions. She agreed they were not communicating when Respondent wrote the prescriptions. Since M.M started Columbia, their communication has improved. Respondent then asked if they had their present level of communication when he wrote the prescriptions would the report to the Board been necessary. Dr. LaShauna McIntosh answered: with M.M. probably not, "but with I.M……". Respondent interrupted preventing her from completing her answer. Respondent then added the following additional facts to this hypothetical about if their communication were better: if Respondent observed his children while doing homework and had ultimately decided not to give the medications to the children. Dr. LaShauna McIntosh answered she would have taken it to Dr. Kingsley for both of their inputs, but what triggered her call was Respondent's use of her insurance to prescribe the

medication even with the additional facts. The decision whether or not to prescribe could have been worked out had Respondent communicated.

Respondent asked whether Dr. LaShauna McIntosh ever gave him her insurance card? Dr. LaShauna McIntosh answered that she made sure he had it in the summer, but not otherwise. Respondent then asked whether Dr. LaShauna McIntosh was aware that he had coupons for the prescriptions so they would not be charged to her insurance and then Respondent said he never told her his intent to use coupons. The Respondent asked that if Dr. LaShauna McIntosh knew that he intended to use coupons, would that have led to a different take. Dr. LaShauna McIntosh answered no. Respondent then asked what physician gave information for the preauthorization? Dr. LaShauna McIntosh said the pharmacy told her he had. Respondent asked if Respondent communicated, used coupons, and told her he would not dispense unless there was further discussions, would there have been an issue. Dr. LaShauna Mcintosh answered yes explaining as a parent the medication for her daughter I.M. stayed on her permanent record which bothered her as a parent.

To Respondent' s question whether she believed he would maliciously do something to harm his children? Dr. LaShauna McIntosh answered: no. Respondent said he has been portrayed as writing the prescriptions for personal benefit without concern for the children when the reality was that if his and their communication was better a lot of this could have been avoided. Dr. LaShauna McIntosh answered it could have been avoided if they had Dr. Kingsley involved. However, Respondent did not communicate and that did not occur.

c. **Hearing Officer Questions to Dr. LaShauna McIntosh**

The undersigned asked Dr. LaShauna McIntosh who had legal custody? She answered she thought legal custody was joint. Dr. LaShauna McIntosh, in answer to a question about

whether she and Respondent agreed to use Dr. Kingsley said, there was an agreement between her and Respondent to use Dr. Kingsley for management of N.M. and M.M.'s ADHD. The daughter I.M. was never treated by Dr. Kingsley but if there had been communication of an issue with her about I.M. she would have gone to Dr. Kingsley. She was uncomfortable with Respondent's medical management and believed as a general matter a parent should not be the physician for their child. However, with child psychiatry, there is a lack of qualified practitioners and Respondent was one of a few. There was a time when they were married and after, when for convenience sake that Respondent played a role in their care. However, that could not continue with his lack of communication.

The State and Respondent had no additional questions for Dr. LaShauna McIntosh.

C. **Respondent's Witnesses and Evidence**

1. **David Doty.**

a. **Respondent's Direct Examination of his witness David Doty.**

On November 1, 2023, Respondent called Mr. David Doty as his witness to testify about his analysis and opinion concerning "Impossible Days" , the quality of data and methodology.

Mr. Doty answered Respondent's questions about his background as follows. Mr. Doty held an undergraduate degree in mathematics and computer science from the University of New Mexico. He was ranked as one of the top 200 mathematicians in the world at that time. He holds a Master's degree in financial engineering from The Wharton School of Business. He completed that degree in 15 months and was the only person in the school's 150-year history to do so. Afterwards he joined the Navy and did 2 tours in Iraq where he was a cryptologist and heavily involved in statistical and mathematical analysis. He led a 50-man division and won the battle excellence award and was twice awarded the Navy chief of valor.

After that, he became a licensed Series 7 for Credit Suisse/ First Boston where he performed financial analysis for some of the largest banking and insurance transactions that occurred on Wall Street in the 1990s. From 1993 to 2008, he was involved in consulting on a global basis of financial institutions for some of the world's largest banks and insurance companies. He was the Senior Director of Strategic Planning for the United States Fidelity and Insurance Company (USF&G) in Baltimore where he led Mergers and Acquisitions and all interim consulting and financial analysis of the insurance company's concerns. More recently, he worked at IBM. He was recognized as an international finance expert in IBM Global Center of Excellence where he performed strategic and financial analysis for some of the largest insurance companies in the world. Currently he is the deputy CFO at JPMorgan Chase where he performs monthly financial analysis and reporting to the President and manages a budget planning and submits reports to the Federal Reserve and Office of Comptroller of Currency.

Respondent asked about his highest military clearance and Mr. Doty answered he had top secret codeword access for the U.S. and NATO and was a nuclear weapons authentication officer when he was in the military.

Respondent asked when and how he became aware of this dispute? Mr. Doty answered he has been involved since 2018 or so after the initial incident. He became aware of it through his wife who owns a large mental health practice and knows Respondent from the medical community. Mr. Doty's experience included fraud. He ran a large fraud study for the Canadian Financial Services Industry where they studied and benchmarked all the major competitors including the sources and methodology of fraud including point of compromise, point of loss and wrote a detailed report to the Canadian Government on how fraud is committed. A focus of this report were the methodologies and tools and approaches used in fraud. So, he became aware how

fraud is generally committed. He was familiar with psychiatric billing and CPR Codes as his wife owns one of the largest independently owned psychiatric practices in the State where he acts as a CFO and is familiar with the billing and reimbursement processes for psychiatric practices.

Mr. Doty was first struck by the term used by Highmark "audit". Audit has a very clear meaning. It implies a level of rigor, care, and detail that he did not find in the "presented materials." All he saw was a daily timetable with no explanation as to how it was computed, what factors were considered, the methodology followed or whether data hygiene was performed.

Mr. Doty explained that data hygiene must be performed to prevent application of "garbage in, garbage out". His analysis was from the time period of 2012 to 2014. This data was obtained in electronic format from the Highmark Insurance company, a successor to Blue Cross Blue Shield of Delaware. The file they sent was a raw data dump. It is the definitive source for any data. The first thing he noted was Highmark's provision of this information violated the HIPPA regulations. It included patients outside of the scope of Respondent's patients. There was information that was exclusive to patients of other practitioners. This should not have been disclosed. The Highmark data supplied was not in a consumable form. It was a raw dump of 80,000 non-parsed data elements. He spent at least 20-man hours parsing the data and aligning it. That would have to be done by any auditor to draw any conclusions from the data.

Mr. Doty then discussed billing codes. Historic billing codes had to be recovered from this analysis. The CPT codes changed during the period of 2012 to 2014 and he had to reconstruct what the CPT codes were under the old billing system and the new billing system.

There was an overlap period when they both were in place. The undersigned asked when the CPT Codes precisely changed and Mr. Doty said he believed it was in 2013 and would "get that exact date for" the undersigned. There were 2 sets of CPT codes. For example, the old one would have been a "90806" which would have been a 45-minute psychotherapy. The new CPT code was "99214." They did not just give new numbers. They changed the definitions slightly. The reason this was important because in order to calculate the time period spent for a day you had to use the CPT codes for that time.

He noted was the Highmark data was riddled with errors. That required significant data hygiene. There was 1 procedure which was miscoded as a 90870 (Electro convulsive shock therapy) when it was a 90806. There was 33214 in Highmark's data (an insertion of a pacemaker) instead of a 99214 (which is a 45-minute patient therapy). His point is any audit should have caught this. What Highmark did was not a forensic audit. It lacked data hygiene, a first necessary step.

The undersigned asked whether Mr. Doty was using the term audit the same as the American Institute of CPAs. Mr. Doty answered: he did not follow the standard of the AICPAs as it was a medical data set. Nor was he following any similar protocol as there was no Board organization with a recognized common standard for audits such as this. However, an audit was never done. The hours for the Impossible Days were just added up.

Mr. Doty went on to further testify about the effect of the change of the CPT codes during the time span Respondent's hours were added up and stated: they can account for different hours, and Highmark failed to total the hours correctly. This would not affect the hours totaled for 2011 and 2012 as the CPT codes did not change until 2013. That was why the undersigned asked about the date the CPT codes changed. Mr. Doty was given time to find it

from review. He clarified that the Old CPT codes were in place until 12/31/12 and the new CPT codes were not viable until 1/1/13. The only issue with 2011 and 2012 is that you could not use the time for the new codes. However, if the data Highmark sent used the new codes, it would have been accurate for 2013 and 2014 but not for 2011 and 2012. He did no analysis for 2011.

The undersigned asked Mr. Doty whether Highmark was using the old CPT codes or new ones in its creation of its Impossible Day reports and Mr. Doty indicated he did not know which Highmark used in the creation of its report. He referred to the diagram in page 3 of Respondent Exhibit 4/ RX 4 as showing the date when the CPT codes changed.

Mr. Doty testified Respondent's billing was prepared by an office manager who he met. In his opinion the office manager was not sufficiently trained or certified in medical billing. This led to a large number of errors in billing. He concluded that sloppy and inaccurate errors were made, not fraudulent ones. Without considering human error, you could not fully understand what happened. He found there was no matching between the date of actual service and the date of billed service. Respondent's office manager would tend to lump submissions together. When this happened the date of actual service would become mismatched with the date of billed service. For example, if Respondent saw patients throughout the week, Monday through Friday but the office manager only submitted bills for the week on Wednesday and Friday, the amount of time Respondent worked Wednesday and Friday would look enormous and no time on the other days of the week. That would not matter over a long period but Highmark's audit performed only looked at specific days. There was no weekly average. There was no annual average or 6-month average.

Mr. Doty said his last and most significant point was that today when a practitioner sees a family group, this is considered as high complexity and there are add on codes to account for

this supplemental level of service. However, these Add On codes were not available in the old CPT codes. Instead, Respondent told him he had an agreement with Blue Cross Blue Shield where he would see family members concurrently and bill for each person individually. Today there is an accommodation in the CPT codes for that, but at the time there was not. He went back and saw all the family members who were billed individually and if he grouped them together so that there was a block of time, that essentially takes care of all of the impossible days. When he did this: in 2012, Respondent averaged 9.3 hours per day , in 2013 he averaged 9.0 hours per day and in 2014 Respondent averaged 6.9 hours per day. This is found in RX 5. The recoding for the family visits is necessary. Mr. Doty was aware that Respondent had Lyme's disease and noted the graph on the last page of RX 5 showed a drop off when this occurred.

Respondent asked Mr. Doty to describe the uniqueness of his practice. Mr. Doty answered he observed that Respondent worked "yeoman's hours". He would see patients at night. He would make house calls. This added to the complexity. He believed probably a lot of time was not billed. In RX5, Respondent billed 13.6 hours daily not even with the adjustment for Family and while these were long hours, they were not unimaginable.

The second thing was the terms such as massive fraud were used to described what Respondent did. From his work in banking and insurance, what occurred was not how fraud was committed. From the data from Highmark, he noticed the complete absence of key indicators such as: structuring, phantom patients, dual books suspicious banking transactions, anomalous editing of electronic medical records. To commit fraud without electronic medical records is even harder. The person would have to create a paper trail of patient records. Respondent was completely transparent in how he billed Highmark a 24-billion-dollar corporation with sophisticated defenses against Fraud. Respondent Faxed the billing to

Highmark who electronically screens the bills. A 24-billion-dollar corporation just doesn't write a check. There's tons of quality control or screening. He did not see subterfuge. There was carelessness and sloppiness, but Highmark reviewed them and reimbursed them.

Respondent asked Mr. Doty whether the manner he was billing Highmark the same way over period of time or was he changing it. Mr. Doty answered that page 1 of RX 5 had a summary of the billing Codes for different years studied. It shows for example in 2012 98% of his billings were in CPT Code # 90806 which is a 45-minute outpatient therapy. In 2013 where coding changes were made there were no "90806" codes billed but there was still a high degree of consistency in what code he was using.

Respondent asked if he or his practice had been more well versed with billing could he have added on certain CPT Codes. Mr. Doty answered in 2012 there were no add on codes and he only billed 4 "90808" codes which are for 75-minute visits. From his experience with his Wife's practice Respondent probably could have billed more 90808 codes in 2012. Mr. Doty thought the reason for this was Respondent's lack of an electronic medical records ("EMR") system. Respondent asked whether he could have made more per hour if he had an EMR billing system. Mr. Doty answered for Code 99214 is an office evaluation with moderate complexity and to upgrade that to 99215 with high complexity, Respondent needed medical records, a time or factored based CPT Code and documentation with it. This is much easier to generate with EMR. Respondent asked Mr. Doty whether he assisted him in acquiring EMR? Mr. Doty answered, he suggested that Respondent acquire EMR and he immediately converted to EMR. Billing is impossible to manage manually.

Mr. Doty concluded Respondent was administratively overwhelmed and his office manager "in over her head". Mr. Doty said using EMR was the corrective action for this even if

he was running a private practice such as Respondent now does without collection from insurance. Mr. Doty's wife went on EMR in 2013. It is one of his wife's practices highest expenses. He set up his Wife's practice with EMR. He set up the backbone of the EMR systems. His Wife formerly practiced at Christianacare where she used paper billing and could not track her compensation. What he did for his Wife was set up a fully integrated system so if there were other practitioners, they could track their billing and reimbursement and compensation. Respondent used an EMR system such as ICANN which is set up for a sole practitioner.

Respondent asked Mr. Doty how many years his Wife was practicing in Delaware and he answered 20 years. Respondent asked whether he interacted with others in the mental health community. Mr. Doty answered that it was a small community and you get to know everybody. Mr. Doty understood that Respondent's practice was impossible to get into. People would wait months. His Wife on November 1 was scheduling appointments for April and May 2024. To get an appointment with Respondent, you had to "know somebody." His clinical practice was held in high regard. His billing was a mess, but he was an excellent practitioner. Mr. Doty said the issue with Behavioral Health Practices is scope. His Wife is a Nurse Practitioner whose focus is psychiatric medication management. Why it was so difficult to get an appointment with Respondent is he operated with a broader more holistic range. The allied services are not reflected in his medical billings. Mr. Doty was not aware of any patient of Respondent's that questioned his ethics. Mr. Doty added that the drug representatives know everything and if you want to know about a practitioner ask the drug representatives. They know all the gossip. There had never been any hint of anything other than quality care from Respondent.

As to why Mr. Doty did not believe he committed fraud, Mr. Doty explained although not a lawyer when he saw fraud in his experience a key element was intent to wrongfully gain and,

in this case, when he looks at the way the billing codes are structured, the way Respondent's bills were submitted to Highmark, and Highmark's reimbursement, he does not see intent. Instead, he sees disorganization. Everything was faxed into Highmark who probably did whatever reviews they do before reimbursement. He just doesn't see intent.

The dispute concerned families. When families were considered, the billing dynamic changed dramatically. If it weren't for the family issue, he does not believe there would have been a question. Outside of family he did not see other anomalies that would have raised a red flag and he started at the bottom in his 100 hours of evaluation. Respondent asked if he were still practicing would Mr. Doty be able to assist with practice procedure and Mr. Doty said yes. There are not enough good practitioners in this state especially those certified for children. It is almost impossible to get someone to see a person with a child or teenager with an issue and if he can provide advice in ICANN or procedures it's a community service to keep a good practitioner "in the game." He and his wife got Respondent on an electronic proscribing system.

Respondent asked Mr. Doty whether he assisted his then attorney Beth Moskow- Schnoll, Esq. He said he helped her. He and Beth would have calls and there was never anything else besides discussion of the case,

Mr. Doty wanted to leave the undersigned with the following. When Highmark gave the data dump, it had information concerning all practitioners from Concord Behavioral Health, not just Respondent. It had data for another Dr. It had data for a Nurse Practitioner. Respondent interrupted his answer and asked whether they all had separate tax ids to bill and Mr. Doty said what Highmark sent him was everything from Concord Behavioral Health . So, he has no confidence that the data only includes Respondent's hours. They may have cleaned up the data but when he removed Dr. Finkelstein's and the Nurse Practitioner hours, the average daily

hours Respondent billed patients dropped. They further dropped when he considered Respondent's agreement with BC/BS as to how to charge families. There was not rigorous analysis to conclude the Impossible Days. The second point is there was poor bookkeeping and sloppy practices , but that Highmark had to know what was going on and Respondent was completely transparent in what was faxed in .

There did not look to be any intent. In Mr. Doty's experience, if one wanted to commit health care fraud, they would do something such as sign up a bunch of Teamsters have them all come in for a short visit. You wouldn't see a stable consistent population of a small nucleus of patients billed in the same manner.

Respondent asked whether Ms. Bastien sent information only that pertained to him. Mr. Doty answered that was what he requested but not what he received. He received the entire data dump from Concord Behavioral Health. The other thing he got was HIPPA information on every single patient. He doesn't want a patient's name just an identifier and there were patients that were assigned to Respondent but were not his patients. He could tell there was reimbursement at the nurse practitioner rate. He spent time cleaning up the data. However, if that was not done, he could not track the outcome. Respondent asked him if he would compromise his integrity by testifying for him. Mr. Doty said he would not. Respondent had no additional questions.

b. <u>Hearing Officer's questions to Mr. Doty.</u>

With Respondent's permission since he was going to introduce certain exhibits, he asked Respondent if he wanted the undersigned to ask Mr. Doty to identify them. Mr. Doty identified Respondent Exhibit 1 / RX 1 as his CV or resume and answered it was accurate.

Respondent Exhibit 2/ RX 2 was Mr. Doty's Reimbursement Analysis for the practice of Respondent. The undersigned asked where the agreement that Respondent had with Blue

Cross/Blue Shield of Delaware was. Mr. Doty answered he was not stating there was an agreement but that if he grouped family together that was what the billing would look like. Mr. Doty would presume that any agreement that Respondent had with Blue Cross Blue Shield continued when it became Highmark. The State indicated the Agreement was set forth in page 24 of Respondent's Exhibit 3/ RX 3 (labeled CBH Concord Behavioral Health also titled Reimbursement Analysis for the practice of Respondent) . Mr. Doty indicated he did not do any independent verification of the agreement set forth on page 24 of Respondent's Exhibit 3/ RX 3. He said that RX 2 and RX 3 were very similar. RX 2 was accurate. RX 3 was similarly his report and dated June 2015.

Mr. Doty identified Respondent Exhibit 4/ RX 4 as his letter Mr. Doty wrote to an attorney Victor Battaglia, Esq.

Mr. Doty identified Respondent Exhibit 5/ RX 5 as part of a PowerPoint he prepared to summarize the reports in RX 2 and RX 3.

Respondent moved for the admission into evidence of Respondent Exhibits 1-5(RX 1 through 5). The State did not object and these were admitted.

The undersigned asked Mr. Doty whether he tried to recreate Respondent's billing from Respondent's bills. Mr. Doty answered he asked for the faxed bills from Respondent for the 3-year period from 2012, 2013 and 2014. The office manager supplied what she could but she did not supply all of the faxed bills for 2012, 2013 and 2014. What she supplied was consistent with what he saw from the data from Highmark. Mr. Doty testified there were only 2 sources of information from Respondent's side. One would be if he kept an electronic calendar. There was none. He did not have all of the faxed bills for any years. He said, "a ton were missing…. at least 1/2." He did not ask Respondent what happened to the missing faxed bills because he did not

think Respondent knew, but that was just a presumption. He should have asked. The faxed bills that his office manager sent to Highmark were in the office Manager/Cindy's handwriting. Nor did he ask Cindy the office manager for a specimen of how she compiled a bill for any particular date. He felt this was not "his charge". His charge was to understand Highmark's Impossible Day data. Mr. Doty admitted he did no analysis of the information for the G family and did not even know who they were. The undersigned asked Mr. Doty if he knew what information the Office Manager was given to create the handwritten faxed bills. Mr. Doty answered: I wasn't in the office at the time. He saw no information from Respondent. However, he indicated that it did not matter. Highmark would not have cared if Mr. Doty recreated from Respondent's information how much time Respondent spent with patients each day.

The undersigned asked whether Mr. Doty drafted his reports despite missing numerous faxes that Respondent sent to Highmark? Respondent started to object. Mr. Doty answered without allowing Respondent to finish his objection: "Right" but Highmark was asking him to review their data to explain "Impossible Days". Mr. Doty interrupted and answered .[11] The undersigned asked whether Mr. Doty's charge was just to impeach the accuracy of Highmark's data and Mr. Doty denied this and denied any predisposition. The undersigned asked if this were the case why would he have become angry when Respondent did not give him all the faxes for billing for the years in question. He said he was not angry just frustrated as he would have wanted to net the two out against each other as an additional check. He would have wanted to see if something was faxed in twice or if it was transcribed incorrectly. However, in his data there

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[11] Accordingly, this was treated at the drafting of this recommendation as a Motion to Strike from the record the underlined question. In this recommendation the undersigned denies this Motion to Strike and Mr. Doty's underlined answer can be considered as the question posed is relevant as it affects the credibility of Mr. Doty's testimony.

was no duplication of data.

Respondent asked if this would have fundamentally changed his conclusion. Mr. Doty had answered no. The State asked to proceed on cross examination and it was determined that the State could proceed and Respondent ask questions if he so chose on redirect.

c. <u>State's Cross Examination (Questions to Mr. Doty)</u>

The State asked Mr. Doty whether RX 3 was the first reimbursement analysis he did? Mr. Doty answered: he believed so. The State then asked whether there was some sort of response from Carolyn Bastien of Highmark? Mr. Doty answered that Carolyn Bastien may have responded. He believed RX 3 was a draft and he believes that RX 2 was his reply but he could not recall Ms. Bastien's email. The state read Mr. Doty page 4 of his report of RX 2 where under Summary Mr. Doty said. "Overall, we note the following with regard to the most recent response from The Company There were a number of concerns raised with the original methodology that were never addresses and there are still open issues." And asked whether when that was read in conjunction with the cover page of RX 2 where it says, " Reply to email from Carolyn Bastien dated June 9, 2016 4:39 p.m." that RX 2 was a response, Mr. Doty answered he "recalled now that Carolyn Bastien" had added up days and done some initial analysis, he "had some questions and she wrote Mr. Doty back a response. He doesn't have those emails as they may have gone to Respondent instead.

The State asked and Mr. Doty answered he was never hired to do this forensic analysis. The state asked how he got involved and Mr. Doty answered, "Karl is a beloved figure in the Delaware community" and he learned of the dispute through his Wife and there weren't a lot of folks with his experience in finance and medical billing and he offered help by contacting Respondent. The state asked then at some point he received the raw data dump from Highmark.

Mr. Doty believes he got from this from Respondent, not directly from Highmark. He expected an excel file and what he got was a comma delimited file and he converted it into an excel file.

In response to the State's questions, Mr. Doty answered as follows. RX 5 was his summary of his analysis. He prepared it for Beth Moskow- Schnoll, Esq. who was working with Respondent to bring her up to speed. He was aware that Respondent was criminally charged but he was not aware he was charged for the Impossible Days. Mr. Doty confirmed when asked by respondent that there was no evidence of anything but quality patient care ever delivered by Respondent. Respondent then objected stated Mr. Doty was not involved in aspects of the criminal case. The state replied it was not asking about specific involvement in the criminal case but was going to ask about SX 35 (Grand Jury Indictment against Respondent.). The undersigned denied Respondent's objection as premature. The State presented SX 35 for Mr. Doty to review. Respondent objected as to its relevance. The undersigned denied the objection as Mr. Doty's credibility like any witness was relevant.

The State then asked whether in Mr. Doty's forensic evaluation he considered any information from the G family. He stated he did so only to the extent their information was in the data file he was given and their data was considered like any other of Respondent's patients. The State asked whether he considered any statement that any member of the G family may have made during the investigation. Mr. Doty answered no. Respondent objected. This was denied as the state was entitled to examine Mr. Doty's basis for testimony. The state then asked whether he took into consideration any statements from the R family in his analysis . Respondent objected which was overruled for the previous reason. Mr. Doty answered he did not take into account any of R or N families' statements. Respondent objected again as it was outside of the scope of what he was asked to do analyze data from Highmark. The objection was denied as it

was relevant. The State asked whether he was aware that Respondent entered a guilty plea ? Mr. Doty answered no. The State asked whether he was aware that Respondent pled guilty to falsifying business records? Mr. Doty answered yes as he thought that was in the “paper”. The State asked whether he was aware that Respondent pled guilty to Forgery 3d and he answered that he did not think so.

The State asked that when he wrote the letter in RX 4 to Mr. Battaglia, Respondent’s attorney, was that in the criminal case? Mr. Doty answered he did not know. RX 4 summarized his findings. The Background and approach and other aspects of RX 4 are more detailed in some respects than RX 2 or RX 3. Also, he indicated Mr. Battaglia was an older gentleman and he did not send the raw excel files but sent him summaries and extracts.

In Answer to the State’s question, Mr. Doty in page 1 of RX 4 did testify he stated:

> *There is definitive forensic billing evidence to conclude that, while Respondent was sloppy, and in some cases basing submissions on a private agreement with BCBS, Respondent performed procedures with the patients reported in the BCBS data file.*

Mr. Doty responded to the State : When he referred in the above that Respondent was sloppy, he meant the collective office practice was sloppy. He deduced that the office manager was sloppy because when he went to the office her papers were “a mess. “ He thought she worked for Concord Behavioral Health.

The State asked what the “private agreement” was referenced in Mr. Doty’s above answer. Mr. Doty started to answer in page 24 of RX 3 and Respondent objected stating Mr. Doty would have limited knowledge because Respondent was bound not to discuss what was verbally agreed to and what was written down to, so Mr. Doty would not be privy to all the elements of this agreement. The objection was overruled as Respondent could ask him questions if he so chose later or could testify.

The State asked if Mr. Doty had read the private agreement as page 24 of RX 3 and what his understanding of page 24 of RX 3 was. Mr. Doty said he was not certain what the State asked. The State asked and Mr. Doty agreed that page 24 of RX 3 was an agreement for Respondent to rejoin in network was modification for 2 CPT Codes and was from 2002 and predates all the changes to coding that he referenced occurred in 2013. The State asked whether the CPT Code for 90801 referenced in page 24 of RX 3 was for" psychiatric diagnostic interview examination." Mr. Doty indicated he could look that up and answer. Mr. Doty answered it was for a diagnostic exam and the CPT code for "90806" reference on page 24 of RX 3 was for outpatient therapy 45 minutes. The State asked whether the Agreement on page 24 of RX 3 said anything about Respondent having the ability to bill for individual patients that he saw together as a family in 1 session. Mr. Doty said he was not a lawyer and this was beyond his scope. The State asked whether Mr. Doty saw any such language in page 24 of RX 3 that says that: Respondent objected. Mr. Doty answered: that he did know what that language would be[12]. So, the State asked whether Respondent was his only source of knowledge of the private agreement. Mr. Doty answered that it was and that he use information verbally communicated to him by Respondent as the basis for grouping individuals billed separately together in his analysis of the Impossible Day scenario.

The State then asked Mr. Doty what documentation he had that the family's he grouped together met together on those days. Respondent objected. This was denied as it was relevant. Mr. Doty answered he did not assume that the family members met together and that for

[12] The undersigned did rule at the hearing Dr. McIntosh objection where he did not state a basis for the objection so the undersigned at draft of this recomendation considered it as a Motion to Strike. Tte undersigned would not strike these underlined answers or grant the objection as they related to Mr. Doty's basis for his testimony and the credibility of his testimony.

example, it could have been Respondent met with the parent in the morning and met with the child after school. He did not presume anyone with the last name met at the same time. The State asked Mr. Doty if he had dates and specific times of appointments. Respondent objected. Mr. Doty answered he could not answer without going back and look at how he did this. Respondent objected that Mr. Doty would not have information if 2 parents came in and gave information about a son or daughter . This objection was denied as again Mr. Doty's basis for his testimony was at issue as a part of a credibility analysis. Mr. Doty answered that his basis for grouping was "large family groupings with similar time stamps using the same billing code" but that he would have to go back and look at the data to confirm this since 7 years had elapsed.

The State then asked Mr. Doty about his answer that there was none of the characteristic indicators of fraud such as structuring and what did he mean by "structuring"? Mr. Doty answered in this case structuring would be setting up a set low threshold billing that you thought wouldn't be challenged or questioned. He said a CPT Code 99215 is a high-level billing code and is always questioned. Structuring would be billing at the lowest rate that insurance companies reimbursed you. The State asked what he meant by a "phantom patient" as a characteristic indicator of fraud. Mr. Doty answered this would be a patient that Respondent never saw and added," One can buy a list of patients on the dark web. " In answer to the State's question about dual books, Mr. Doty answered that dual books were 2 sets of books. As what he meant by suspicious transfer, Mr. Doty answered that none of the transactions were large enough to be suspicious. Mr. Doty though admitted that you couldn't deduce these characteristics from the data he received from Highmark alone.

The state asked when he grouped family members together, did he prior thereto examine medical records and Mr. Doty answered no. The state asked did he check if the persons grouped

were indeed family members. Respondent objected. The objection was overruled. Mr. Doty answered no. However, he added he did speak to Respondent in the review and he went over the data with him.

The State asked about the 7-month period in 2013 where the billing codes were in flux and that confusion and whether he presumed Respondent was confused? Mr. Doty answered that Respondent told him he was confused. The state asked about what Mr. Doty meant in page 3 of RX 4 when he referred to "Enormous clerical errors" number wise?" Mr. Doty answered he could not put a number on it but there were systemic errors such as a bills being submitted on the wrong day. There were also keying errors that may have resulted from the bad handwriting of the office manager of Respondent that submitted them. That may account for the error concerning the pacemaker, the electro convulsive shock therapy in the office .

The State asked and Mr. Doty answered that his analysis was focused on analyzing the Impossible Day Data. The State asked whether he looked at the patients EOBs? Mr. Doty answered: he did not look at the patient's EOBs asking how would he have gotten them?

The State asked Mr. Doty to review State Exhibit 15/ SX 15 and asked whether it was the document that he was referring to when he stated Highmark simply totaled the hours and there was no indication as to how Highmark reached them. Mr. Doty answered he had not seen SX 15 before but he saw something similar that listed dates and hours per day. The state asked and Mr. Doty confirmed that what he reviewed included hours for providers other than Respondent. The State had no additional questions.

d. Respondent's Redirect questions for Mr. Doty

Respondent asked Mr. Doty whether the majority of errors he saw from the data sets sent from Ms. Bastien of Highmark, resulted from his office manager's handwriting? Mr. Doty

answered errors such as inclusion of providers other than Respondent were not a result of bad handwriting. When Highmark reimbursed Respondent at the Nurse Practitioner rate rather than the physician rate, that could not have been handwriting. Mr. Doty added that should have led to Highmark to question that bill even if the handwriting were legible. Mr. Doty answered reimbursement controls were careful. There was a computer system that looks for things. He said he was shocked that some of these things made it through their system. There was probably somebody on the billing department and somebody in the reimbursement department. Insurance companies not only examine for fraud, but examine for reasonableness. If there are too many of 1 sort of code it may be flagged as the insurance companies have predicative algorithms. In confirming family units, Mr. Doty discussed it with Respondent's office manager as well as Respondent. Mr. Doty answered that he did not believe the addresses were in the data sets given him by Highmark. Respondent ended his questions.

e. **Undersigned additional questions for Mr. Doty**

The undersigned asked Mr. Doty about whether SX 15 may have considered what he testified about errors and Mr. Doty answered he did not know. The undersigned asked Mr. Doty whether his Wife separately billed family members she saw together. Mr. Doty answered: no and added there is different CPT code that is meant for that with Add Ons but before CPT codes changed his wife never billed in that manner. The undersigned asked about when patients expect a bill. Mr. Doty answered that sometime patients expect a call after hours and expect not to be billed for it. There are times when his Wife does not bill for a short call of for example 10 minutes and times when his Wife bills and the patient does not anticipate it for example when they kept her on the phone for an hour. They should anticipate it, but they do not. Mr. Doty added: they are psychiatric patients.

Respondent asked about whether often patients dispute bills and Mr. Doty answered that it almost never happens as patients do not read their EOBs. Respondent asked whether he had any doubt any information Respondent gave him about his agreement with Blue Cross Blue Shield? Mr. Doty said, “he had no way of knowing one way or the other.” He analyzed the data both ways with grouping the family members and without.

The State had nothing further. Respondent had nothing further.

2. D.L.

D.L. testified under oath by zoom as follows as Respondent’s first witness on November 2, 2023, the 4th day of hearing.

a. Respondent’s Direct Examination / Questioning of D.L.

D.L. is a U. of Delaware undergraduate and graduate in International Political Economics. He works at the U.S. Dept. of Health and Human Service in the HHS’ Office of Recipient Integrity which deals with grant acquisition policy and accountability and involves analytics. He has known Respondent for 10 to 15 years. Respondent has treated his Wife and boys and helped him with medical clearances. He was generally aware of Respondent’s charges of insurance fraud where he pled guilty to 2 misdemeanors. He has used Blue Cross and Blue Shield Insurance. At times, he went to Respondent with other family members to be seen.

He regarded Respondent as the best diagnostician he has ever met. His family had been to other psychiatrists. Respondent’s treatment differed from these psychiatrists in time spent and his treatment of the whole patient. The time spent was always above the average of other providers. Other providers are 5 minutes late and 40 minutes later they are looking around as if to wrap things up. Respondent often spent between an hour and 15 minutes to an hour and half of a time in his appointments. There was no rushing by Respondent. During the period he was

using his insurance he had no concern that Respondent was taking advantage of him. His concern was that Respondent was not billing enough.

D.L. testified about an incident where Respondent saw his Wife just after she had seen her primary care physician. Respondent told her that he thought she might need a surgery for her gall bladder. It was typical for Respondent to check blood pressure and other diagnostics. His wife followed up and had gall bladder surgery.

Respondent's criminal issues did not change his opinion as to Respondent's skill and character. In his career, he has seen lots of wrongdoers and Medicaid abuse. His team and he studied the patterns. He didn't see any pattern here. He was shocked when he learned about Respondent's criminal issues as it was very different from what he and his family experienced. He felt there was something else going on. Maybe somebody had a vendetta. He could probably go into any Dr. in Delaware and find more severe examples of misbilling and things that do not rise to the level of requiring prosecution. He may have asked around to see others if there was a pattern and he didn't hear of anything weird going on. It was inconsistent with what he has seen. His personal opinion was that it was something personal.

b. <u>State's Cross examination of D.L.</u>

D.L. in answer to the State's questions testified to the following. D.L. confirmed that his entire family had seen Respondent. At times they met as a group with Respondent. At times they met separate. He did not know how many patients were in Respondent's practice. He refers other folks to Respondent for treatment. He is not directly involved in any other patient's care with Respondent. He does not know anything about other people's billings with Respondent. He would not agree that Respondent's billing practice differed with other patients. He did not agree his families billing was an anomaly. He had unspecified discussions with other families. He

never discussed anything with the G family, the N family, or the R family. He has not discussed Respondent's billing practices with all Respondent's patients.

3. B.D.

B.D. testified under oath by zoom as follows as Respondent's witness.

a. Respondent's Direct Examination / Questioning of B.D.

B.D. answered the Respondent's questions as follows. Respondent has been treating his family since 2004. He has treated 4 of the 6 members of his family, which included at different times, 2 of their children his Wife and himself. He was aware of criminal charges regarding Respondent. When he first started services with Respondent, he used his Blue Cross/Blue Shield Health Insurance. There were times where Respondent met with his youngest son E only. Other times Respondent met with B.D. and his wife and still other times, Respondent met their son E, and or their daughter S and him and or his Wife. He never felt Respondent was taking financial advantage of him or his family. The billing seemed normal and when he came in, he paid his co pays. The Bills from BC/BS appeared normal.

Originally Respondent saw his youngest son E prior to E starting kindergarten. E was seeing Dr. Finkelstein as well. Respondent's treatment of E continues through the present.

In 2007, his wife's sister committed suicide and her 3 children came to live with him and his Wife. They suddenly went from 1 to 4 children. This created a broader need for psychiatric services across his family. There was a time when he was out of work and Respondent continued to care for his family and did not even charge a co-pay. He never noticed any billing discrepancies. Rather he noticed the opposite. Respondent told him that as long as he was breathing, he would take care of him and his family. Nobody in his family were rushed in appointments. Rather the opposite occurred. The appointments often ran over. When that

occurred, Respondent would either allow for additional time then or arrange for additional time such as later in the same day. He arranged calls on the weekend to address challenges.

Once the 3 additional children moved in, he got the 3 additional children their own therapists. They used Respondent as the family connection. Respondent did more than just prescribe medications. He made detailed effort to understand what was going on. For example, there was a time when medication became supplementary at most for E. He met with E at times when E was available whether it be non-business hours and sometime in alternative settings such as hiking or at Respondent's house. Respondent discussed B.D.'s heart issues with him and worked with his cardiologist and cardiac surgeon so there was no adverse reaction to medication. Respondent supported his needs through that health crisis.

When he first heard about Respondent's criminal issues, he was more concerned about Respondent's well-being. He felt it just didn't "add up" with his experience with Respondent. He has since spoken to Respondent about it and it has not affected his interactions. He felt Respondent was concerned not just about a patient's psychiatric health but their overall physical health. B.D. felt his family would not be in their present good state without him.

b. **<u>State's Cross-examination / Questioning of B.D.</u>**

B.D. in answer to the State's questions testified to the following. Once his sister in laws 3 children came to live with him, 4 of them were treated by Respondent. The sister-in-law's children had their own therapists. Respondent worked with the information from the other therapists. The 3 children who came to live with him had been "in and out" of shelters their entire lives. Their eldest brother died in a car accident and their mother had addiction issues. Respondent was critical in helping with this transition. He had BC/BS insurance until 2019 and never saw any issues with billing. They were paying over $30,000 a year in medical expenses

for the family and they paid for the other children's therapists out of pocket. So, he was very aware of the billing.

He had no access to other patients about their billings from Respondent. While he met families in the waiting room ,they did not have billing discussions. The State asked whether it was possible other families could have had issues with billing. Respondent objected and it was overruled. B.D. reiterated he did not discuss with other families their billing. The state asked him if he knew any members of the G family. He said no and reiterated he did not have discussion with any other patients about billing with Respondent. The State had no additional questions for this witness. Neither did Respondent and this witness was excused.

3. Respondent's Testimony and Exhibits

Since there was time before the next witness was scheduled, Respondent moved for the introduction of his CV as Respondent Exhibit "7"/ RX 7. Respondent testified; it was accurate but not up to date. He would have added he joined the military in Medical School in the lead up to the First Gulf War. They did not pay for his school. He was in the Army for about 8 years.

Respondent testified about his background. His undergraduate was from American University. He went to Medical School at Meharry Medical College. He did a year of Internal Medicine at Georgetown University and his Adult Psychiatry training there. He did a 2-year Child and Adolescent fellowship at Johns Hopkins and his last year of that fellowship, he was made Chief Resident. He was offered a job by Johns Hopkins as a director of 1 of the inpatient units. He declined as he had too many student loans and instead John Hopkins offered him an instructor level position so he would teach the residents and fellows about real world psychiatry.

About 1997, he was approached by Blue Cross and Blue Shield of Delaware to become a consultant to help them concerning their policies and procedures for an organization BVCQA

which is a stamp that HMOs desire. In doing so, Blue Cross and Blue Shield of Delaware asked that he take their patients and join their network. Then he became chairman of Blue Cross and Blue Shield of Delaware's Behavioral Health Committee and their Behavioral Health Credentialing Committee.

He was approached by community members and then Governor Ruth Ann Minner who appointed him to the Delaware Board of Medical Practice. That started in 2001. He served on the Board until 2011 eventually becoming President. When his tenure was up, he was kept on the Board as a legislative liaison where he served concerning revisions to the practice act.

During that time, he was member of the Federation of State Medical Boards and was elected to their Nominating committee. In that capacity he was asked to volunteer time concerning the National Board of Medical Examiners.

In 2004, he was approached by members of the Christiana Care Health Systems to become a member of the Board of Trustees. He is still a member of that Board. Finances were discussed such as the Helen Graham Cancer Center and how Christiana Care would absorb other health facilities.

When at Georgetown he was awarded an honor for which resident attendings learned the most from. He contributed countless hours to organizations in Delaware such as CHADD, an organization for parents and children with ADD.

He came to live in Delaware when his wife was finishing her OB/GYN residency at Hahnemann in Philadelphia. He bypassed offers from the University of Pennsylvania and Yale University. In Delaware, he has made efforts to donate time to teach both Nurse Practitioner's studying at the U. of Delaware about psychiatric medications and Family Practice residents at St. Francis about drug interactions. Respondent's CV as Respondent Exhibit 7/ RX 7 was admitted

into evidence without objection by the State. The undersigned reminded Respondent that he had not yet moved for admission of Respondent's Exhibit 6/ RX 6. Respondent's next witness S.B. joined by zoom and Respondent stopped testifying with leave to continue later.

4. <u>S.B.</u>

Respondent called S.B. as his 4th witness who testified under oath by zoom.

a. <u>Respondent's Direct Examination Questioning S.B.</u>

S.B. testified to the following. When she first went to Respondent, she worked as a victim advocate for the Criminal Division of Delaware Attorney General's Office. She first went to Respondent to care for her son A.B. during his last year of St. Edmonds or first year at Sallies. A.B. was going down the wrong path. She feared A.B. would die before graduation of high school. At first, Respondent saw A.B. with S.B. and her husband. Sometimes they met together and sometimes he met just with her son A.B. and sometimes he met just with the parents or one of them. Respondent treated A.B. for more than a couple of years.

She never felt rushed and always knew she and A.B. would get the time they needed. Respondent was not a pill mill. Her son was able to effectively communicate with A.B. about what was wrong. It was an hour of time for A.B. every week. Additionally, Respondent talked her down when she was overly fearful about her son. Respondent not only involved the parents in A.B.'s therapy, but also his school.

S.B. never felt Respondent overcharged her. Respondent talked to A.B. about alternative ways to express himself that were not dangerous. She felt included in her son's therapy even when they were spared details. The parents and A.B. grew a lot as a result of Respondent. Respondent helped A.B. not to self-sabotage. He helped develop A.B.'s coping skills to address his anxiety. A.B. became more respectful in his communications.

A.B. had been to another counselor who told her that he couldn't help A.B. if he continued to lie. That was not what they experienced from Respondent. He saw A.B. as an adult and discussed A.B. going into the service. A.B. is now 36 years old, "doing great" and works at the Department of Defense. She attributes a lot of this to Respondent.

b. State's Cross Examination Questioning of S.B.

In answering to the State, S.B. testified that she paid for Respondent's services out of pocket for 4 or 5 years. She did not have any issues with Respondent's billing practices. She had not spoken with any of Respondent's other patients about his billing practices.

c. Hearing Officer's Questioning of S.B.

S.B. testified that her health insurance did not cover Respondent's services. It was not a situation where she did not place the claim on health insurance to preserve privacy.

Neither the State nor Respondent had any additional questions.

5. C.C.

Respondent called C.C. as his 5th witness who testified under oath by zoom.

a. **Respondent's Direct Examination Questioning C.C.**

C.C. testified to the following in response to Respondent. She was a litigator until about 3 ½ years ago and now helps to run a Hedge Fund. She has known Respondent for about 20 years. She met him concerning his treatment of her much younger brother for serious depression and anxiety. When she experienced similar challenges, she went to Respondent for treatment. Respondent had treated her and her birth family for about 20 years. She has since had her Husband and Children treated by Respondent.

She had insurance with Blue Cross and Blue Shield and at some point, it went to Highmark. She was aware of the criminal charges against Respondent and his plea to

misdemeanors concerning forgery and tampering with medical records. She was never concerned about billing when Respondent accepted insurance. She reviewed her Explanation for Benefits (EOBs) concerning her treatment with Respondent and the EOBs always matched actual treatment. She never felt rushed by Respondent.

She's had experience with other psychiatrists. She had a psychiatrist in law school for anxiety who managed her prescriptions. She had talk therapy with another psychiatrist Dr. Lydia Ynez. However, neither of these practitioners had the holistic approach utilizing medications and therapy the way Respondent did.

Respondent addressed her son's GI issues and anxiety. Her son suffers from severe anxiety to the extent when he started seeing Respondent, it bordered on agoraphobia. Respondent addressed all holistically. As to his availability, Respondent adapted to seeing her son. He did house visits when her son had difficulty leaving the house. He worked with the families' crazy schedules. When there were exacerbations, he would talk to her son over zoom.

Her awareness of Respondent's criminal issues did not change her opinion of Respondent's character or medical skills. People make mistakes. She regards herself as a "True Mama Bear" and brought her children to him despite knowing of them. She is very confident in Respondent's ability to help her children.

Her Husband has physical issues that limit his abilities to parent leaving her often to function as a single parent. Her encounters with Respondent have not just been about medications. Respondent has helped her children develop coping skills concerning their anxiety with talk therapy and has contributed to their success.

Respondent has interfaced in her children's lives by going to school meetings in a high school and dealing with different folks at the University of Delaware. When her son was at

Sanford, Respondent worked with the school to assist him to attend with persons exhibiting agoraphobic type symptoms. When they encountered obstacles with her son's attendance at Sanford, Respondent helped getting her son into the Centreville Layton School in the middle of his senior year. Her son's symptoms decreased and he graduated. She even recalled Respondent going to an appointment with her son and herself to an oral surgeon. Now her son makes his own dental appointments and goes alone. Respondent has had an appreciation of her family situation and has helped her help her children. Further, Respondent helped her and the children cope with her husband's health challenges.

Respondent additionally helped her daughter and son coordinating with their school's accommodations. Respondent first assisted her daughter while she was at the U. Of Delaware. Her daughter "bombed out" her first year and went into deep depression and was dismissed from college. Respondent helped her get a retroactive medical leave. She graduated with a double major. She now has a fellowship fighting "hoof and mouth disease" and African Swine fever. Her daughter did an internship with him. Respondent still treats her and her children. He helped her son pick employment to help his social anxiety and it helped. Respondent did not just prescribe medication. The medications helped but Respondent emphasizes talk therapy in his practice to address the roots of issues. She feels he has helped her family greatly and none of them would have attained their successes without his help.

b. **State's Cross examination /questioning C.C.**

In answering the State's questions, C.C. testified she and her family still treat with Respondent. She started with Respondent about 20 years ago. At some point, her insurance switched to Highmark. All her EOBs are accurate. She has not spoken to any of Respondent's other patients about Respondent's billing practices and cannot speak about Respondent's billing

practices for other patients with insurance companies. When asked if it was possible there were issues with Respondent's billing of other patient's insurance, C.C. answered that anything was possible. She was aware of Respondent's criminal issues when the News Journal published a notice of his arrest. It had no bearing on her trust in Respondent. She has always felt confidence in his abilities as a psychiatrist.

Neither party had additional questions.

6. <u>F.N.</u>

Respondent called F.N. as his 6th witness. F.N. testified under oath by zoom to the following.

a. <u>Respondent's Direct Examine/ Questioning of F.N.</u>

In answer to Respondent's questions, F.N. testified as follows. He retired from DuPont about 10 years ago after working there 38 years. His last position at Dupont was as the Chief Executive of Central Transportation Division, a joint venture with Phillips. His educational background is as an Engineer with an M.B.A.

He sought Respondent's professional services for his son. Things were not working out for his son in public school because, in F.N.'s opinion, a lack of resources. He found Respondent through "word of mouth." Respondent was one of the few people who gave him hope with his situation. He has known Respondent for about 14 years.

F.N. was aware of Respondent's criminal issues and pleas. He still holds Respondent in the highest esteem and regards him as an honorable person and an outstanding clinician. Respondent employs a holistic approach. For instance, he hesitated in giving medication. There were medications he recommended against and others he would start on a trial basis at low dosage. He has learned there was a lot of "trial and error" regarding medication. Another

example of his holistic approach was his son was able to call Respondent when a crisis arose regardless of when. Further, Respondent coordinated the care of his son with other medical specialists and assisted in gaining care for his son with other specialists even calling one he knew to get his son seen within a week. He experienced difficulties in obtaining his insurance's coverage of certain medications he wanted to try and Respondent assisted him with gaining coverage. He coordinated his son's care with a cardiologist.

He never felt rushed in appointments. If anything, he rushed them. He felt at times he was given more time than due. Beyond appointments, Respondent provided space for his son to do homework after his appointments. There were multiple times where Respondent stayed on after hours working on homework with him and his son. When his son had issues at college, Respondent drove to the college to speak to his son's advisors. When his son recently became angry with him , his son called Respondent and was seen immediately. He does not know any other physician who would do this.

Respondent practices with a broader more holistic approach. When his son had thyroid issues, Respondent discovered them through the order of labs.

As to Respondent's concern about money, he had a written agreement with Respondent for services. There were many times when Respondent did not charge him. There was a time when he left services with Respondent and instead utilized his health insurance with other providers for economic reasons. That was a "disaster." They had difficulty finding persons who could help them. He returned to Respondent. Around then, he entered the written agreement after Respondent started his concierge practice. Respondent supplied a sliding scale of payment and since he is retired charged him a lower than typical rate.

In Delaware, it was very difficult to obtain help in mental health. He obtained lists of

practitioners from insurance companies and when he called, he found them sometimes not willing to accept insurance or unavailable for 2 months. He believes it would be a "travesty" if Respondent cannot continue to practice and does not know what he will do for his family. There aren't enough professionals like Respondent in Delaware.

b. <u>State's Cross examination / Questioning of F.N.</u>

The State confirmed that F.N.'s payment arrangement with Respondent started after Respondent started his concierge practice and has existed longer than 2 years but could not recall when it started. During this Respondent interjected and said that after he stopped accepting Highmark BC/BS, he saw all his patients with Highmark BC/BS for 6 months with no charge before he started his concierge practice. The matter then returned with F.N. answering the State's questions. In response to the State, Mr. Noble answered when he first saw Respondent, he had tried other practitioners, Respondent did not accept the insurance he had with DuPont and was paying out of pocket to Respondent. He then went with the providers his insurance covered and that didn't work out.

There was some occasions where the office manager sent some billing to insurance and he was reimbursed by the insurance company. Then he went to other providers covered by his insurance and that did not work out. When he paid out of pocket, there were no issues where Respondent charged him for services he did not provide. Similarly, there was no overbilling when he came back to Respondent.

He was aware Respondent had other patients. F.N. had no communications with other patients about billing. He did speak to a friend who he referred to Respondent who was happy about Respondent's services. There were other persons who he knew received services from Respondent. He did not speak about billing with them. However, he thought they would have

told him if they experienced overbilling by Respondent.

7. Dr. J. Ge.

Respondent called J. Ge. as his 7th witness. J. Ge. testified under oath by zoom to the following.

a. Respondent's Direct Examination/ Questioning of Dr. J. Ge.

J. Ge. is the retired Director of the College School at the University of Delaware where she worked from 1995 until 2012. The College School serves children in grades 1 through 8 with learning differences. She learned very quickly upon assuming the directorship of the need for a team approach and sought the services of a Delaware Psychiatrist and contacted Respondent in 1996 or 1997 and asked if Respondent would consider working with her and families in support of children and the College School.

Respondent had a diverse skill set. In her 35 years of working with children with special needs, she regarded Respondent's diagnostic skills as "tops" of anyone she worked with. She raved about his ability to present psychoeducational data to parents, educators, and children. Respondent was always willing to give away his time to those who worked with complex children.

Respondent willingly provided workshops for her staff in subjects such as: ADHD Diagnosis and Intervention, Understanding ADHD medications, Workshops concerning Oppositional Defiance Disorder, Reactive Attachment Disorder, Anxiety and Depression in Children, Individualized Educational Plans (IEP) and 504 Plan Development through psychoeducational evaluation and interpretation and others. He had a tremendous positive impact on their program. **RESPONDENT NEVER CHARGED!** She presumes he did charge for those students in his practice. He was generous with his time and never rushed her. She

referred patients to him but did tell them there was a 1-2 year wait to get into his practice.

Respondent was always available to her. He observed students in the classroom setting at her school and attended IEP or 504 Plan meetings when his input was needed.

As to his character, she learned of Respondent's criminal issues through the News Journal and she sent him a text offering herself as a character reference since she valued him so highly as a professional. When Respondent asked if he was a "Pill Mill", J. Ge. answered she regarded Respondent as the opposite of a "Pill Mill". He started children very slowly on medication. He even indicated certain children who came to her school were overmedicated and tapered them off. She came into contact with many parents who used Respondent for their children but could not recall any of them being unsatisfied or changing from him. She never heard any negative feedback about Respondent other than from his ex-wife, Dr. LaShauna McIntosh who she knew quite well and spoke about Respondent negatively personally not about his professional treatment.

About 9 or 10 years ago, her sister was having a nervous breakdown and she called Respondent and asked him to see her sister after hours. Respondent worked with her after hours until about 8:30-9:00 p.m. prescribed medications and gave her sister guidance. As Respondent predicted to her sister, she was doing appreciably better within a month.

The undersigned asked and J. Ge. answered it was not easy in Delaware for a parent to find a child psychiatrist when she last lived primarily in Delaware in 2015.

b. <u>Respondent's Cross Examination/ Questioning of J. Ge.</u>

J. Ge. in answer to the State's questions testified as follows. Her sister was the only one in her family including herself treated by Respondent.

c. <u>Respondent's redirect Examination/ Questioning of J. Ge.</u>

Respondent asked J. Ge. if there was anything she wanted to add. The State objected. The Undersigned denied the objection as J. Ge. had asked if she could make a statement in Respondent's direct. J. Ge. asked the undersigned to consider Respondent's positive impact he had for Delaware's children and the community detriment that would ensue if Respondent was not allowed to practice. In her 45 years in working in education in numerous states, Canada and Japan, Respondent was the best pediatric psychiatrist she ever worked with.

8. **W.H.**

Respondent called W.H. as his 8th witness. W.H. testified under oath by zoom to the following.

a. Respondent's Direct Examination/ Questioning of W.H.

W.H. had COVID while testifying by zoom. She knew a little about Respondent's criminal charges and pleas. She did not investigate it. She first encountered Respondent when her son who was attending Centreville School. She was concerned he may have ADHD. Her son had a neuropsychological examination and she was referred by someone at the Centreville School to him. When under Respondent's care, her son did much better in school. When her other son had school difficulties, she took her other son to Respondent. W.H. got evaluated as well. Her treatment for ADHD has changed her professional curve and achievements.

She earned her undergraduate at the University of Pennsylvania in biology and went to law school. She moved to Delaware after her husband, an OB/GYN, finished his residency. She with another individual wrote a book about Public Assembly Facility law for the International Association of Assembly Managers. The NFL asked for their help with an ADA access program for the Super Bowl and Pro Bowl. She assisted with this for 8 years. Since the travel with 2 young children started to be a bit much, she stopped this. After that she did a podcast concerning

learning disabilities. She co-wrote a book about differentiated instruction in the classroom. She started doing a lot of “visual media stuff”. She became a township supervisor.

Usually, she came in with the children. There were times he dealt with them together and other times when he dealt with the child alone. Her health insurance was BC/BS and then Aetna and back to Highmark. She never thought Respondent’s billing was inappropriate. Respondent always asked about the children or how they were doing and took a genuine interest even discussing their hobbies.

b. Respondent’s   Cross Examination/ Questioning of W.H.

W.H. answered the State’s questions as follows. Her son that was the first to treat with Respondent is now 28 years of age. Her other son was 3 years younger and was in the Independence School when he began his treatment with respondent for ADHD. It was during their treatment where she had a conversation with Respondent who did an evaluation of her. Once she started on medications, it helped her focus. She is a supervisor in Kennett Township and it would have been difficult to do that had her ADHD not been under control. Her husband has never treated with Respondent.

She is insured through her husband’s employer. It is presently Highmark.   The State asked : When she said Respondent’s billing was appropriate, was she referring to herself personally or her insurer and W.H. answered: It was all hers and she knew the charges up front and it was always clear. Her children are no longer treating with Respondent, but she is. The only time Respondent’s billing practices came up with her and other parents were when parents were looking for a provider when her children were in school years ago and nobody ever complained to her. Respondent had good privacy practices. It was not like she would see another person when she went there. She knows she has not spoken to all of Respondent’s patients. She

would be hard pressed to name another of Respondent's patients.

D. Closing Arguments

On the last day of trial, November 3, 2023, the parties agreed to resolve the matter. Since their agreement required Board approval , the parties and undersigned agreed to the continuance of this matter to restart from where it stopped if the Board rejected the agreement. Respondent requested the admission of Respondent Exhibit 6/ RX 6 and Respondent Exhibit 8 which were admitted into evidence. Since Respondent did not wish to additionally testify and had no other witnesses, they further agreed if the Board rejected the agreement, the hearing would restart with closing arguments. The Board rejected the consent agreement on November 7, 2023. A zoom conference to reschedule occurred on November 14, 2023. At this Conference, the undersigned asked Respondent whether he desired to testify. Respondent indicated he did not wish to testify. The parties agreed closings would be by zoom starting 10:00 a.m. December 4, 2022 with each party having an hour and the State having 15 minutes available for rebuttal.

1. **<u>State's Closing Argument</u>**

The State argued it had established by a preponderance of the evidence that Respondent violated the following 5 sections of the Delaware Code: 24 Del. C. §1731(b)(1), 24 Del. C. §1731(b)(2), 24 Del. C. §1731(b)(3), 24 Del. C. §1731(b)(6) and 24 Del. C. §1731(b)(11).

First, the State argued Respondent violated 24 Del. C. §1731(b)(1) by use of false or fraudulent document engaged in fraudulent, deceitful, dishonest, or unethical practices in connection with the practice of medicine. He fraudulently submitted bills for the G family to Highmark as well as similar conduct for the N family and R family. For M.G. there were 12 office visits in 2011, but Respondent billed Highmark for hundreds more set forth in pages 1-5 of SX 12. A.G. went to 8 visits in January 2011, but was billed for many more as set forth in pages

6-8 of SX 12. L.G. went to 11 visits in January 2011 to September 2011, but Respondent billed for many more in pages 9-12 of SX 12. J.G. went to Respondent 3 times in 2011 and 2013, but was billed many more times set forth in pages 13-14 of SX 12. Each of those bills are shown in SX 10. The G Family testified there were significantly less visits than Respondent billed Highmark. A.G.'s testimony about their travel dates conflicting with dates billed corroborated this.

Mr. Doty, Respondent's witness, focused merely on the "Impossible Day" argument. Mr. Doty's testimony did not address any of the evidence that Respondent billed Highmark for the G, N or R family for visits they did not have. Mr. Doty's testimony was merely that the "Impossible Day" evidence was inaccurate. Respondent's character witnesses testimony was based on their personal experiences and is irrelevant to how Respondent's billed the G, N, or R families.

Additionally, Respondent's first response to the G family was apologetic to their email. He said nothing about his alleged agreement with BC/BS which permitted him to individually bill patients that he met together.

Respondent's billing for Impossible Days separately violated 24 Del. C. §1731(b)(1). SX 15 was a compilation of all hours Respondent billed Highmark each day from January 5, 2012 to February 12, 2015. It showed numerous days where Respondent billed for more than 24 hours and some where he billed for close to 24 hours and that was impossible. Mr. Doty testified this information was flawed and when they are corrected there were no impossible days. Mr. Doty said the hours on SX 15 included those for a Nurse Practitioner and Dr. Finkelstein and when they are taken away, it decreases the hours reported daily. However, Mr. Doty testified that maybe Highmark did remove the data, but was unsure because when Highmark supplied him the

data, he had to do some data manipulation to interpret it. He acknowledged that SX15 was not the data he received and even if it is assumed the data he reviewed had to be manipulated, he could not say the same about SX 15.

The State's witness Mr. Bock testified that the impossible day calculation in SX 15 were determined by checking Respondent's Tax ID # which was unique to Respondent. According to Mr. Bock SX 15 did not contain the Nurse Practitioner's hours or Dr. Finkelstein's hours because it was based on Respondent's unique Tax ID #. Mr. Bock further testified there were no issues as to the malfunctioning of equipment used by the EDW system or the AT Web System used to generate this report.

Mr. Doty also claimed the Impossible Day data was flawed because it did not account for the alleged special billing agreement that Respondent had with Blue Cross and Blue Shield. Respondent admitted this agreement predated the merger of Highmark with Blue Cross/ Blue Shield of Delaware and there is no documentation of it other than from Respondent. Respondent said the agreement was that he could bill patients separately when seen in a group setting. Mr. Doty's reliance on an agreement without proof was flawed. Also, in grouping families he relied upon what Respondent and Respondent's office manager said were family. There was no further determination by Mr. Doty that he met all the family members on the day in question. In RX 3, there was a letter between Respondent and BC/BS that dealt with billing rates for 2 specific codes but it said nothing about an agreement that Respondent could bill family members in the manner he alleged. That is Mr. Doty was relying on a document that did not state what Mr. Doty was relying on it for.

Additionally, Respondent's billed for patient visits to Highmark when he worked at events for 2 different pharmaceuticals companies in SX 20, 21, 22, 23. When Respondent

worked at these events between 5 and 13 hours, he still billed Highmark working with patients 22.04-32.66 hours a day. The primary dates were September 11, 2014, September 23, 2014, November 18, 2014, October 15, 2013, November 14, 2013, and December 3, 2013. This was another violation of 24 Del. C. §1731(b)(1).

A.G. showed Respondent billed Highmark for the G family for hours they were away. All of that was in regard to the 2015 and 2019 cases.

Mr. Doty's testimony there was no evidence of fraudulent intent from an intent to deprive on the part of Respondent was inaccurate. The entry of a guilty plea to falsifying businesses records and forgery is such evidence. Mr. Doty testified that Respondent's actions were transparent and a 24-billion-dollar company like Highmark would have known if there was fraud. The evidence was clear that Highmark missed it. Mr. Doty relies upon Respondent's statement that Respondent was confused when the Codes changed in 2013, but there was no other evidence than this.

Respondent separately violated 24 Del. C. §1731(b)(1) in the 2017 Case when Respondent issued prescriptions for controlled substances and there was no patient records or documents of medical justification for the medications prescribed. He wrote these prescriptions for his 3 children I.M., N.M and M.M. However, there were no records or justification for these and invited the Hearing Officer's attention to SX 27 as an admission of this.

Second, the State argued Respondent violated 24 Del. C. §1731(b)(2) which pertains to conduct that would constitute a crime substantially related to the practice of medicine. Board Reg. 15 defines certain designated crimes as crimes substantially related to the practice of medicine.

Board Reg. 15.3.16 defines one of them as Felony Theft . There is proof that

Respondent overbilled Highmark for the G family by more than $1,500 which is felony theft. Board Reg. 15.3.2.9 Identity theft is another of these crimes specifically related and there was evidence that Respondent used personally identifying information without the consent of the G family with the intent to commit felony theft, health care fraud and insurance fraud. Respondent violated Board Reg. 15.3.33 falsifying business records as a crime substantially related and respondent pled guilty to this. Board Reg. 15.3.54 defines insurance fraud as a crime substantially related to the practice of medicine. Respondent violated this by submitting claims with false information with intent to defraud. Board Reg. 15.3.55 defines health care fraud as a crime substantially related. Respondent engaged in a pattern of conduct by presentation of health care claims for the G family that totaled over $100,000. Lastly Reg 15.8 incorporates violations of Title 16 as crimes substantially related to the practice of medicine. In the 2017 case there was evidence that Respondent violated 16 Del. C. §4757 (obtaining a controlled substance by misrepresentation, fraud, forgery deception or subterfuge) and 16 Del. C. §4763 (possessing or consuming a controlled or counterfeit substance). The evidence was Respondent's statement about issuing a prescription for his children and not giving them to his children. Not having medical records, and not having documents for the medical necessity of the prescription and those statement from Respondent are in SX 26 and SX 27. SX 33 shows the prescriptions issued for the 3 children. There is testimony from Respondent at the hearing that he did not give these medications. His Ex-Wife testified Respondent and she had an agreement that N.M. and M.M. were under the care of Dr. Kingsley. However, the Kingsley records, SX 31 and SX 32, lacked any records that they had been prescribed medications. The Ex-Wife testified they were not on medications at that time.

Third, the State argued Respondent's lack of medical records for these prescriptions is a

violation of 24 Del.C. §1731(b)(3) (dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public). Board Reg. 8.1.13 says that failing to adequately document and maintain patient records and because of this alone his prescription for his children is a violation. The evidence of the overbilling in the 2015 case establishes a violation of Reg. 8.1.2(exploitation of the doctor/patient privilege for personal gain) and 8.1.4 (fraudulent billing for medical services) and 8.1.16 (any other act tending to bring discredit upon the profession).

Fourth, the State argues it established a violation of 24 Del.C. §1731(b)(6)in the 2017 case as they established that Respondent issued a prescription for dangerous or narcotic drugs other than for therapeutic or diagnostic purpose. He prescribed for his daughter I.M. who was not prescribed any medication. There was no diagnosis for her to be on the medication Respondent prescribed. For his sons, Respondent issued prescriptions that had been prescribed previously, but there was no contemporaneous diagnosis.

Fifth, the State argues it has established a violation of 24 Del.C. §1731(b)(11) that Respondent has engaged in incompetence, or gross negligence or pattern of negligence in the practice of medicine. All the evidence presented in this case provides this.

Lastly, the State concedes it has not presented evidence of a violation of 24 Del.C. §1731(b)(14) or of Board Reg. 8.1.5.

Based upon his violations and despite Respondent's character witnesses who spoke highly of him, the State requests a 3-year suspension of Respondent's license immediately suspended for Probation of 3 years and:

(1) within 120 days of this Board's entry of a final order, Respondent shall have an audit of his practice by an expert that is preapproved by this Board. The auditor shall ascertain if applicable if Respondent:

(a) timely and accurately bills patients and or insurance companies;

(b) complies with usage of CPT Codes; and

(c) Properly maintains patients records which shall include, but is not limited to, progress notes for each encounter, medications prescribed and documentation establishing the medical necessity of any prescribed medications;

They shall prepare a written report to the Board. Upon receipt of the written report, the Board may impose such additional conditions of probation deemed to appropriate to protect public health, safety, and welfare.

(2) Every six months following the auditor's report prepared in compliance with paragraph (1), Respondent shall provide written documentation to the Board that his practice continues to timely and accurately bill patients and/or insurance companies, comply with usage of CPT codes, and properly maintain patient records which shall include, but is not limited to, progress notes for each encounter, medications prescribed, and documentation expressing the medical necessity for any prescribed medications. Respondent shall be responsible for the cost of the audit and any subsequent costs arising therefrom;

(3) Respondent shall continue to utilize electronic billing and prescriptive systems; and

(4) Within sixty (60) days from the date the Board enters a final order Respondent shall complete three continuing education hours in the area of ethics. These continuing education hours shall be in addition to, and not in lieu of, the hours required for his licensure renewal.

(5) Respondent shall be solely responsible of all costs of this audit and the reports hereunder;

(6) If Respondent violates any of the conditions of probation, the suspension shall be immediately reinstated without the necessity of a hearing.

2. <u>Respondent's Closing Argument</u>

Respondent had no objection to the State sending the undersigned its requested

sanctions. Respondent wanted to send the undersigned a written document as to arguments. The State had no objection.

First, Respondent argued it was not his choice to represent himself. Charles Slanina, Esq. agreed to represent him if he had been given 90 days to prepare. Further, he has not had legal counsel review previous consent agreements offered by the State or any of the discovery offered by the State and argued he had been denied the right to be represented by an attorney.

Second, Respondent argued that his admitted lack of an electronic medical records system contributed to the inconsistencies in his documentation and billing dates.

Third, he acknowledged that with the number of patients in his practice, he was often behind in documenting office visits and this accounts for inconsistencies in the date the patient was seen, the date of note and the date the patient may have been billed. He readily admits sloppy record keeping and poor administrative oversight, but not to fraud.

The State presents a Highmark audit that merely adds up hours billed per day without forensic analysis. The state did not present what standard of care should have been applied to review those billings. He presented evidence from Mr. Doty whose testimony was not challenged by an expert. Nor was there a control in Highmark's audit where his hours were compared to a similar practice.

Mr. Doty pointed out a number of errors fatal to the Audit presented by the State.

These include that the data produced by Highmark was not cleansed of errors in calculating his hours of service. Investigator Kutch readily admitted to blindly accepting data presented by Highmark without employment of methods to ensure data submitted by Highmark was free of errors that negatively impacted Respondent's case. Furthermore, he admitted to only examining families that were similar to the G family in size if fraud was committed without

examining other families or patients in his practice. There was no accounting for the difference in the dates of service from the dates billed. Highmark's data failed to account for clear errors such as alleging he billed for insertion of a pacemaker or asserting, he saw patients he never saw as well as providing information which it should not have under HIPPA.

Further the was no account by Highmark for his special agreement with Blue Cross Blue Shield of Delaware that allowed him to bill for "multiple family members within 1 session as single hours" as well as having a representative of the family speak for other family members. Any account for this agreement was entirely absent from analysis of Impossible Days. When adjustments were made for these, there were no impossible days. Mr. Bock stated he was aware of his special agreement with Blue Cross Blue Shield of Delaware but was not aware of any specifics of that agreement. There was no testimony from Mr. Bock or other evidence presented by the State that accounted for this. This allowed Mr. Doty to make the adjustments that he did.

He wanted to remind the hearing officer that as of the early 2000s he had a special agreement with Blue Cross Blue Shield which allowed him to bill a family of 5 for 1 hour 5 separate hours. Also, there was no evidence presented by Highmark from any persons that signed the agreement. Some of the agreement was verbal and some of it was written. However, in the written part it precluded Respondent from discussing the particulars of the agreement with anyone. That tied his hands in discussing this with patients or families or other individuals.

Regarding the G family, in his settlement with Highmark the G family says they did not see him since 2011. However, the complaint moved the last date to 2015.

The State also presented charges against him for attempting to prescribe ADHD medications for his children all of which were dropped by the State. The complaint painted him as a substance abuser when there was no evidence of that.

The State charges him with various failure to report matters. He does not deny these. However, it was never intentional. He was simply in shock and distracted from his arrest for criminal charges against him and as well as suffering from Lyme's disease. The amended complaint alleges that he was fined and that did not occur. In addition, he was given a 1-year probation where he was only asked to serve 6 months. He had to go once a month for 5 months but it ended it after 6 months with his clean drug test. This clean drug test is further support of his lack of a substance abuse issue.

Nowhere in the amended complaint is there any mention of patient care or danger to the public.

Regarding grounds for discipline, there was no proof that he was unethical or was knowingly and intentionally fraudulent. He may have been sloppy about documentation and lacked administrative oversight but as Mr. Doty testified there was absence of the typical elements of fraud. He was never convicted of felony theft or any other felony. He was never convicted of insurance fraud or of healthcare fraud. The State dropped the possession or consuming a controlled or counterfeit substance charge and he was not convicted of this. Additionally, his ex-wife testified none of these issues would exist if their communication were better at that time. The State referenced his letter to the Board Investigator where he was being upfront and candid without an attorney and where he concluded from doing homework with his children that ADHD medication would be helpful. He reiterated the lack of any evidence that he had a substance abuse issue.

The State in alleging a violation of 24 Del. C.§1731(b)(3) dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public are not true. There was no evidence that he set out to intentionally exploit his patients for financial gain and hence no violation of

Board Reg. 8.1.2.

There was no evidence of intentional fraudulent billing as per Mr. Doty's testimony and a violation of Board Reg. 8.1.4. As to other acts that tend to discredit the profession and a violation of Reg. 8.1.16, his countless hours of volunteering as testified by his witnesses his commendation letter from the Lieutenant Governor's Office demonstrate his long record of protecting the public. His CV shows not only does he volunteer his time to the citizens of Delaware, but also to the Attorney General's Office and the Delaware Bar. He does not believe he is a person who in totality is a discredit to the profession.

Respondent admits his lack of EMR led to isolated instances of sloppy record keeping. However, there was no evidence of his intentional engagement or misconduct in the practice of medicine under 24 Del. C.§1731(b)(11). On the contrary, his witnesses established he always went above and beyond expectations. He diagnosed D.L.'s wife's need for a gallbladder surgery after she had been evaluated by her primary care practitioner.

Respondent also noted some mischaracterization in the amended complaint. Characterizing his billing practices as a massive scheme to defraud Highmark is a misrepresentation of the facts. His expert witness testified there were no elements of fraud and the state did not produce a witness or evidence to refute Mr. Doty's expert conclusions.

Respondent requests that should the undersigned feel that he violated any regulations he give weight to his state of mind as well as the overwhelming mitigating factors and the absence of aggravating factors in his recommendation of sanction. He urges the hearing officer recommend probation with appropriate conditions as stated earlier or in the alternative a suspended period of suspension stayed and probation in its place with conditions stated by the Deputy Attorney General in her closing. He believes that if one were to review his 26 years of

service to the State and the citizens of Delaware, they would find he is an honorable man with human frailties who admits to not having an appropriate process in place including EMR. However, these were not done intentionally to harm anyone and he believes he still has a lot to offer the citizens of this State with his experience.

The undersigned reviewed those written arguments that Respondent emailed on December 5, 2023 as the State indicated no objection to this. They merely restate Respondent's above oral arguments.

3. State's Rebuttal Arguments

In rebuttal, the State argued that it was not required to establish conviction of a crime for the violation of 24 Del. C. §1731(b)(2). It further argued that Respondent in his argument did not accurately depict his ex-Wife's testimony. His Ex-Wife said it would have been better if they had better communication, not that she wouldn't reported Respondent's prescriptions for his children to the DPR. Rather she testified she reported it because she felt an ethical obligation to do so.

B. Findings of Fact

A. This is a civil proceeding. The State has the burden of proof by a preponderance of the evidence. This means that when all the evidence is weighed, a factual finding is warranted if State shows the fact is simply more likely so, than not so. The following Findings of Fact are entered after careful consideration of all testimony, exhibits, demeaner and manner of presentation of the witnesses as well as the parties' oral arguments, pretrial emails, and prior orders. While all of the above were considered to reach these findings, for the sake of brevity they are not set forth in full below.

1. Respondent is an actively Licensed Physician, M.D. through March 31, 2025. Respondent was first licensed by this Board on May 7, 1996. (p. 4, SX 2) His specialties are listed as psychiatry and pediatric psychiatry. (p.7, SX 2). While Respondent has another pending case before this Board, as of the day of hearing the only discipline imposed upon Respondent were for unrelated child support delinquencies and tax issues lifted within 2 weeks of imposition. (SX 2). The allegations in the other pending case were not even reviewed and not considered as nothing has been established at a hearing yet concerning them.
2. Respondent was served with the Notice of Hearing August 30, 2023 as evidenced by his timely attendance from October 30, 2023 through November 3, 2023.
3. Less than a week before the hearing, Respondent on October 24, 2023 filed for a continuance. The State objected. This was a second continuance request where Respondent had been informed of a deadline to obtain a replacement counsel on April 25, 2023 by July 25, 2023 and the State had 9 witnesses it had to coordinate. The continuance request was denied by the undersigned because the public's need for

prompt resolution outweighed Respondent's reasons. Respondent had the complaint for some of the allegations for about 3 years prior to the hearing. At the time of consideration, it appeared Respondent had 2 prior counsel.[13] A prior continuance was granted when his counsel withdrew for irreconcilable differences. After this occurred, Respondent on April 25, 2023 stated he thought 60-90 days was a sufficient amount of time for him to obtain replacement counsel. Respondent was given 90 days and told that the matter would be scheduled after that with no other delays. The matter was scheduled well after the expiration of this 90-day deadline with Respondent's input.

4. Respondent treated the G family. M.G. had been friendly with Respondent who was also a customer at his jewelry store. The G family contains 4 persons: M.G., the father, A.G. the mother, L.G. the daughter and J.G. a son.
5. M.G. initially went to Respondent for treatment of his then minor daughter, L.G. who was in 8th grade at the time and was experiencing attention issues and problems in her relationship with him.
6. Respondent provided therapy in sessions where L.G. was present about 8 to 12 times. That therapy ended in 2011 when L.G. refused to continue discussing her matters in therapy with Respondent. L.G. credibly testified she had seen Respondent discussing matters at Father's store and felt her privacy had been compromised. L.G. believes the therapy ended in February, 2011. It is found these therapy sessions ended before June, 2011 as her Mother A.G. credibly testified to requesting L.G. to see him one more time

[13] At the hearing the name of 2 additional prior counsel were mentioned: Beth Moskow-Schnoll, Esq and Adam Balick, Esq. It is not certain whether Ms. Schnoll represented respondent in this matter or the criminal matters. However, regardless of whether there were 2 or 4 prior counsel, the reasons for the denial of continuance are the same.

when school had started and L.G. refused This was not materially different from what A.G. emailed Carolyn Bastien. Further L.G. testified she was out of state at camp without phone access from sometime in June through the middle of August, 2011.

7. After L.G. stopped therapy with Respondent, Respondent continued to provide prescriptions for L.G. for about a year. L.G. would pick them up from the reception area of Respondent's office[14] where they were left for her. While Respondent from his SOAP notes attached as SX 9 says he last treated L.G. on May 23, 2013 (p.417 of SX 9), the largely consistent testimony of the G family as to when Respondent last saw L.G. was more credible than the contrary information.

8. In billing Highmark, Respondent provided the information to his assistant who faxed a handwritten bill to Highmark based only on the information respondent gave her. This occurred even when the assistant questioned Respondent about the information.

9. Respondent billed Highmark for 187 visits with L.G. despite seeing her for therapy about 12 times.[15] This was done intentionally by Respondent who financially gained when paid by Highmark until he reimbursed them as a part of his settlement with Highmark where he admitted no wrongdoing. Even the retention of Highmark's'

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[14] Respondent's lack of documentation or monitoring while prescribing L.G. was not before the hearing officer and that is neither decided to exist on not exist. The State never alleged it in its amended complaint which would have notified Respondent and enabled him to defend against it. Respondent was entitled to notice of this sort of allegation so he could defend against it. Consistently. the State never argued it as a violation or a basis for invoking harsher discipline.

[15] While Investigator Kutch relays A.G. and L.G. telling him that L.G. saw him about 25-30 times. It is believed 12 is more accurate and perhaps when A.G. and L. G. told him this, they were including times where L.G. picked up prescriptions However, even if the Respondent saw L.G. 18 more times than as indicated it would not change this recommendation as Respondent billed Highmark for L.G. 187 visits. Moreover, Respondent's documentation or monitoring of L.G. was not before the hearing officer for discipline and was not considered by him in this matter at all as it was not set forth in the State's amended complaint where the only allegations as to Respondent's prescriptions concerned his children.

payments from the time Respondent received them until he reimbursed Highmark provided Respondent financial benefit from the use of the money that was not his until reimbursement was made.

10. Respondent billed Highmark for a visit with L.G. on 4/25/11 when L.G. was in Aruba with her family. Respondent even had a SOAP note for this 4/25/11 visit where he stated, "Patient refuses to engage in any family therapy at this time with her parents in the room at the same time……." (p. 131, SX9). On 4/13/12, Respondent billed Highmark for a visit with L.G. when L.G. was on a cruise to Puerto Rico (P. 243 SX9).). L.G. had no appointment of any sort with Respondent on these dates while she vacationed with her family or was on a trip with her Mother or in England with a friend. The vast majority of the SOAP notes created by Respondent for his visits with L.G. concern appointments that never occurred. In making these and similar findings of fact for other members of the G family, the undersigned considered Respondent's statement that his SOAP notes and billing had inaccurate dates as not done contemporaneous to the appointment. Yet, the pattern of billing in SX 12 for the weeks following the 2011 vacation are the same. Moreover, there was mention of this vacation as having occurred the week after it occurred in Respondent's SOAP Note for L..G. of 5/2/11.(p. 135, SX 9). Respondent solely controlled when his bills and SOAP notes are dated (or if not dated). Respondent did not submit what he gave the employee to assist him with his billing or what that employee faxed to Highmark or any calendar of patient visits.

11. Respondent saw J.G. the son of M.G. and A.G. J.G. was 23 years old when he testified and 10 years old when he first saw Respondent. Respondent saw J.G. for appointments 2 or 3 times, twice in 2011 and possibly once in 2013 when A.G. asked Respondent to

see J.G. about something he experienced in school. She was not certain if Respondent actually saw J.G. in 2013, but she did contact him and request it.

12. Despite seeing J.G. less a than a handful of times, Respondent billed Highmark for 97 visits with J.G. from January 17, 2011 to March 10, 2014 more than 90 times without providing any treatment to J.G. This was done intentionally by Respondent who financially gained for the reasons set forth in paragraph 9.

13. Respondent billed Highmark for a visit with the son J.G. on 4/27/11 when J.G. was in Aruba with his family and Respondent wrote a SOAP note that J.G. told him there were times when he worried "whether his sister will be safe around him…." (p.43, SX 6). The vast majority of the SOAP notes created by Respondent for his visits with J.G. concern appointments that never occurred with him. The undersigned in making the finding in this paragraph considered Respondent's claim that the bills and SOAP notes had incorrect dates at times due to Respondent's negligent practices. The undersigned examined the bills for J.G. in the 2 months after J.G. was with his family in Aruba. They show bills weekly for J.G. to Highmark and 12 bills for J.G in May and June 2011 (P. 13 SX 12). The SOAP notes for J. G. from April 20, 2011 through the end of June 2011 period make no mention of a trip to Aruba (p.42 SX 6-p.61 SX 6). This absence of what was an event likely to be discussed was one of many reasons the undersigned did not find the above excuse valid.

14. Respondent saw A.G. the mother of the G family alone about twice. A.G. saw Respondent twice with her husband, no more than twice with her son J.G. and A.G went with her daughter once initially. Counting all of these, Respondent saw A.G. about 8 times. Respondent billed Highmark for about 151 visits for A.G. more than 140 times

that he actually treated A.G. This was done intentionally by Respondent who financially gained when paid by Highmark until he reimbursed them for the reasons set forth in Paragraph 9. These included visits when A.G. was out of the continental U.S. in Aruba or on a cruise to Puerto Rico with the rest of the G family.

15. While in Aruba per Respondent SOAP note dated 4/27/11, Respondent said that A.G. in an appointment told him she was close to calling 911 out of a fear of violence from L.G. (p.62 SX7). This appointment likely never occurred as A.G. was in Aruba with L.G., M.G. and J.G. (p..2 SX 18). Similarly in the SOAP note dated 4/13/12 Respondent said A.G. had an appointment where they discussed difficulties with her family of origin and current family. (P. 136 SX 7). This likely did not occur as A.G. during this time was on a cruise to Puerto Rico with all current family members J (p.8-16, SX18). The vast majority of the SOAP notes created by Respondent for his visits with A.G. concern appointments that never occurred.
16. A.G. received the Explanation of Benefits forms from Highmark. These set forth Respondent's bills for the visits that did not occur. However, like many people she opened them up and never read them until she discovered Respondent's wrongful billing in late March 2014. A complaint was made when she discovered this.
17. The father M.G. and Respondent were friends for about 2 years before any of the members of the G Family went to Respondent for Psychiatric services. M.G. in conjunction with his wife or either of the children went to no more than 10 appointments with Respondent. (p.1 SX 12). There were 2 separate appointments with Dr. Finkelstein and even presuming these are accounted for as a part of M.G.'s visits with Respondent,

the number of visits M.G. had at Respondent's office grows to 12. They ended by February 2011.

18. Numerous times after February 2011, Respondent would drop by M.G.'s store and discuss matters that friends often discuss. At times they discussed their families as friends typically do. The conversations included other matters as well as he and Respondent were friends. M.G. invited Respondent to his son's bar mitzvah. He went to some sort of art event where Respondent's present wife was involved. Respondent and he even went to the presidential inauguration together.

19. Respondent's above visits to M.G's store by Respondent were not scheduled by either Respondent or M.G. Nothing from Respondent's visits to his store where they had conversations over the broad range of topics would have caused a reasonable person to assume or even guess they were having an appointment for care with a psychiatrist. There were no contextual clues to M.G. that these were therapeutic visits to treat him or his family and thus nothing to alert him that Highmark was being billed for these visits. This is not changed by Respondent obtaining an authorization for M.G. and A.G. to provide information about their children or each other. This is the sort of authorization one might anticipate being signed when part of the therapy involved the family. Moreover, the EOBs supplied after the appointment did not place M. G. on notice that these were therapeutic appointments to M.G. (or any member of the G family). M.G. simply gave the EOBs to his wife A.G. who never read them. This is not unlike how many patients treat EOBs.

20. Respondent billed Highmark not only for M.G. but additionally for M.G's wife, A.G., his daughter, L.G. and his son, J.G. (all without either M.G's or A. G's knowledge) for

hundreds of times when there was no appointment. Many came from times other than when Respondent went to M.G.'s store. That insufficient basis did not even exist for these.

21. The G family were never seen all together and the times when Mother A.G. and Father M.G. were present with either J.G. or L.G were less than 10.

22. Respondent did have a September 5, 2002 agreement with Highmark's predecessor, Blue Cross Blue Shield of Delaware as set forth on p. 24 RX 3. However, that agreement only permitted Respondent to bill CPT Code 90801 $250 and CPT Code 90806 $150. While Respondent claims an oral modification of this Agreement allowed him to separately bill each member of a family seen or discussed at an appointment with a different family member, the undersigned does not find this credible and finds no such oral modification existed.

23. The undersigned does not believe the wrongful billings set forth above with the G family occurred merely from Respondent's negligent misconstruction of the agreement he had with the insurer. Respondent solely controlled the information he gave to his assistant who relayed it in the handwritten bills faxed to Highmark. Respondent solely picked when he went to see M.G. at his store without input from the G family. When he billed members of the G family without seeing any of them, Respondent solely controlled this as well. Respondent alone was responsible for his SOAP notes many of which were fictitious. These all support intentional design by Respondent. Moreover, the use of CPT Codes by Respondent inconsistent with their meaning occurred. No insurer ever gave permission for Respondent to do this. The unlikelihood of this was supported by Investigator Bock.

24. Mr. Doty's testimony does not affect the findings of fact regarding the G, R or N family as he admits he never spoke to them.

25. The undersigned finds that Respondent billed Highmark for members of the N family and R family for fictional visits. It corroborated what members of the G family testified live about, with an irrelevant exception. Mother in the R family said the bills that pertained only to her were accurate.

26. The undersigned does not find it credible that the overbilling of the G family merely was caused by sloppy billing practices, a lack of administrative oversight on the part of Respondent or that these simply resulted from the practice of bills and notes not being completed shortly after an appointment and thus having the wrong dates on them. In reaching this conclusion, the undersigned reviewed all of the SOAP Notes. As another nonexclusive example there were SOAP Notes for Daughter L.G. and Son J.G. when they were in overnight camp in Pennsylvania without phone access to Respondent.

27. **The undersigned does not and the Board should not consider the settlement that Respondent made with Highmark concerning the G family or the Impossible Day Scenario as admissions by Respondent to any wrongdoing.** That is expressly set forth in Paragraph 2 of each agreement. Nor does the undersigned consider Respondent's payment admission of any wrongdoing.

28. Respondent prescribed controlled substances ADHD medications to his 3 children without medical documentation, an examination by him or medication logs (SX 26). Nor did he communicate these prescriptions to the agreed to treating physician for his sons (M.M.) and (N.M.), Dr. Kingsley. To the extent, Respondent claims this occurred because he did not recall Dr. Kingsley's name, that is not an excuse as he could have and

should have talked to his ex-Wife before issuing prescriptions and could have asked her. While it is believed that Respondent observed his children and the diagnosis of ADHD is based upon observation, it did not include observations from his Ex-Wife. Wife testified that her daughter had no medical necessity. Wife credibly testified unlike her sons there were never times when her daughter required ADHD medications.

29. That brings the undersigned to the allegations that Respondent billed for Impossible Days a day where it was impossible for him to work the hours billed. The undersigned does not find sufficient proof that SX 15 State's exhibit concerning this is accurate, but does find that Respondent billed Highmark for hours that he did not work as supported from the evidence of the G family and the R and N family.

30. The undersigned is not convinced that it is more likely so than not so that the Data that Highmark used to compile SX 15 removed the hours for practitioners other than Respondent. SX 15 was created first from data from a query input into a Software program EDW which generated a unique set of data with a unique SAS #. Depending on what query was made, the data could have included other providers at CBH mostly owned by respondent or would only have included Respondent's data. The investigator that made this query originally, Carolyn Bastien, did not testify. She had retired. It cannot be known then whether the query she input into EDW to create the data utilized the EIN # for Concord Behavioral Health ("CBH") or the equivalent for Respondent. It further is not likely that her query to obtain the Data was based on Respondent's NPI # which would have just generated Respondent's billings to Highmark[16]. Investigator Bock

[16] Respondent did not work for multiple practices where an NPI# draws in their information.

originally testified the parameters he would have used for the Data report would have been Respondent's Tax ID Number and the dates of service and that would bring in everyone that was billed by Respondent and CBH. On cross examination, Mr. Bock admitted not knowing whether Respondent's own Tax Id # was used or that for Concord Behavioral Health. If the Tax ID # for Concord Behavioral Health were used that would have generated the other providers hours billed as well as Respondent's. If CBH's Tax ID # was used to generate the information that went to At Web that led to the creation of SX 15 [17], SX 15 could include the daily hours for these other practitioners and is flawed. This leaves SX 15's depiction of how many hours Respondent billed in a particular day questionable. While by Mr. Doty's own report, Respondent was responsible for 89.4% of the sums collected by CBH, the other provider's had different billing rates, and the undersigned cannot translate SX 15 into daily hours using a pro rata analysis. Despite this, the undersigned does find at a minimum on 10/15/13 Respondent billed for Highmark for services he did not provide as he was away in Havre De Grace and Baltimore for 12 hours at some sort of conference for the pharmaceutical company Otsuka. This left him with little time to see Highmark patients. SX 15 indicates Respondent billed Highmark 32.66 hours for this date. Even if we found this included the 2 other practitioner's Dr. Finkelstein and the Nurse Practitioner who each billed Highmark 10 hours, that would still mean Respondent billed Highmark 12.66 hours which was impossible if he was out of town 12 hours at a conference. [18]

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[17] SX 10 suggests the Tax ID # for Concord Behavioral Health was utilized on the bills as it Concord Behavioral Health's Tax ID # that appears on SX 10. This would have led to SX 15 for example including Dr Finkelstein's hours.

[18] The undersigned is reluctant to interfere with this finding based upon Mr. Doty's testimony that Respondent lumped days together when billing. Mr. Doty testified there was no review of respondent's calendar of visits as a

31. The undersigned was not persuaded by Mr. Doty's testimony except insofar as noting the issue as to the possible inclusion of other practitioner's hours in SX 15[19], that patients often do not review their EOBs, rarely complain about bills and there is a shortage of qualified psychiatrists in Delaware. The largest flaw in Mr. Doty's testimony is he assumed the accuracy of Respondent's oral modification of the billing arrangement. The undersigned was especially unpersuaded by Mr. Doty's testimony that the level of overbilling could not have occurred as Highmark is a 24-billion-dollar corporation with controls. From this Mr. Doty insinuates the special agreement Respondent had been what Respondent relayed. Mr. Doty testified to no information as to what internal procedures Highmark had or did not have to conclude this. Respondent additionally did not testify or provide evidence as to specifics of this special agreement such as what was said, by whom and when it was said so that the undersigned could better determine credibility. Mr. Doty admitted he did not have at least ½ of the faxed bills sent to Respondent in SX 15 and no electronic calendar for respondent's appointments. Mr. Doty did not review what Respondent gave to his assistant to create any bill.

32. Respondent pled guilty to Forgery 3d, a violation of 11 Del.C.§861 and falsifying business records, a violation of 11 Del.C.§871 on August 27, 2019 (SX 36) and adjudged guilty of these offenses on September 17, 2019 (SX 37). Respondent received suspended sentences of these of 1 year total suspended for probation of a year and he was released from probation early.

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basis to state this.

[19] Even with this, Mr. Doty indicated he was uncertain if in SX 15 the issues as to the possible inclusion of other practitioners was eliminated.

33. Respondent presently does not accept insurance and has direct billing arrangements for patients. There is no evidence from any of Respondent Witnesses that Respondent ever overbilled them. Rather, there was evidence of Respondent's reduction and waiver of fees. However, these witnesses had no contact with the G, R or N family so they do not affect what the undersigned has found credible about what occurred to these families.
34. Respondent has helped and continues to help those patients who testified about him. There is no evidence presented that Respondent has an addition issue or intended to improperly use the prescriptions to his children himself.
35. Except insofar it relates to Respondent's prescriptions for his children, there is no evidence that Respondent negligently provide medical services in these proceedings. It is noted that this factual finding has no bearing on any other complaints pending as they were not a part of this matter.
36. Respondent has been generous in volunteering his medical services for the Delaware community and to this profession for decades. His patient witnesses raved about his services and he has publicly committed his time to mental health services in many ways including during COVID and to the homeless population as indicated ex-Lieutenant Governor Hall- Long in her thank you letter.

III. Conclusions of Law

A. The undersigned recommends the following Conclusions of Law.

1. It is a matter of public policy in Delaware that laws should be adopted which ensure that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine in this State. 24 *Del. C.* §1701. The Board of Medical Licensure and Discipline has been chartered by the legislature to serve as the State's supervisory, regulatory, and disciplinary body for the practice of medicine here. 24 *Del. C.* §1710. The Board is authorized to promulgate rules which carry out its powers and duties as authorized in the Medical Practice Act. 24 *Del. C.* §1713(a)(12). The Board is vested with the authority to hold disciplinary hearings with respect to its licensees. 24 *Del. C.* §1713(a)(11). Upon a showing of good cause, the Board may impose appropriate professional discipline upon its licensees. 24 *Del. C.* §1713(a)(9). The Board is also authorized to adopt rules which establish guidelines for the imposition of professional discipline. 24 *Del. C.* §1713(f). Under 24 Del. C. §1731(a) "A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section". There are 26 types of unprofessional conduct defined in 24 Del. C. §1731(b) (1) through §1731(b) (26). The State has alleged Respondent violated §1731(b) (1) , §1731(b) (2), §1731(b) (3), §1731(b) (6), and §1731(b) (11), as set forth below.

2. 24 Del. C. §1731(b)(1) defines unprofessional conducts that subjects a licensee such as Respondent to discipline to include:

   "The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with a certification, registration, or licensing requirement of this chapter, or in connection with the practice of medicine or other profession or occupation regulated under this chapter."

When a Dr. submits a bill for medical services for a patient treated in Delaware whether to an insurance company or directly to the patient, they are holding themselves out to the public as authorized to practice medicine in this state. This is engaging in the "Practice of medicine" under 24 Del. C. §1702(12)a.

The State has argued that there were 34 visits of the 4 members of the G family, the father M.G., the Mother A.G., the daughter L.G. and the son J.G. The undersigned believes the number of actual visits was inconsequentially less about 31.[20] The State argued Respondent billed Highmark for hundreds of visits. The undersigned counted about 607[21] visits where Respondent billed the Highmark for the G family. That is the undersigned essentially accepts the State's argument. The State has established by preponderance of the evidence, that Respondent billed Highmark for hundreds of appointments to the G family to A.G. , L.G. and J.G. which never occurred.

Respondent claims he was entitled to bill Highmark for the G family (and other families such as the R and N family) when a member of the family such as his friend M.G. discussed another family member he treated. M.G. denied such a communication. Respondent inconsistently apologized to M.G. when M.G. initially accused him of overbilling. That impairs Respondent's contention of a special agreement with Highmark's predecessor that allowed this.

Respondent contended this arrangement allowed Respondent for example, if he saw M.G. for an hour and in that hour M.G. discussed his relationship with his wife A.G. and daughter L.G., Respondent could bill M.G., A,G. and L.G each 1 hour for a total 3 hours rather than just 1 hour for M.G. Respondent has not supplied sufficient evidence that he had a basis to believe that Blue Cross Blue Shield ever authorized billing in this manner. P.24 of RX 23 does not support it. Nor was there any

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[20] However, it would not matter to the undersigned if the number of visits included the times when L.G. picked up her prescriptions from Respondent's office, even if this were 36 more visits (once a month for 3 years. While the undersigned does not believe this accurate, it simply still does not matter as the visits would be about 70 a fraction of those billed 607.

[21] 607 may be off by one or two but that is meaningless.

specific evidence of any specific oral or written communication with any employee of any insurance company from which the undersigned could find such authorization. Respondent merely relays it in a conclusory manner.

Furthermore, the undersigned finds it unlikely that any insurance company ever would have authorized billing in this manner. This was substantiated by Investigator Bock who testified to not ever hearing about an arrangement like this. One reason was Investigator Bock credibly testified is that it conflicts with the established CPT Codes at the times of billing and insurance companies would be unlikely to change the established common meanings of these codes. While this was true for the entire time Respondent billed the G family , this is especially so after 2013 when the new CPT codes provided a method for billing for families in therapy. Lastly, the undersigned views this as improbable because the insurance company could not easily check it. For example, suppose Respondent and M.G. meet for an hour during which M.G. in part discusses A.G. and L.G. and bill 3 separate hours. The insurance company contacts A.G. and asks her whether she met with Respondent who answers: she didn't. The insurance company would then have to check its records for other family members to see if they met with Respondent. The unwieldiness of this is so obvious the undersigned finds it unlikely that any insurance company would agree to it.

As to Respondent's visit to M. G.'s store where he had general discussions with him as a friend that may have included M.G.'s casual mention of his family, that was not a billable appointment. Neither M.G. nor any reasonable person would have been alerted they were being billed for these routine friendly conversations. They were not at M.G.'s request or initiated by M.G. Respondent made no appointment to do this. Respondent's arguments that this was agreed to between him and the insurance company appears contradicted in his Email or text reply to M.G. of March 31, 2014 at 11:05 a.m. where he said " Hi M, These <u>mistakes</u> appear to be significant but I assure you Cindy is already starting the process of returning any and all funds that were mis billed. I believe <u>part of what may happened is you guys were billed as a family as each one signed in as a patient</u>." If Respondent was authorized to bill all members of the G family, why would he have characterized this as a mistake. Also, how can a non-

present family member sign in? Respondent even billed members of the G family when they were all outside of the country on a family vacation. As to these occasions there was never any visit with M.G. or anyone else from the G family or even a call. He billed the children when they were in camp and without phone access. He billed M.G. when they were at a presidential inauguration together.

This overbilling of the G family was intentional and fraudulent. The undersigned does not believe they were merely the result of negligence. In coming to this conclusion, the undersigned reviewed all the testimony, considered all of Respondent's exhibits (including p.24 of RX 3 where Respondent had an agreement with Blue Cross Blue Shield of Delaware to charge CPT Codes 90801 and 90806 at higher than typical rates) and all of Respondent's statements even if it was part of his question to a witness, or his argument. The undersigned reviewed all 4 reports of Mr. Doty, RX 2, RX 3, RX 4, and RX 5. There were defects in them. For example, page 65 of SX 10 shows on 4/13/12, Respondent billed CPT code 90837 for an appointment with L.G. However, Mr. Doty in p.1 of RX 5 indicated Respondent never billed CPT Code 90837 in 2012 at all. That is not only was this a bill for a nonexistent appointment as L.G. was on a cruise with her family to Puerto Rico, but it also conflicts with Mr. Doty's own forensic analysis stated on page 1 of RX 5 that Respondent never billed any CPT Code 90837 in 2012. This was not the only time Respondent represented he billed CPT Code 90837 during 2012. SX 10 reveals CPT Code 90837 was frequently billed in 2012. In fairness to Mr. Doty, he admitted that he had requested the underlying faxed bills sent by Respondent and was only provided about half of them and he had no electronic calendar of what patients Respondent saw. Nor is it known whether Respondent supplied Mr. Doty SX 10, when he created a table on page 1 of RX 5 that had a column 2012 which reflected no use of 90837 in 2012.

The undersigned further found Mr. Doty's testimony that what Respondent did, failed to fit all the general patterns of fraud he has seen as unpersuasive. Mr. Doty admitted he had never spoken to the

G family. [22] The undersigned even considered that portion of Mr. Doty's testimony that what Respondent did was so transparent that a 24 billion Dollar Corporation could not miss it. This contradicts the more persuasive testimony of Investigator Bock who works at Highmark that in large part Insurers such as Highmark rely upon the integrity of Providers. The undersigned even considered whether the fact that this may have been missed for years by Highmark (or for that matter Blue Cross Blue Shield of Delaware) that could be a course of dealing that created a contractual obligation thereby providing an excuse for the overbilling.[23]). However, the undersigned found the G family too convincing to find this.

The State argued that Respondent's entry of guilty pleas was evidence of his fraudulent intent. Respondent pled guilty to 11 Del.C.§861 and 11 Del. C. §871. The State is correct as Respondent pled guilty to 11 Del. C. §871 and was adjudged guilty of 11 Del. C. §871 as well. That decision was final. The Delaware courts have allowed the application of the legal doctrine of offensive collateral estoppel to prevent an individual such as Respondent who enters a guilty plea from relitigating the issues necessary for guilt in a subsequent civil proceeding. This is a subsequent civil proceeding. The test for applying the collateral estoppel doctrine requires that (1) a question of fact be essential to the judgment (2) be litigated and (3) determined (4) by a valid and final judgment. Colbert v. Thrower, 2016 Del. Super. LEXIS 70 (February 3, 2016). Since conviction of falsifying business records which Respondent pled guilty requires an "intent to defraud" the State is able to use this plea and to satisfy the burden that Respondent had an "intent to defraud" when he overbilled Highmark for the G, N and R family.

However even without the guilty plea, the undersigned would find that Respondent had intent to defraud in overbilling Highmark for the G family. The nature of the special agreement Respondent

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[22] Mr. Doty testified to the impossible day scenario not whether the G family was specifically overbilled.

[23] Nationwide Mut. Ins. Co. v. Hockessin Constr., C.A. No. 93C-03-057-SCD; and C.A. No. 93C-03-179-SCD (Consolidated), 1996 Del. Super. LEXIS 263 (Super. Ct. May 15, 1996) (Waiver and estoppel do not create an insurance contract)

alleged was simply too unusual for the undersigned to believe it existed[24] and the number of these overbillings is simply too many for the undersigned to believe this was accidental on the part of Respondent or the result of sloppy business practices. The undersigned believes it is unlikely that Blue Cross Blue Shield expressed orally or in writing that Respondent could bill for patients he did not see personally or by zoom or telephone or text. Moreover, when the billing codes changed in 2013 and **Respondent was no longer billing** the old CPT Codes, Respondent continued this practice using new, different CPT Codes despite no evidence he had permission to do so. Respondent argues that he could not discuss this agreement with the insurance company with patients because he had agreed the arrangement was confidential with Blue Cross Blue Shield. However, the confidentiality was expressly waivable and there was no evidence that Respondent ever sought any sort of waiver or discussed requesting waiver. Moreover, the undersigned believes the conversation with the patient could have occurred in a manner without referring to respondent's agreement with the insurance company.

Lastly, Ms. B, Ms. C, Mr. N, Mr. D, and Mr. L and J. Ge. testimony as to the excellent medical services provided by Respondent do not impair this finding. They knew nothing as to how Respondent billed the G. R or N families. There is nothing inconsistent as it is possible that their exposure to Respondent's billing practices differed from the G family. There was credible corroborating evidence that Respondent did this same sort of overbilling with the N and R families that he did to the G family.

The State additionally argued that Respondent additionally violated 24 Del. C. §1731(b)(1) when he billed in excess of 24 hours for numerous days from January 5, 2012 to February 12, 2015. The undersigned does not recommend that the Board find this as it is not clear to the undersigned that the State's evidence of this, SX 15, removed hours billed daily by the Nurse Practitioner and Dr. Finkelstein at Concord Behavioral Health. From a careful review of the testimony especially Mr. Bock's and Mr. Doty's as well as consideration of Mr. Doty's exhibits RX 2, RX 3, and RX 5, the undersigned

[24] Earl Bock testified that he had never heard of an arrangement where a psychiatrist could bill like this.

was not convinced the query used to generate the data that led to the creation of SX 15 was designed to remove the daily hours of any professional other than Respondent. While it may have, the undersigned cannot be certain as the investigator whose query request the created the data Carolyn Bastien retired and did not testify. Moreover, if the EIN # input by her to the software Highmark used EDW was unique to Concord Behavioral Health (a company somewhat owned by respondent) rather than Respondent's Personal Tax ID # (his social security # or EIN only for his practice) the data generated would have contained hours billed for practitioners other than Respondent. This leaves the undersigned with a lack of confidence in the accuracy of SX15 as to the daily hours billed by respondent on a particular day[25]. Having said that the undersigned does believe that there were other overbillings. In addition to the G family Highmark was overbilled for the R and N family. Additionally, there may been others not proven. The undersigned is simply unconvinced that SX 15 shows Respondent alone billed Highmark for more than 24 hours on all the days it indicates.

Lastly, the undersigned recommends a legal conclusion that there is good cause to discipline Respondent. This was not a singular isolated incident of overbilling such as a typographical error, but literally 100s of overbillings that related to 3 families[26]. Even if none of these families made co pays there would be good cause as it undermines the confidence of members of the community in the trustworthiness in a physician respected by our community which easily can transcend to a distrust of medicine in general. The demeaner of M.G. shows this as he was justifiably upset at the amount of time it took for him to have the opportunity to testify. Moreover, it demeans the profession to Highmark who testified that it relies on the Provider's integrity in bills. Lastly, Delaware is a small state where there are few child psychiatrists and needs to attract more. This behavior does not promote future such practitioners to want to practice here. For these reasons, the undersigned recommends that the Board find that Respondent has

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[25] This is even more inaccurate if respondent bunched bills.

[26] The undersigned further finds that there was overbilling 10/15/13 when Respondent was in Maryland for 12 hours for Otsuka.

committed unprofessional conduct under 24 Del. C. §1731(b)(1) that subjects him to this Board's discipline under 24 Del. C. §1731(a).

3. 24 Del. C. §1731(b)(2)

Respondent engaged in unprofessional conduct under 24 Del. C. §1731(b)(2). 24 Del. C. §1731(b)(2) prohibits: "Conduct that would constitute a crime substantially related to the practice of medicine". Respondent pled and was adjudged guilty of falsifying business records under 11 Del. C. §871 which is defined under Board Reg. 15.3.33 as a crime substantially related to the practice of medicine and subject to discipline. This alone is sufficient to establish Respondent's violation of 24 Del. C. §1731(b)(2).

The state additionally argues that even without a guilty plea or verdict it has established a violation of 24 Del. C. §1731(b)(2) as Respondent's conduct was amongst those other separately defined crimes as substantially related to the practice of medicine. The State is correct conviction is not required for these under 24 Del. C. §1731(b)(2).

The state has established by a preponderance of the evidence that Respondent engaged in felony theft as Respondent overbilled Highmark for the G family by much greater than $1500. This is a crime substantially related to the practice of medicine under Board Reg. 15.3.16. The State has established the conduct of identity theft as it has established that by using the members of the G's family name and address in his bills to Highmark, Respondent used their personal identifying information. This is a crime substantially related to the practice of medicine under Board Reg. 15.3.29. The State has established by a preponderance of the evidence that Respondent committed healthcare fraud under 11 Del. C. § 913A a crime substantially related to the practice of medicine under Board Reg. 15.3.55.

The State had argued violations under Board Reg. 15.7 a misuse of narcotic or other addictive substances or substances with the capacity to impair reason. These incorporate violations of the record keeping sections in 16 Del. C. §4757. In SX 27 , Respondent admitted he prescribed for his children without any charts or notes of his own for them or from other physicians and without making sufficient records. This violates 16 Del. C. §4757. Respondent did this knowing his sons were treated by another physician and did not consult them because he did not know who it was. However, all he had to do was call and ask his ex-wife. He did not do so. The concern the undersigned has with this subterfuge and lack of record keeping is the risk of overmedication. These actions were substantially related to the practice of medicine under Board Reg. 15.7 and enough for discipline under 24 Del. C. §1731(b)(2). Respondent's discard of these medications is not a justification.

Respondent's witnesses Ms. B, Ms. C, Mr. N, Mr. D, Mr. L., and Ms. Ge provide no defense to this violation. His different treatment of them will be considered in the discipline.

4. 24 Del. C. §1731(b)(3)

The State has established Respondent engaged in unprofessional conduct under 24 Del. C. §1731(b)(3). 24 Del. C. §1731(b)(3) prohibits: "dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public." Respondent's above prescription of his children with ADHD medications at a minimum was dishonorable. His lack of consulting or keeping any records before he prescribed his children was unethical. Board Reg. 8.1.13 requires a physician to maintain and properly document records. Respondent admittedly did not do this in the prescription of ADHD medications for his children.

Separately Respondent's overbilling of Highmark of the G, N and R family was dishonorable and unethical. It further was an exploitation of the Dr. patient relationship for

personal gain prohibited by Board Reg. 8.1.2 and fraudulent billing for medical services prohibited by Board Reg. 8.1.4.

5. 24 Del. C. §1731(b)(6)

The undersigned does not find that Respondent engaged in unprofessional conduct under 24 Del. C. §1731(b)(6). 24 Del. C. §1731(b)(6) prohibits: "The use, distribution, or issuance of a prescription for a dangerous or narcotic drug, other than for therapeutic or diagnostic purposes." While it is accurate and believed that Respondent should not have prescribed his children ADHD medications in the manner he did, he still had a therapeutic purpose in prescribing them and did not violate 24 Del. C. §1731(b)(6.

6. 24 Del. C. §1731(b)(11)

The State has established Respondent engaged in unprofessional conduct under 24 Del. C. §1731(b)(11). 24 Del. C. §1731(b)(11) prohibits: "Misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence or pattern of negligence in the practice of medicine or other profession or occupation regulated under this chapter." For the reasons previously set forth concerning the violation of 24 Del. C. §1731(b)(1), Respondent engaged in Misconduct as that term is used in 24 Del. C. §1731(b)(11) in overbilling Highmark for the G, N and R families and his prescription to his children of ADHD medications.

IV. **Imposition of Appropriate Discipline**

The undersigned summarizes Respondent's misconduct as follows. Respondent overbilled Highmark for the G, N and R families and prescribed his children ADHD medication, controlled substances, in 1 instance[27] without appropriate documentation (but threw the medications away). These form the basis for 4 separate code violations recommended for 24 Del. C. §1731(b)(1), 24 Del. C. §1731(b)(2), 24 Del. C. §1731(b)(3) and 24 Del. C. §1731(b)(11). The undersigned does not regard the number of code violations that persuasive since they come from the same underlying facts.

The undersigned first consider this Board's Guidelines to Discipline.
Board Reg. 17.2 states that the Board should impose a penalty within the range set forth in the Guidelines unless grounds to deviate are found. The guideline for violations of 24 Del. C. §1731(b)(1), 24 Del. C. §1731(b)(3) and 24 Del. C. §1731(b)(11) state discipline should range from a $1000 fine to 6 months suspension. Board Reg. 17.5.1. As to the violation of 24 Del. C. §1731(b)(2), the undersigned considers Board Reg. 17.13.2 which concerns false documentation and alterations and recommends a range of discipline from a $2000 fine and letter of reprimand to 6 months' probation.

In determining where on the above range, the undersigned considers the Board's enunciated purposes in discipline under Board Reg. 17.1 as well as weighing the aggravating factor under Board Reg. 17.14 which support harsher discipline against the mitigating factors under Board Reg. 17.15 which support milder discipline. Board Regulation 17.1 recognizes the

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[27] The State did not plead in its amended complaint that Respondent prescribed L.G. medications without appropriate examination and did not argue the same at the hearing The undersigned does not recommend discipline for L.G.'s prescription without seeing her as Respondent was not placed on adequate notice.

purposes of discipline are to improved medical care not to enforce the penal code, but rather either to deter other practitioners from the same sort of misconduct, deter the respondent from future violations and offer opportunities for rehabilitation where appropriate. In this matter deterrence of others from insurance fraud is the most important of these. It is a silent cost easily passed onto the consumer as there are very few providers of health insurance that providers accept in Delaware.

Board Reg. 17.14 lists the aggravating factors as:

17.14.1 Prior Disciplinary Offenses
17.14.2 Past Disciplinary Record
17.14.3 Frequency of Acts
17.14.4 Nature and (extreme) gravity of the allegation
17.14.5 False evidence, false statements, other deceptive practices during disciplinary process or proceedings and during the investigative process
17.14.6 Dishonest or selfish motive
17.14.7 Motivation; criminal dishonest; or personal gain
17.14.8 Different multiple offenses
17.14.9 Failing to comply with rules or orders
17.14.10 Refusal to acknowledge wrongful nature of conduct and vulnerability of the victim
17.14.11 Intentional
17.14.12 Abuse of trust
17.14.13 Consensus about blameworthiness of conduct
17.14.14 No consent of patient/Against patient's will
17.14.15 Age capacity or vulnerability of patient or victim of licensee's misconduct
17.14.16 Severe injury caused by misconduct
17.14.17 Potential for injury ensuing from act
17.14.18 Practitioner present competence in medical skills
17.14.19 Pattern of misconduct
17.14.20 Illegal conduct
17.14.21 Heinousness of actions
17.14.22 Ill repute upon profession
17.14.23 Public's perception of protection

While the undersigned considered all of the above in determining the discipline, the undersigned believes the following aggravating factors the most relevant: frequency of acts, intentional, abuse of trust, illegal conduct, Ill repute upon profession. There were frequent acts of misconduct. There were hundreds of instances of overbilling the G family. The actions in overbilling were intentional. There was an abuse of trust in overbilling the G family. Every patient

trusts that the practitioner will not bill them when not seen. This is especially so with the psychiatric treatment of children where parents often prefer to pay out of pocket rather than have record of any treatment for their children. The overbilling was illegal as evidenced by Respondent's guilty pleas. Lastly, any intentionally overbilling reflects negatively upon this profession.

Board Reg. 17.15 lists the mitigating factors as:
17.15.1 Absence of prior disciplinary record
17.15.2 Single act
17.15.3 Nature and (minimal) gravity of the allegation
17.15.4 Voluntary restitution or other actions taken to remedy the misconduct
17.15.5 Remorse and/or consciousness of wrongful conduct
17.15.6 Absence of dishonest or selfish motive
17.15.7 Timely good faith effort to rectify consequences of misconduct
17.15.8 Interim rehabilitation
17.15.9 Remoteness of prior offenses
17.15.10 Length of time that has elapsed since misconduct
17.15.11 Inadvertent
17.15.12 Consent of patient
17.15.13 No apparent vulnerability of patient
17.15.14 No significant injury caused by misconduct
17.15.15 No significant potential for injury ensuing from act
17.15.16 No evidence of motivation of criminal; dishonest or personal gain
17.15.17 Mental or physical health; weak health; cancer
17.15.18 Personal circumstances
17.15.19 Present fitness of the practitioner
17.15.20 Potential for successful rehabilitation
17.15.21 Practitioner's present competence in medical skills
17.15.22 Personal problems (if there is a connection to violation)
17.15.23 Emotional problems (If there is a connection to violation)
17.15.24 Isolated incident unlikely to reoccur
17.15.25 Public's perception of protection

While the undersigned applied all of the above in determining Respondent's discipline , the undersigned believes the following mitigating factors the most relevant: Respondent's absence of prior disciplinary record, Respondent's institution of EMR and repayment to Highmark of an agreed amount, Respondent's ADHD, Respondent's potential for successful rehabilitation, and the practitioner's present competence in medical skills. The undersigned believes that the actions in overbilling the G family were intentional and Respondent knew they were wrong. However, the

undersigned believes Respondent's being challenged by ADHD, overwhelmed by the billing practice necessary for a small practice and failure to gain the necessary help including the timely adoption of EMR and electronic billing records created an obstacle for which Respondent applied an unethical solution. Lastly, the undersigned has applied a great deal of weight to: Respondent's numerous pro bono contributions to his profession, this Board, and the public.

However, the most persuasive mitigating evidence came from Respondent's patient's testimony as to the help they and their families receive from Respondent, his willingness to lessen their cost, Respondent's testimony that he provided those patients with Highmark services at no cost for 6 months after he stopped accepting Highmark Insurance, the longer a suspension the greater hardship this poses to Respondent's present patients. Moreover, the undersigned considers the overbilling of the G R and N family not likely to reoccur as at present Respondent practices concierge medicine. He no longer accepts insurance and has billing contracts with his patients who directly pay him. While this can change in the future, the undersigned believes Respondent has no present intent to change it. Since Respondent's patients now pay out of pocket if they are overbilled, they are likely to refuse payment, notify Respondent and/ or the authorities the Division of Professional Regulation. Additionally, the 6 patients who testified said they had no issues with Respondent's billing and that he was generous and underbilled. The undersigned further considered that Respondent himself suffers from ADHD.

The undersigned finds no grounds to deviate from the guidelines for discipline.

The nature of the violation is an embarrassment to the profession. It is the sort that could and hopefully never does deter a parent from having their child treated by a psychiatrist using health insurance. This merits a suspension. However, a shorter suspension of 2 months is

recommended to accommodate the needs of Respondent's present patients and to minimize the disruption to their services. This is to be followed by a probation of 3 years with the conditions:

1) Respondent being barred from accepting insurance payment for services until he obtains Board Permission to do so which shall only be granted after 60 days from this Board's final order and with Respondent's establishment to this Board proof of sufficient office practices to accurately electronically bill the particular insurance company and maintain electronic medical records for the patients;
2) Respondent continues use of electronic billing and prescriptive services during the term of probation;
3) Respondent within 60 days of the Board's entry of a final order complete continuing education of 3 CE hours in ethics. This is in addition to the CE hours required for licensure renewal.;
4) That within 120 days of this Board's final order pay a monetary penalty of $2000. 60 additional days were added since Respondent will be suspended 60 days;
5) Not be found by this Board to overbill any of his patients;

The undersigned applies this same discipline simultaneously for Respondent's violation of 24 Del. C. §1731(b)(1), 24 Del. C. §1731(b)(2), 24 Del. C. §1731(b)(3) and 24 Del. C. §1731(b)(11).

V. Recommendation

Based on due consideration of all relevant evidence and on the findings of fact and conclusions of law set forth herein, the following is recommended to this Board:

1. That due to Respondent's violations of 24 Del. C. §1731(b)(1), §1731(b)(2), 24 Del. C. §1731(b)(3) and 24 Del. C. §1731(b)(11) that Respondent receive:

   a. a letter of reprimand; and

   b. Respondent's license be suspended for two (2) months from the date this Board enters its final order followed by it being placed on probation for three (3) years with the conditions of the probation being that:

      1) Respondent being barred from accepting insurance payment for services until he obtains Board Permission to do so which shall only be granted in the event, he supplies to the Board proof of sufficient office practices to accurately electronically bill the particular insurance company;

      2) Respondent continues to use electronic billing and prescriptive services for patients;

      3) Respondent completes within 60 days of the Board's entry of a final order continuing education of 3 CE hours in the area of ethics. This is in addition to the CE hours required for licensure renewal; and

      4) Not be found by this Board to overbill any of his patients;

   c. That if respondent violates any of the conditions of this Probation, the Board may suspend his license without Notice or a Hearing for the Balance of the Probation.

2. That Respondent pay a fine of $2,000 payable within 120 days of this Board's final order.

3. That the final order of the Board in this case constitutes public disciplinary action and/or restriction on his license reportable to the pertinent public practitioner data bases. It also may be considered as an aggravating factor in any future disciplinary matter before this Board.

Dated: January 30, 2024

Gary R. Spritz
Hearing Officer

Any party to this proceeding shall have twenty (20) days from the date on which this recommendation was signed by the hearing officer in which to submit in writing to the Delaware Board of Medical Licensure and Discipline any exceptions, comments, or arguments concerning the conclusions of law and recommended penalty stated herein. 29 Del.C. §8735(v)(1)d.