Final Order No. DOH-25-0061-FOF-MQA
FILED DATE - JAN 03 2025
Department of Health
By: Deputy Agency

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2020-04497
2022-40854 2022-40855
DOAH CASE NO.: 23-2350PL
23-2351PL 23-2358PL
LICENSE NO.: ME0088613

IFTIKHAR RASUL, M.D.,

Respondent.
_____/

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on December 6, 2024, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions to the Recommended Order, (copies of which are attached hereto as Exhibits A, B, and C) in the above-styled cause. Petitioner was represented by Corynn Alberto, Assistant General Counsel. Respondent was present and was represented by John E. Terrel, Esquire.

As a preliminary matter, the Board considered the Respondent's Objection to the Department's Motion for Final Order and moved to overrule the objection as the Department's

Motion is a procedural motion asking the Board to perform its statutory obligation to enter a Final Order resolving the Recommended Order. Further, the Respondent's objection is not grounded in fact or law and contains a number of over-riding complaints regarding the proceeding as a whole. To the extent Respondent's objection was based on the Administrative Law Judge's typographical error contained in footnote 2 on page 3 of the Recommended Order, the Board found this error to be harmless as no exhibits were improperly admitted into evidence, improperly relied upon by the Administrative Law Judge, or improperly provided to the Board.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record of this case, the Board makes the following findings and conclusions.

RULING ON RESPONDENT'S GENERAL EXCEPTIONS CONTAINED IN PARAGRAPHS ONE (1) THROUGH SEVEN (7)

The Board considered and reviewed Respondent's exceptions contained in Paragraphs 1 through 7 of the Respondent's Exceptions and denied the exceptions as the exceptions fail to identify the page number and portion of the Recommended Order to which they take exception and for the reasons outlined in the Petitioner's response.

RULING ON RESPONDENT EXCEPTIONS TO FINDINGS OF FACT

The Board reviewed and considered the Respondent's Exceptions to the Findings of Fact contained in the Recommended Order and ruled as follows:

1. The Board reviewed and considered the Respondent's exception contained in Paragraphs 8 through 10 of the Respondent's Exceptions and denied the exception because it addresses a footnote of the Recommended Order that is part of the preliminary statement of the case and contains no findings of fact or conclusions of law and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

2. The Board reviewed and considered the Respondent's exceptions to Paragraphs 6, 7, 9, 10, 12, 14, 16, 17, 18, 19, 20, 21, 23, 28, 29, 31, 32, 34, 36, 39, 40, 42, 44, 48, 49, 51, 52, 55, 56, 58, 61 and 62, 66, 78, 79, 80, 81, and 83 of the Recommended Order, and denied the exceptions because the findings contained in the aforementioned paragraphs of the Recommended Order were based on competent substantial evidence that was presented and considered at a final hearing that met the essential requirements of law, each of the exceptions are asking the Board to re-weigh evidence and/or re-asses witness credibility, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

3. The Board reviewed and considered the Respondent's exceptions to Paragraphs 70, 72, 73, 76, 77, 82, 84, 87, 88, 91, 92 and 93, 96, 97 and 98, 99, 101, and 103 of the Recommended Order, and denied the exceptions because the findings contained in the aforementioned paragraphs of the Recommended Order were properly labeled as findings of fact not mislabeled conclusions of law, were based on competent substantial evidence that was presented and considered at a final hearing that met the essential requirements of law, each of the exceptions are asking the Board to re-weigh evidence and/or re-asses witness credibility, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support all of the findings of fact contained in the Recommended Order.

RULINGS ON EXCEPTIONS TO CONCLUSIONS OF LAW

1. Regarding Respondent's exceptions contained in paragraphs 73 through 76 of the Respondent's Exceptions to the Recommended Order, the Board declined to rule on the exceptions as they contain a general narrative regarding the underlying

proceedings and fail to cite to or identify the page number and portion of the Recommended Order to which they take exception.

2. The Board reviewed and considered the Respondent's exceptions to Paragraphs 113, 116, 117, 118, 120, 121, 122, 123, 125, 126, 128 and 129, 130, and 131 of the Recommended Order, and denied the exceptions because they were deficient and failed to provide any alternative conclusions of law, no less any conclusions that were as or more reasonable than those offered by the Administrative Law Judge in the aforementioned paragraphs of the Recommended Order, and for the reasons outlined in the Petitioner's Response to the Respondent's Exceptions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

RULINGS ON EXCEPTIONS TO PENALTY

1. The Board reviewed and considered the Respondent's exception to the recommended penalty of the Recommended Order, and denied the exception as because to the extent the imposition of penalty was based on a finding if fact, the findings were

supported by competent substantial evidence that was offered at a hearing that complied with the essential elements of law and to the extent the imposition of penalty was based on a conclusion of law the conclusions offered by the Respondent are not as or more reasonable than those of the Administrative Law Judge and for the reasons outlined the Petitioner's Response to the Respondent's Exceptions.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

Respondent's license to practice medicine in the State of Florida is hereby **REVOKED.**

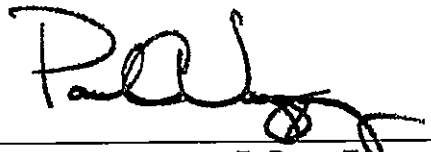
RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and voted to bifurcate the ruling on the Motion to Assess Costs. The Motion to Assess Costs will be considered by the Board at a future meeting.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

DONE AND ORDERED this 2nd day of January, 2025.

BOARD OF MEDICINE



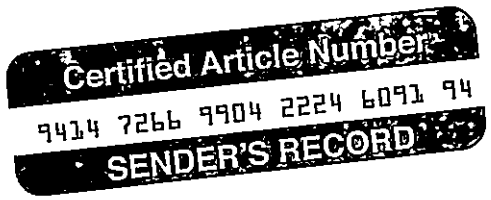
Paul A. Vazquez, J.D., Executive Director
For Nicholas W. Romanello, Esquire, Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by Certified and U.S. Mail to: Iftikhar Rasul, M.D., at 6150 Metrowest Blvd., Suite 101, Orlando, FL 32835; by U.S. Mail to: John E. Terrel, Esq., at 2898-6 Mahan Drive, Tallahassee, FL 32308; Linzie F. Bogan, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; via efiling by email to: John E. Terrel, Esq., at **jetlawyer@yahoo.com**; Andrew J. Pietrylo, Jr., Chief Legal Counsel, Department of Health, at **Andrew.Pietrylo@flhealth.gov**; Corynn Alberto, Assistant General Counsel, Department of Health, at **Corynn.Alberto@flhealth.gov**; Kathryn Ball, Assistant General Counsel, Department of Health, at **Kathryn.Ball@flhealth.gov** and Christopher R. Dierlam, Senior Assistant Attorney General, at **Christopher.Dierlam@myfloridalegal.com** this 3rd day of January, 2025.



Amy L. Conaway

Deputy Agency Clerk

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF MEDICINE,

Petitioner,

vs.

IFTIKHAR RASUL, M.D.,

Respondent.
_____/

Case Nos. 23-2350PL
23-2351PL
23-2358PL

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference from June 10 through 12, 2024, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Corynn Colleen Alberto, Esquire
Kathryn Ball, Esquire
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399

For Respondent: John E. Terrel, Esquire
Rickey L. Strong, Esquire
Liane S. LaBouef, Esquire
Howell, Buchan & Strong
2898-6 Mahan Drive
Tallahassee, Florida 32308

Exhibit A

STATEMENT OF THE ISSUES

Whether Respondent, as to Patient E.L., violated sections 456.072(1)(v), and 456.063(1), Florida Statutes,[1] and, if so, what discipline should be imposed. Whether Respondent, as to patients A.B. and D.D., violated sections 456.072(1)(v), 456.063(1), and 458.331(1)(j), Florida Statutes, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On January 8, 2021, the Department of Health (Department or Petitioner) filed a one-count Complaint (Complaint I) charging Respondent, Iftikhar Rasul, M.D. (Dr. Rasul or Respondent), with violating section 456.072(1)(v), Florida Statutes (2018), through a violation of section 456.063(1), by engaging or attempting to engage in sexual misconduct with female patient, E.L.

On April 24, 2023, the Department filed a two-count Complaint (Complaint II) charging Respondent with violating section 456.072(1)(v), Florida Statutes (2020-2021), through a violation of section 456.063(1), by engaging or attempting to engage in sexual misconduct with two female patients, A.B. and D.D., and violating section 458.331(1)(j), Florida Statutes (2020-2021), by exercising influence within a patient-physician relationship for the purposes of engaging a patient in sexual activity, with patients A.B. and D.D.

The cases were referred to DOAH in June 2023. On July 6, 2023, an Order consolidating the cases was entered and the final hearing was scheduled for September 26 through 28, 2023, in Altamonte Springs, Florida. On September 27, 2023, an Order was entered with respect to each case granting Petitioner's Motion to Relinquish Jurisdiction to allow for the Board of

[1] Unless otherwise indicated, citations to Florida Statutes refer to the versions in effect (2019-2021) at the time of the alleged violations. It should be noted that none of the statutes alleged to have been violated were amended during that period.

Medicine's probable cause panel to consider proposed amendments to the Administrative Complaint(s). On or about March 29, 2024, the cases were returned to DOAH and the proceedings were re-opened and consolidated.

Prior to the final hearing, the parties filed a Joint Pre-Hearing Stipulation, which included stipulated facts that did not require evidence at the hearing. The stipulated facts have been incorporated into this Recommended Order.

Petitioner's Exhibits 1 through 8 were admitted into evidence.[2] Respondent's Exhibits 1 through 8, 10 through 12, 15, 17 through 33, and 35 through 44 were admitted into evidence. Petitioner presented testimony from: patients D.D., A.B., and E.L.; Alex Seamon; Olga Rafaelian, M.D.; and Melinda Sowka, L.M.H.C. Respondent testified on his own behalf and also offered testimony from: Melissa Beaudoin; Sidra Rasul; patients G.M., K.A.F., E.F., A.B.(2), and T.P.; and Henry Storper, M.D. The deposition testimony of Laiana Menezes was also admitted into evidence.

On July 9, 2024, a six-volume Transcript of the disputed fact hearing was filed with DOAH. Pursuant to Respondent's motion, an Order Granting Extension of Time was entered on July 19, 2024, wherein the parties were given additional time to each submit a proposed recommended order (PRO). Both parties timely filed PROs, which were considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of medicine pursuant to section 20.43, and chapters 456 and 458, Florida Statutes.

[2] Petitioner's Proposed Recommended Order notes that its "Exhibits 1-6 and 8 were admitted into evidence." A review of the Transcript shows that Petitioner's Exhibit 7 was also admitted into evidence.

2. Respondent is a licensed medical doctor in Florida, having been issued license number ME 88613.

3. At all times material to this proceeding, Dr. Rasul was the owner of, and practiced as a psychiatrist at, Serene Behavioral Health Services located at 6150 Metrowest Boulevard, Suite 101, Orlando, Florida 32835.

4. At all times material to this proceeding, Dr. Rasul was in a physician-patient relationship with E.L., A.B., and D.D.

Patient D.D.

5. On July 11, 2022, D.D., who was then 27-years-old, presented to Dr. Rasul to establish psychiatric care. From July 11, 2022, through October 3, 2022, D.D. saw Dr. Rasul regularly for appointments.

6. D.D.'s visits with Dr. Rasul took place in his office with the door closed. D.D. sat on a leather couch across from Dr. Rasul, who sat in a chair behind his desk.

7. On October 3, 2022, D.D. presented to Dr. Rasul for a follow-up appointment. During the visit, Dr. Rasul asked D.D. whether she had a "green card" and showed her his credentials on the office walls. Dr. Rasul specifically noted that the date of one of his certificates was the same year that D.D. was born.

8. Dr. Rasul then told D.D. that he needed to check her heart. D.D. testified that Dr. Rasul had never done this during any of her previous appointments.

9. Dr. Rasul came out from behind his desk and approached D.D. on her right side as she sat on the couch. He took her blood pressure and placed a stethoscope under D.D.'s shirt and bra. He then touched D.D.'s left breast and nipple. D.D. testified that Dr. Rasul's hand was "all over" her breast and nipple.

10. Dr. Rasul also pulled D.D.'s shirt and bra away from her body exposing her left breast and nipple.

11. D.D. felt uncomfortable and froze. She felt "stupid" and "ashamed" of what was happening to her.

12. D.D., shortly after leaving Dr. Rasul's office, spoke to her friend Liana Menezes on the phone and told her what happened. Ms. Menezes testified that during the call D.D. was "crying a lot," "couldn't speak much," and was "very nervous." D.D. told Ms. Menezes that Dr. Rasul touched her breast under her bra.

13. Later that day, D.D. contacted the Orlando Police Department (OPD) and provided a written statement detailing what happened during her appointment with Dr. Rasul.

14. OPD Detective Sierra noted that when he met with D.D. about the allegations, she was "crying her eyes out."

15. D.D. never returned to Dr. Rasul's office after October 3, 2022.

16. Respondent's counsel tried to discredit D.D. by unsuccessfully eliciting testimony from D.D. that her medical condition, knowledge of Complaint I, and possible financial gain, motivated her allegations against Dr. Rasul.

17. In an attempt to impeach D.D., Dr. Rasul's counsel suggested that D.D.'s long Covid diagnosis impaired her ability to recall the events that happened in Dr. Rasul's office on October 3, 2022. The point of counsel's inquiry was to suggest that D.D. was hallucinating with respect to Dr. Rasul's actions. That said, D.D.'s testimony about what was done to her by Dr. Rasul was clear, concise, and without equivocation, and counsel failed to offer credible evidence that D.D. had memory issues or trouble with perception at her last appointment.

18. Dr. Rasul's counsel also sought to impeach D.D. by suggesting that she fabricated the allegations against Dr. Rasul after finding the Department's Complaint related to E.L. D.D. testified that while sitting in the car waiting for OPD, she searched Dr. Rasul's name online because she wanted to see if there were any reviews that would give insight into Dr. Rasul's behavior. During her search, she found Complaint I. Ms. Menezes corroborated D.D.'s

account that while waiting for OPD, D.D. went online to search for information about Dr. Rasul and found a case of another patient with a very "similar situation."

19. Respondent offered no credible evidence that D.D.'s knowledge of E.L.'s complaint impacted her own allegations against Dr. Rasul.

20. Respondent also questioned D.D.'s credibility by suggesting that she was "looking for money" and had repeatedly sought money from him. Respondent did not offer any credible evidence in furtherance of this suggestion. While Dr. Rasul's malpractice carrier was made aware of D.D.'s allegations, the fact that D.D. may elect to pursue a civil remedy against Dr. Rasul does not, without more, impeach her credibility.

21. Respondent also sought to impeach D.D. by noting that she continued to request medication refills from Dr. Rasul without returning to his office for appointments. It is unsurprising and reasonable that D.D. did not want to return to Dr. Rasul's office after her last visit, which involved him exposing and fondling her breast, to obtain refills for her psychiatric medication. Furthermore, Dr. Rasul was clearly not overly concerned with her refusal to return to the office since he continued to refill her medication until she eventually stopped communicating with his office.

22. D.D. does not know and has not spoken to any of the other patients involved in these cases.

23. D.D. testified credibly regarding her October 3, 2022, appointment with Dr. Rasul and her subsequent reporting of the incident. Her testimony is consistent with her previous accounts of the incident, including her written statement to OPD, and her statements to Ms. Menezes.

Patient A.B.

24. On October 12, 2018, A.B., who was then 25-years-old, presented to Dr. Rasul to establish psychiatric care.

25. From October 12, 2018, through November 2, 2020, A.B. saw Dr. Rasul regularly for appointments.

26. A.B.'s visits with Dr. Rasul took place in his office with the door closed. A.B. sat on a leather couch across from Dr. Rasul, who sat in a chair behind his desk.

27. On November 2, 2020, A.B. presented to Dr. Rasul for a follow-up visit. During the appointment, Dr. Rasul told A.B. that he wanted to check her heart. Dr. Rasul came from behind his desk and approached A.B. as she sat on the couch.

28. Dr. Rasul placed a stethoscope under A.B.'s shirt and bra. As he did this, he touched and rubbed A.B.'s left breast and nipple with his hand.

29. Dr. Rasul also pulled A.B.'s shirt and bra away from her body exposing her breast and nipple.

30. A.B. felt shocked and froze. She testified that she "just kind of just sat there" because she didn't know if what was happening was normal, and she didn't know what to do.

31. At the end of her visit, A.B. felt anxious about Dr. Rasul's actions. After exiting the office, she got into her car and cried. She immediately called her boyfriend, Alex Seamon, and told him "I think I was assaulted."

32. Mr. Seamon testified that A.B. called him from her car after her appointment with Dr. Rasul. She was crying and "obviously distraught." He remembers her saying, "I think I just got assaulted."

33. Mr. Seamon recalled that A.B. told him that Dr. Rasul had slid his hand down through the top of her shirt and touched her breast under her bra.

34. While sitting in her car after the appointment, A.B. called OPD, who met her in a parking lot not far from Dr. Rasul's office. A.B. provided a written statement to OPD detailing what happened with Dr. Rasul.

35. A.B. never returned to Dr. Rasul's office after the November 2, 2020, appointment.

36. As with D.D., Respondent unsuccessfully attempted to impeach A.B.'s testimony by suggesting she had financial motives in making the allegations against Dr. Rasul.

37. During her treatment, A.B. discussed with Dr. Rasul her new job as an agent for the Aflac insurance company. Following a presentation with A.B. and her supervisor,
Dr. Rasul bought an Aflac policy.

38. On cross-examination, counsel suggested that A.B. tried selling the policy to Dr. Rasul to earn a commission and introduced emails showing that A.B. had communicated with Dr. Rasul directly about setting up a meeting to go over policy options.

39. A.B. acknowledged that she earned a commission on the sale of the policy to Dr. Rasul but clarified that it wasn't substantial. She testified that the conversation with Dr. Rasul about the insurance occurred organically during one of her appointments. She never tried to persuade him to buy a policy. Dr. Rasul expressed an interest, and she responded. The direct emails she sent to Dr. Rasul were crafted under the supervision and guidance of her supervisor at Aflac.

40. Counsel also sought to impeach A.B. by asking her about
Dr. Rasul's November 2, 2020, visit note, in which he documented that A.B. was asking him for financial assistance. When confronted with the note, A.B. was visibly stunned by what Dr. Rasul had written and emphatically denied ever asking Dr. Rasul for money.

41. A.B. did, however, testify that Dr. Rasul gave her $200 after she mentioned that she was having financial challenges during one of her scheduled visits to his office. Mr. Seamon substantiated her account and testified that A.B. told him that Dr. Rasul had given her cash during an appointment. He specifically recalled seeing two $100 bills that he believed was the money given to A.B. by Dr. Rasul.

42. Despite counsel's attempts to discredit A.B. regarding the Aflac policy and alleged request for financial assistance, no credible evidence was offered to prove that A.B. was untruthful in her allegations against Dr. Rasul.

43. A.B. does not know and has not spoken to any of the other patients involved in these cases.

44. A.B. testified credibly regarding the November 2, 2020, appointment with Dr. Rasul and her subsequent reporting of the incident. Her testimony is consistent with her previous accounts of the incident, including her written statement to OPD, and her statements to Mr. Seamon.

Patient E.L.

45. On November 27, 2017, E.L., who was then 19-years-old, presented to Dr. Rasul to establish psychiatric care.

46. From November 27, 2017, through June 25, 2019, E.L. saw Dr. Rasul regularly for appointments.

47. E.L.'s appointments with Dr. Rasul took place in his office with the door closed. E.L. sat on a leather couch across from Dr. Rasul, who sat in a chair behind his desk.

48. On June 25, 2019, E.L. presented to Dr. Rasul for a follow-up visit. During the appointment, Dr. Rasul told E.L. that he wanted to take her blood pressure. He had never taken E.L.'s blood pressure during any of her previous sessions.

49. Dr. Rasul came from behind his desk and approached E.L. on her right side as she sat on the couch. After taking E.L.'s blood pressure, Dr. Rasul talked to E.L. about her anatomy. He took her right hand and started counting down her ribs from the top of her chest until he was inside her bra. E.L. removed her hand, but Dr. Rasul kept his hand inside her bra and touched her left breast and nipple.

50. E.L. was shocked and leaned away from Dr. Rasul. She left the office without stopping at the reception area to schedule her next appointment. On the drive home, she had to pull over because she was having what she described as a "panic attack."

51. E.L. did not return to Dr. Rasul's office after June 25, 2019.

52. E.L. was shocked and overwhelmed by Dr. Rasul's actions. She

internalized what Dr. Rasul had done to her and did not talk about his actions until she disclosed the events to her therapist, Melinda Sowka, L.M.H.C., in January 2020.

53. Ms. Sowka testified that E.L. disclosed that her previous psychiatrist had touched her inappropriately – specifically, that he touched her breast while taking her blood pressure. Ms. Sowka described E.L. as scared, hurt, and fragile at the time of this disclosure.

54. As a mandatory abuse reporter in the State of Florida, Ms. Sowka filled out and submitted a Department complaint form and described therein the incident with Dr. Rasul as told to her by E.L.

55. Dr. Rasul sought to impeach E.L.'s testimony by citing to unfounded accusations of drug use. E.L. admitted that she had used marijuana in the past, but she denied ever having a drug problem. There is no documentation in Dr. Rasul's June 25, 2019, visit note that he suspected E.L. was under the influence of any substance, and ultimately counsel failed to show that any alleged drug use affected E.L.'s ability to recall or perceive the events which occurred during her appointment on June 25, 2019.

56. E.L. was also questioned about her communications with Dr. Rasul's office following the June 25, 2019, visit – specifically, that she made several requests for medication refills but refused to return for an appointment. E.L. did not recall the communications. Again, it is unsurprising and reasonable that E.L. did not want to return to Dr. Rasul's office after her last visit, which involved him inappropriately touching her breast, to obtain refills for her psychiatric medication. Furthermore, as with D.D., Dr. Rasul was clearly not overly concerned with E.L.'s refusal to return to the office since he continued to refill her medication until she eventually stopped communicating with his office.

57. E.L does not know and has not spoken to any of the other patients involved in these cases.

58. E.L. testified credibly regarding the June 25, 2019, visit with Dr. Rasul. Her testimony is consistent with her previous accounts of the incident, including the written allegations in the complaint form submitted by Ms. Sowka.

Respondent's Criminal Case

59. On November 3, 2022, Dr. Rasul was arrested in connection with D.D.'s report to OPD. He was charged with misdemeanor battery.

60. On October 10, 2023, Dr. Rasul executed a pretrial diversion contract (PTD) with the Office of the State Attorney for the Ninth Judicial Circuit. According to the PTD, the charges against Dr. Rasul would be dismissed if he completed the PTD program.

61. On April 18, 2024, Dr. Rasul completed the PTD program, and on May 8, 2024, the criminal case against him was dismissed.

62. The dismissal of criminal charges against Dr. Rasul is irrelevant to the credibility of D.D. or whether her allegations against Dr. Rasul are true.

Expert Witnesses

63. Dr. Olga Rafaelian, M.D., testified as a medical expert for the Department. Dr. Rafaelian is a licensed medical doctor in the state of Florida and is board certified in psychiatry and forensic psychiatry.

64. Dr. Henry Storper, M.D., testified as a medical expert for Respondent. Dr. Storper is a licensed medical doctor in the state of Florida and is board certified in psychiatry.

65. Both Dr. Rafaelian and Dr. Storper agree that it is outside the scope of practice for a psychiatrist to touch the breast or nipple of a patient.

66. The Department's expert testified that psychiatrists are governed by a more stringent set of ethical guidelines than other physicians because of the vulnerabilities of psychiatric patients. The relationship between a psychiatrist and a patient must be based on trust. If trust is broken, the therapeutic nature of the relationship is damaged.

67. Dr. Rafaelian also testified that if the patients' allegations against Dr. Rasul are true, Dr. Rasul acted outside the scope of practice for a psychiatrist by touching them in an inappropriate manner.

68. Respondent offered the testimony of Dr. Storper to support his theory that secondary gain played a role in the patients' allegations.

69. Dr. Storper described the concept of "secondary gain" as trying to "obtain a benefit other than the stated goal of the interaction with the physician."

70. According to Dr. Storper, E.L. and D.D.'s attempts to obtain medications without having to come in for appointments could be secondary gain. Importantly, however, Respondent's expert also admitted that it would not be unusual for a patient who experiences sexual assault in a medical office to avoid returning to that office for treatment.

71. Dr. Storper contends that A.B. attempted to obtain secondary gain by selling the Aflac policy to Dr. Rasul for a commission and by asking him for financial assistance. In other words, Dr. Storper suggests that A.B.'s allegations could be motivated by a desire to get money from Dr. Rasul since she was unable to reach her financial objective by selling him an Aflac insurance policy.

72. While it is possible that A.B. was motivated in the manner suggested by Dr. Storper, his opinion in this regard is based on a mere "possibility" rather than the requisite "probability" and is therefore of no evidentiary value when assessing the credibility of A.B.'s testimony.

73. Dr. Storper's testimony was speculative and ultimately unpersuasive.

Dr. Rasul

74. Dr. Rasul is a psychiatrist who typically sees patients for medication management.

75. Dr. Rasul denies that he touched the breasts of D.D., A.B., or E.L.

76. Dr. Rasul spent much time testifying about each of the patient's medical diagnoses and the treatment he rendered to them but offered no

credible explanation as to why the patients have made these allegations against him.

77. Much of Dr. Rasul's testimony was unclear, inconsistent, and not persuasive.

78. On direct examination, Dr. Rasul testified he has never kept a stethoscope in his office and does not remember if he has ever owned one. Yet, on cross-examination, when asked whether he has ever owned a stethoscope, he answered "not for a while."

79. During the hearing, Dr. Rasul claimed that before buying the Aflac policy, he requested someone else's contact information from Aflac because he did not want A.B. to be involved. Even so, he never advised A.B. that it was inappropriate to deal with her directly, and he willingly attended a Zoom meeting, at which A.B. was present, to discuss the insurance. Additionally, he never explored any other insurance options outside of Aflac to avoid involvement with A.B.

80. Dr. Rasul also claimed he didn't remember whether he purchased a policy from Aflac. He was impeached by his deposition testimony in which he clearly stated that he bought a policy from Aflac and canceled it several months later because his office manager did not want to have to pay for it.

81. Dr. Rasul's counsel offered photos of Dr. Rasul's office to establish the layout of the inside and the view from outside. When asked who took the photos, Dr. Rasul said they were a combination of pictures taken by him and his attorneys. He could not specify when the pictures were taken and failed to establish that they accurately portrayed what his office looked like at the time of the patients' allegations.

82. Dr. Rasul testified about the importance of seeing patients before refilling prescriptions. For example, he noted that E.L.'s medication had a risk for toxicity, and that it was important to keep a "close eye" on it. Yet on cross examination, he admitted that he continued to refill E.L.'s prescription for months without appointments, until she eventually stopped

communicating with his office. Dr. Rasul did the same for D.D. when she refused to return for an appointment after her last visit.

83. Dr. Rasul also claimed that E.L. approached him after her appointment on June 25, 2019, to request another month's prescription. However, there is no documentation of this request in the visit note for June 25, 2019, and when asked about it on cross-examination, Dr. Rasul stated, "we do not document those minor things."

84. Respondent offered inconclusive and unclear testimony about his office chair – specifically, that he could not have rolled it over to the couch at the time of the incidents because it did not fit within the space in his office. In support, he relied on a photo of a chair in his office between the desk and the couch. Whether the chair would fit remains unclear as Respondent failed to provide any measurements or dimensions for the space. Furthermore, at least one of the patients said that the chair in the photos was different from the one she remembered.

85. No clear testimony was offered to establish whether the photos reflect the setup of Dr. Rasul's office at the time of the events at issue. Therefore, Dr. Rasul's testimony about the chair, which relied on an unreliable photo, is not persuasive.

86. Dr. Rasul explained that he tries to sign his patient visit notes immediately but many times he cannot do so because he is busy. Sometimes his notes are signed months later, but "within the same year."

87. However, during A.B.'s testimony, she noted that Dr. Rasul's visit note for her last appointment on November 2, 2020, was not signed until November 2022. A review of the patients' records reflect many occasions in which Dr. Rasul signed his visit note months or even years after the date of the appointment. Counsel tried to clear up this discrepancy, but Dr. Rasul's testimony was confusing and not persuasive.

88. Overall, Dr. Rasul's testimony was not credible, distinctly remembered, precise, or lacking in confusion as to the material facts at issue.

There were instances when his testimony was inconsistent or contradicted by other persuasive documentary evidence or testimony. None of his testimony convincingly rebutted the testimony of the Department's witnesses, including the patients at issue.

Respondent's Witnesses

89. Respondent presented the testimony of his wife, Sidra Rasul. Mrs. Rasul is an employee of Serene Behavioral Health and orders and purchases medical supplies for Dr. Rasul. Aside from her job at Dr. Rasul's office, she is not employed in any other capacity. She has no personal knowledge of the allegations in these cases.

90. Mrs. Rasul did not recall ever buying a stethoscope for Dr. Rasul, and she has never seen a stethoscope in the office. She could not say with certainty whether Dr. Rasul has a stethoscope, only that she has never bought a stethoscope for him and that she has not seen a stethoscope at his office.

91. Mrs. Rasul testimony is of limited evidential value as it appears that she is completely financially dependent on Dr. Rasul and the money that he generates from his medical practice.

92. Dr. Rasul also offered the testimony of Melissa Beaudoin, his receptionist and office manager. Ms. Beaudoin has worked at Serene Behavioral Health for seven or eight years. She has no personal knowledge of the allegations in these cases.

93. Through Ms. Beaudoin's testimony, counsel sought to prove that Dr. Rasul did not have the opportunity to touch patients inappropriately because Ms. Beaudoin is able to see and hear what is happening inside Dr. Rasul's office. Ms. Beaudoin referenced a photo with a view of Dr. Rasul's office door from her desk and testified that she can see into Dr. Rasul's office. The door in the photo has a vertical window in its top left side.

94. On cross-examination, Ms. Beaudoin acknowledged that Dr. Rasul's office door was previously solid, and the window had been installed sometime

during the last year. She admitted that when the door was solid, she could not see into Dr. Rasul's office.

95. Another photo was offered which showed Dr. Rasul's view of Ms. Beaudoin's desk area from behind his desk. The photo shows the right end of a brown leather couch which is pushed up against the wall directly across from his desk.

96. E.L., A.B., and D.D. each credibly testified that the office door was closed during their visits. This photo proves that even if the door were open during appointments, Ms. Beaudoin could not witness an interaction between Dr. Rasul and a patient if the patient was sitting on the couch.

97. Ms. Beaudoin also stated that from the building's parking lot you can see into Dr. Rasul's office windows. Two photos taken from outside the office were referenced. The photos are taken from the side of the building and not directly outside of Dr. Rasul's office. Dr. Rasul's office windows are tinted and reflect the parking lot. Respondent failed to establish, through either the photos or Ms. Beaudoin's testimony, that the office was easily seen from outside the building.

98. Ms. Beaudoin also claimed that she can hear Dr. Rasul and patients inside his office from her desk, even when his door is closed. This testimony is irrelevant as none of the patients testified that they vocalized any distress during the incidents with Dr. Rasul.

99. Ultimately, Ms. Beaudoin offered no relevant evidence disproving the allegations. Additionally, any consideration given to her testimony is weighed against her potential for bias, as she is financially dependent on Dr. Rasul as her employer.

100. Respondent also offered the testimony of five female witnesses, G.M, K.A.F., E.F., A.B(2), and T.P., who are current patients of Dr. Rasul's. None of the patients has any personal knowledge of the allegations against Dr. Rasul.

101. A.B.(2) and T.P. had appointments at Serene Behavioral Health on the afternoon of June 25, 2019, the same day as E.L.'s last visit. Neither of them noticed anything out of the ordinary while in the office that day. E.L. never stated that she was visibly upset or distraught as she left the office on June 25, 2019, so their testimony was irrelevant.

102. The rest of the testimony offered from these patients relates to Dr. Rasul's professionalism and is neither useful nor relevant.

103. Neither Respondent nor any of his witnesses provided testimony which discredited or disproved the patients' allegations against him.

CONCLUSIONS OF LAW

104. DOAH has jurisdiction over the subject matter of this proceeding and the parties. §§ 120.569, 120.57(1), and 456.073(5), Fla. Stat.

105. The Department is the state agency charged with regulating the practice of medicine under section 20.43 and chapters 456 and 458.

106. The Department seeks to suspend, revoke, or impose other discipline upon Respondent's license to practice medicine based on several violations of Florida law. Proceedings to discipline a license, including revocation, are penal in nature. *State ex rel. Vining v. Fla. Real Estate Comm'n*, 281 So. 2d 487, 491 (Fla. 1973). Thus, the Department bears the burden of proving the charges against Respondent by clear and convincing evidence. § 458.331(3), Fla. Stat.; *Fox v. Dep't of Health*, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) (citing *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996)).

107. As stated by the Florida Supreme Court:

> Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without

> hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 492 So. 2d 797, 800 (Fla. 4th DCA 1983)). "[E]ven when the evidence is in conflict, the proof may be more than sufficient to meet the standard of clear and convincing evidence." *In re Henson*, 913 So. 2d at 592 (quoting *In re Bryan*, 550 So. 2d 447, 448 n.* (Fla. 1989)).

108. Penal statutes must be construed strictly according to their plain meaning, and the actual text used by the Legislature may not be expanded upon to broaden the application of such statutes. *Elmariah v. Dep't of Bus. & Prof'l. Reg.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990); *Griffis v. Fish & Wildlife Conser. Comm'n*, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008). "No conduct is to be regarded as included within a penal statute that is not reasonably proscribed by it; if there are any ambiguities included, they must be construed in favor of the licensee." *McClung v. Crim. Just. Stds. & Training Comm'n*, 458 So. 2d 887, 888 (Fla. 5th DCA 1984).

109. This proceeding is predicated on the factual allegations set forth in the Complaints. *Trevisani v. Dep't of Health*, 908 So. 2d 1108 (Fla. 1st DCA 2005); *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits the Department from taking disciplinary action against a licensee based on matters not alleged in the charging instrument, unless those matters have been tried by consent. *Delk v. Dep't of Prof'l. Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

110. The Department has alleged that Respondent, as to each complainant, violated section 456.072(1)(v) through a violation of section 456.063(1).

111. Section 456.072(1)(v) authorizes the Department to impose discipline against a licensee for engaging or attempting to engage in sexual misconduct as defined and prohibited in section 456.063(1), which provides:

> Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

112. As for A.B. and D.D., the Department has alleged that Respondent violated section 458.331(1)(j), as defined in and prohibited by section 458.329 and Florida Administrative Code Rule 64B8-9.008.

113. Section 458.331(1)(j) provides that exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity constitutes grounds for disciplinary action. A patient is presumed incapable of giving free, full, and informed consent to sexual activity with his or her physician. There was no evidence offered establishing that the patients consented to having their breasts and nipples touched by Dr. Rasul.

114. Section 458.329 also addresses sexual misconduct, in the specific context of the practice of medicine. It provides:

> The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

115. Rule 64B8-9.008(1) provides that sexual contact with a patient is sexual misconduct and is a violation of sections 458.329 and 458.331(1)(j).

Rule 64B8-9.008(2) notes that sexual misconduct between a physician and patient includes the following:

> (a) Sexual behavior or involvement with a patient including verbal or physical behavior which:
>
> 1. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it,
>
> 2. May reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or any third party, or
>
> 3. May reasonably be interpreted by the patient as being sexual.
>
> (b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in paragraph (2)(a), above, and which:
>
> 1. Results from the use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship,
>
> 2. Misuses privileged information or access to privileged information to meet the physician's personal or sexual needs, or
>
> 3. Is an abuse or reasonably appears to be an abuse of authority or power.

116. Patients D.D., A.B. and E.L. each credibly testified that Dr. Rasul touched their breasts in a sexual manner under the guise of examining them during an appointment. Dr. Rasul did this by exploiting the trust that these patients put in him as a licensed physician.

117. The testimony of three patients, having no prior connection, about almost identical experiences with Dr. Rasul, points to a pattern of

inappropriate conduct by Dr. Rasul. Furthermore, each of their accounts has remained consistent despite the years that have passed since the incidents.

118. Although not required, the Department offered the credible testimony of Ms. Menezes, Mr. Seamon, and Ms. Sowka to corroborate the testimony of D.D., A.B., and E.L., respectively, regarding their incidents with Dr. Rasul.[3]

119. The experts for both parties agree that touching a patient's breast in the manner described by these witnesses is beyond the scope of the practice of medicine by a psychiatrist.

120. Dr. Rasul's defense largely amounts to mere suggestions that the victims had ulterior motives in fabricating allegations against him and that, had they been true, his staff would have witnessed the illicit conduct. However, the testimony of Dr. Rasul and his other witnesses was largely unpersuasive and failed to rebut the credible testimony of the patients.

121. Regarding D.D.'s allegations that Dr. Rasul touched her breast and nipple during the appointment on October 3, 2020, Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v) by engaging in, or attempting to engage in, sexual misconduct, as defined and prohibited in section 456.063(1), and violated section 458.331(1)(j) for exercising influence within a patient-physician relationship for the purposes of engaging a patient in sexual activity, as defined and prohibited by section 458.329 and rule 64B8-9.008 as charged in Complaint II.

122. Regarding A.B.'s allegations that Dr. Rasul touched her breast and nipple during the appointment on November 2, 2020, Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v) by engaging in, or attempting to engage in, sexual misconduct, as defined and prohibited in section 456.063(1), and violated section 458.331(1)(j) for

[3] Section 120.81(4)(a), Florida Statutes, provides that in a proceeding against a licensed professional which involves allegations of sexual misconduct, the testimony of the victim of the sexual misconduct need not be corroborated.

exercising influence within a patient-physician relationship for the purposes of engaging a patient in sexual activity, as defined and prohibited by section 458.329 and rule 64B8-9.008 as charged in Complaint II.

123. Regarding E.L.'s allegations that Dr. Rasul touched her breast and nipple during the appointment on June 25, 2019, Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v) by engaging in, or attempting to engage in, sexual misconduct, as defined and prohibited in section 456.063(1).

124. Rule 64B8-8.001 has been promulgated by the Board of Medicine to set forth disciplinary guidelines for violations such as those found here. The version(s) of rule 64B8-8.001(2) in effect when the offenses occurred provided the range of disciplinary penalties typically imposed for violating sections 456.072(1)(v) and 458.331(1)(j).

125. As for section 456.063(1), rule 64B8-8.001(4)(b) provided that it is considered an aggravating factor in sexual misconduct cases in which the relationship between the licensee and the patient involved psychiatric diagnosis or treatment, and revocation is an appropriate penalty.

126. Rule 64B8-8.001(3) also provided aggravating and mitigating factors that may be considered in determining a penalty outside the disciplinary guidelines. Resort to these factors is unnecessary because the recommended penalty is within the guidelines. Moreover, any mitigating factors that might be present are greatly outweighed by the aggravating factors, including the harm to the patients and the repeated nature of the sexual misconduct.

127. Rule 64B8-8.001(2)(j) provided that the penalty authorized for a first-time violation of section 456.072(1)(v) ranges from a one-year suspension to be followed by a period of probation and a reprimand, and an administrative fine of $5,000, to revocation and an administrative fine of $10,000. Revocation is the recommended penalty for a second violation of section 456.072(1)(v).

128. Rule 64B8-8.001(2)(j) provided that the penalty authorized for a violation of section 458.331(1)(j) ranges from a one-year suspension to be

followed by a period of probation and a reprimand, and an administrative fine of $5,000, to revocation and an administrative fine of $10,000. Revocation is the recommended penalty for a second violation of section 458.331(1)(j).

129. Rule 64B8-8.001(1) provides that "multiple counts of the violated provisions ... may result in a higher penalty than that for a single, isolated violation."

130. Each of these patients sought treatment from Dr. Rasul to help with mental health issues. Dr. Rasul used his position as a psychiatrist to exploit their vulnerabilities and the trust they placed in him by inappropriately touching their breasts under the guise of checking their hearts.

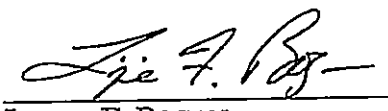
131. Revocation of Dr. Rasul's medical license is the only appropriate penalty given the reprehensible nature of his repeated violations.

132. Section 456.072(4) provides that, in addition to any other discipline imposed for violating a practice act, the Board of Medicine shall assess costs related to the investigation and prosecution of the case. The Board should therefore also assess the costs of the Department's investigation and prosecution of Respondent in these matters.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health, Board of Medicine, enter a final order finding that Respondent violated: section 456.072(1)(v), through a violation of section 456.063(1); section 458.331(1)(j), as defined in and prohibited by section 458.329 and rule 64B8-9.008; section 456.063; and for those violations, revoking his license to practice medicine, imposing a $15,000 administrative fine, and imposing costs of investigation and prosecution of these cases.

DONE AND ENTERED this 4th day of October, 2024, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

DOH case no.s 2020-04497,
2022-40855, 2022-40854

DOAH Case No. 23-2350PL
23-2351PL
23-2358PL

v.

IFTIKHAR RASUL, M.D.,

Respondent.

_____/

RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

Respondent, Iftikhar Rasul, (hereinafter "Dr. Rasul" or "Respondent"), pursuant to Rule 28-106.217 and Section 120.57(1)(k), F.S., files these Exceptions to the Recommended Order issued by the Administrative Law Judge (ALJ) and states:

PRELIMINARY STATEMENT

Section 120.57(1), Florida Statutes, and case law have clarified the reviewing authority of an Agency under the Administrative Procedures Act. In order to reject or modify findings of fact, the Agency must review the entire record, and state with

Exhibit B

particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. Section 120.57(1)(l), Florida Statutes.

In order to reverse a conclusion of law in a recommended order, the Agency must:

a) state with particularity its reasons for rejecting or modifying such conclusions of law or interpretation of administrative rule and

b) make a finding that the substituted conclusion of law or interpretation of administrative rule is as or more reasonable that that which was rejected or modified. See, Section 120.57(1)(l), Fla. Stat. (2009); Barfield v. Department of Health, 2001 WL 1613797 (Fla. 1st DCA 2001) Humana, Inc. v. DHRS, 492 So.2d 388, 392 (Fla. 4th DCA 1986); Bayonet Point Regional Medical Center v. DHRS, 516 So.2d 995 (Fla. 1st DCA 1987); and Pan Am World Airways v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983). Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. Section 120.57(1) (l), Fla. Stat. (2009). Finally, simply because a conclusion of law is masked or presented as a finding of fact by the ALJ does not insulate it from its proper status as a conclusion of law subject to review by the Board or reviewing agency. Goss v. District School Board of St. John's County, 601 So. 2d 1232 (Fla. 5th DCA 1992).

Section 120.57(1)(c), Florida Statutes states:

> Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

This provision has been explained further in the following cases. Harris v. Game and Fresh Water Fish Com'n, 495 So. 2d 806 (Fla. 1st DCA 1986)(hearsay in a business record is still hearsay and does not fall under any exception), Scott v. Department of Professional Reg., 603 So. 2d 519 (Fla 1st DCA 1992) (error to rely on hearsay report) and Doran v. Department of Health and Rehabilitative Services, 558 So. 2d 87 (Fla. 1st DCA 1990). See also, Avalon's Assisted Living, LLC v. AHCA, 80 So. 3d 347 (Fla. 1st DCA 2012).

Another basic tenet of a formal hearing is that an administrative law judge (ALJ) must afford the licensee due process. The statutory and regulatory provisions' requirement of factual finding is ultimately based on principles of due process. Borges v. Dept. of Health, 143 So. 3d 1185 (Fl. 3rd DCA 2014). The ALJ in this case deprived Dr. Rasul of due process by basing his substantive on part of the record and ignored the depositions and other evidence in this case.

The ALJ entered a Recommended Order (RO) on October 4, 2024.

1. The proceedings on which the findings were based did not comply with the essential requirements of law in this case. Further, the findings were not based on competent, substantial evidence.

2. On April 5, 2023, the Department entered an emergency restriction order (ERO) against Dr. Rasul. The appellate court granted a motion for stay on October 6, 2023 subject to conditions proposed by Respondent. On September 25, 2024, the First

District Court of Appeal granted the petition and set aside the ERO only to the extent that it conflicts with the order entered on October 6, 2023. See, Rasul v. Dep't of Health, 1D23- 0910 (October 6, 2023) and Rasul v. Dep't of Health, 1D23 -- 0910 (September 25, 2024).

3. The ALJ also committed error in making factual findings based on allegations that were not only absent from the administrative complaint, they were explicitly rejected by the Board of Medicine's Probable Cause Panel (PCP) when the Department attempted to amend the A.C.s The Department sought relinquishment of the case from the ALJ, which he granted, to add allegations about "boundary violations" to the administrative complaints. The PCP met and considered the request to amend the A.C.s and voted to deny the request. Despite this ruling by the PCP, the ALJ chose to make findings of fact on the so-called boundary violations. See, Resp. Exh. 43.

4. At its meeting, the PCP pointed out that the expert was relying on the AMA's principles of medical ethics and "not on any statute, rule or anything like this" to support her opinion. Resp. Exh. 43 p. 16.

5. The panel members talk about trying to tie the new argument to the existing allegations in the A.C.s. They then voted to deny the request to amend the A.C.s Resp. Exh. 43 p. 16 – 7, 18. Ultimately, the request to amend the A.C.s was denied and there are **no allegations** about boundary issues in this case. Further, an agency cannot argue boundary issues without also charging them in the A.C.s This was not done and the Department's actions violated case law on this issue.

6. The ALJ ignored this substantive ruling by the PCP and allowed the Department to continue to argue, over Respondent's objections, the issues about boundary "violations." This was error. See, Trevisani v. Department of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005), Tampa Health Care v. Agency for Health Care Administration, DOAH Case No. 01-0734 (August 22, 2001); Vista Manor v. Agency for Health Care Administration, DOAH Case No. 00-0547 (September 27, 2000).

7. The ALJ delayed the handling of this case when he granted the motion to relinquish jurisdiction back to the Department to add the "new allegations." He failed to inquire about the alleged amendments to the A.C.s. When the PCP transcript was filed on the docket and then admitted as an exhibit, the ALJ ignored same.

EXCEPTIONS TO FINDINGS OF FACT

8. Petitioner takes exception to footnote 2 in the Recommended Order (hereafter R.O.). The ALJ claims that the deposition of Dr. Storper, Respondent's expert, was admitted into evidence in the transcript. This was error as the Department's attorneys subsequently stated that it would not offer the deposition into evidence. (We do not intend to offer at this time . . . Dr Storper's deposition transcript. ALJ: No. No. I was just going to say, *that's fine.*)(emphasis added). Tr. p. 104.

9. Thus, the ALJ found facts based on a document that was not admitted into evidence. "At the outset, it should be noted that our adversary system imposes on the

parties the burden of presenting evidence at the trial pursuant to the rules and practices that make it clear when proof has been presented so that it is officially introduced and thereupon can be considered by the trier of fact in the resolution of fact issues." *McCormick on Evidence*, Third Edition (1984). The parties agreed that the provisions of the Florida Evidence Code, Chapter 90, F.S. would apply to these proceedings.

10. This is a basic tenet of a formal hearing or trial that a judge, including administrative law judges in the Executive branch, can only rely on documentation that was offered and admitted into evidence. The ALJ in this case based his substantive findings on documentation that was neither offered nor accepted into evidence. Not only is this use of unadmitted evidence improper under the Rules of Evidence, it also directly contradicts the ALJ's April 17, 2024 Notice of Hearing by Zoom Conference paragraph 4,which specified that all "[t]he proposed exhibits **will not be considered unless they are admitted** into evidence during the final hearing." (emphasis added). Despite this clear Order and the rules of evidence, the ALJ relied on the deposition of Dr. Storper in his Recommended Order. This was error.

11. Respondent takes exception to paragraph 6 of the R.O. This finding is not based on competent substantial evidence. The paragraph states that D.D.'s visits with Dr. Rasul took place in his office with the door closed. This finding ignores D.D.'s testimony from her deposition. Resp. Exh. 38.

12. In her deposition, D.D. testified on **direct and cross-exam** from the Department's attorney that the door **was open** the entire time of the visit. These

contradictory sworn statements do not constitute clear and convincing evidence and do not represent competent substantial evidence. Resp. Exh. 38 p. 83, 120.

13. Petitioner takes exception to paragraph 7 of the R.O. D.D.'s testimony had been contradictory concerning whether the door was open or closed during her appointment, her testimony contradicted the testimony of Ms. Menezes about where they went after the alleged incident as well as other contradictions that this statement is not supported by competent substantial evidence. Dr. Rasul's records fail to include such a statement to D.D. Resp. Exh. 4 p. 5 – 7.

14. Respondent takes exception to paragraph 9 of the R.O. This paragraph is not based on competent substantial evidence. Initially, there was no evidence to support the claim that Dr. Rasul had a stethoscope. Section 120.651, F.S. requires the Division to appoint at least two judges that must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from The Florida Bar. The findings in this paragraph do not evidence experience in health care. The manner of describing taking blood pressure is not accurate. Further, the inconsistencies in D.D.'s testimony on this issue makes this finding lacking in competent and substantial evidence. D.D. testified in her deposition that she agreed Respondent "held the stethoscope in one hand, pulled her bra and shirt away and then touched her breast with another hand." This would take three hands to accomplish. She also testified that Respondent was sitting during this alleged incident. Resp. Exh. 38 p. 51 – 2, 53.

15. When confronted with this testimony at the formal hearing, D.D. realized that it would be impossible to commit the alleged act as she described it. Tr. p. 90-1.

The ALJ's findings are not supported by the sworn testimony of D.D. and do not constitute competent and substantial evidence.

16. Respondent takes exception to paragraph 10 of the R.O. with the similar argument expressed above. The ALJ ignored the testimony in the deposition where D.D. claimed that Respondent "held the stethoscope, pulled her bra up and then touched her breast or breasts." D.D. realized that Dr. Rasul could not commit the act as she described in her deposition. She then tried to justify it at the formal hearing, but the sworn testimony is clear and concise. The ALJ concludes that D.D.'s testimony is credible. (R.O. p. 23). The ALJ either ignored the deposition testimony or was unable to discern the differences in the testimony. Either way, this finding is not based on competent substantial evidence and should be stricken.

17. Respondent takes exception to paragraph 12 of the R.O. Ms. Menez actually testified that D.D. consulted with a doctor, was crying a lot and *had personal issues*. Ms. Menezes testified that she was not there and did not see anything. Ms. Menez testified that D.D. told her that Dr. Rasul touched her breast. This last statement contradicted the testimony of D.D. about the incident. Paragraph 12 is not supported by competent substantial evidence. Resp. Exh. 41 p. 16, 38, Exh. 4 p. 5 – 7.

18. Respondent takes exception to paragraph 14 of the R.O. Hearsay alone itself cannot be used to make a finding of fact. Detective Sierra was **not** called as a witness to the formal hearing. The ALJ does not indicate where he obtained this statement. Regardless, hearsay alone cannot be used to make a finding of fact. This statement is not supported by direct evidence because Ms. Menezes testified that D.D.

was crying and then mentioned personal problems. She did not clarify what the personal problems were. Dr. Rasul's medical record identified the personal problems of D.D. (problems with her boyfriend, issues with family members saying she makes things up, etc.). Section 120.57(1)(c), F.S.

19. Respondent takes exception to paragraph 16 of the R.O. This finding is not supported by competent substantial evidence. Dr. Rasul clearly testified about the threat of a civil suit by D.D. He talked about the demands made by D.D.'s lawyer. D.D. admitted she looked up the A.C. on E.L. prior to filing her complaint. She also hired a lawyer to pursue money from Dr. Rasul. The complaints are very similar, even mentioning a stethoscope. There was no proof that Dr. Rasul ever had a stethoscope in his office at Serene Behavior. This paragraph is not based on clear and convincing evidence nor is it supported by competent substantial evidence. Again, an ALJ should apply due process in his/her findings in a case. Borges, *supra*. Resp. Exh. 38 p. 47, Resp. Rebuttal exhibit 44, Tr. p. 53, 754 – 6.

20. Respondent takes exception to paragraph 17 of the R.O. This paragraph seems to originate from the deposition of Dr. Storper. As noted above, the Department stated it was not offering the deposition into evidence. The ALJ improperly made findings of fact on documentation not admitted into the record. Further, he violated his own order setting the hearing. This notice clearly stated that "[t]he proposed exhibits **will not be considered unless they are admitted** into evidence during the final hearing." If the exhibit is not even offered, there is no authority for the judge to rely on it in a recommended order.

21. Even if the ALJ tried to imply these statements from Respondent's counsel or the expert, it is an incorrect implication in paragraph 17. The inconsistent sworn testimony of D.D. from her deposition to her formal hearing testimony was the issue. Further, D.D. testified that she went with Ms. Menezes to her sister-in-law's house before reporting the alleged incident. Tr. p. 43, 46 Resp. Exh. 38 p. 46. However, Ms. Menezes testified that she did not even really know L.D. (the sister-in-law) and they went to the police station. Resp. Exh. 41 p. 12, 19, 30. This contradiction in testimony should have alerted the finder of fact to the discrepancies of the witnesses. At one point, D.D. even testified that her friend thought she was committing fraud. Paragraph 17 is not supported by competent substantial evidence and should be deleted. Tr. p. 55.

22. Paragraph 17 also ignores the testimony of D.D. She testified that "everything was perfect until unfortunately Covid happened." She also testified that "October 3rd [2022], I - - I was not having a good day." The ALJ ignored this testimony from the ex-patient about the effects of Covid. This also supports the exception to this paragraph. The paragraph is not supported by competent substantial evidence. Resp. Exh. 38 (D.D.'s depo) p. 34, 36.

23. Respondent takes exception to paragraph 18 of the R.O. This finding misstates the testimony of D.D. She testified that she wanted to find answers and was trying to find reviews. She then testified that she saw "a couple of stars and I was, like, okay. I think he's a good doctor. And then I went." She did not explain how she found the review and what she meant when she said, "then I went." It appears that she sought reviews for Dr. Rasul and then started seeing him. This would reflect knowledge about

the A.C. for E.L. even before the first visit. Thus, paragraph 18 is not supported by competent substantial evidence.

24. In regard to the exceptions to paragraph 18, the ALJ also ignored the testimony of D.D. concerning the OPD Detective. D.D. claimed that a Detective with the OPD advised her to make up an excuse to obtain the Adderall for another month. Adderall is a controlled substance. D.D.'s credibility for the truth was tested by this claim that a Detective would ask her to commit a crime by asking for an additional prescription for Adderall without a legitimate medical reason. Obviously, a detective would not ask a person to commit a crime. The Department chose to not call the detective as a witness to the formal hearing. Based on this testimony, D.D. was not a reliable or truthful witness. Resp. Exh. 38 depo of D.D. p. 91 – 92.

25. Respondent takes exception to paragraph 19 of the R.O. This paragraph is not supported by the evidence in the record and, thus, is not supported by competent substantial evidence. D.D.'s admitted she looked up the A.C. on E.L. Her complaint was, as the ALJ admitted, "similar" to E.L.'s complaint. D.D. hired an attorney prior to her deposition with the goal of "suing him for costs she has incurred as a result of his actions." As noted in the record from the state attorney's office, D.D. sought an attorney on November 22, 2022. Dr. Rasul testified about D.D. hiring a lawyer who made demands for money from his insurance company. The lawyer gave a deadline before he would sue and Respondent refused to pay the demand. Resp. Exh. 44, Tr. p. 53, 754 – 6.

26. Respondent takes exception to paragraph 20 of the R.O. for the same reasons stated in regard to paragraph 19. Taken in conjunction, D.D.'s copying the

complaint from E.L. and the demands for money by her attorney do show motive. This, combined with the inconsistent testimony between the deposition and the formal hearing as well as the conflict with Ms. Menezes' testimony, demonstrates the lack of credibility of D.D. D.D. testified that even her former best friend, Ms. Menezes, claimed that what she was doing was fraud. This was an admission against interest and the ALJ should have considered it. Resp. Exh. 44, Tr. p. 53, 754 – 6, Tr. p. 55.

27. Respondent takes exception to paragraph 21 of the R.O. This finding is not based on competent substantial evidence. After the alleged incident, D.D. continued to request medication (Adderall) from Dr. Rasul. This is documented in the text messages between D.D. and Melissa. D.D.'s testimony is contradictory between her statements in the deposition and the formal hearing. This contradiction in testimony is not clear and convincing evidence. Further, Dr. Rasul did not indicate a concern because D.D. asked for a "vacation override" and he was not aware of the allegations until the complaint was sent to him. The ALJ also overlooked the testimony from D.D. where she stated she was in Brazil. It would be impossible to return to the office to demand the drugs, like D.D. did, when she is traveling. Resp. Exh. 15, Tr. p. 752 – 3, Tr. p. 440 - 447.

28. Respondent takes exception to paragraph 23 of the R.O. In this paragraph, the ALJ overlooks the deposition testimony of D.D. and the deposition testimony of Ms. Menezes. Instead, he claims that D.D.'s testimony is consistent with her previous account and with what she said to Ms. Menezes. This is akin to claiming a witness is credible because she repeats the statement to another individual. This is not competent substantial evidence. Instead, the deposition testimony of D.D. is inconsistent with her

testimony at the formal hearing. When confronted with the contradictions, she claimed that she didn't understand or that she couldn't understand English. An unbiased factfinder would question the credibility of such a witness. An unbiased factfinder would note that D.D.'s testimony about what she did after the alleged incident conflicted with the testimony of Ms. Menezes (instead of what D.D. claimed she told Menezes). D.D. claimed she went with Ms. Menezes to her sister-in-law's house while Ms. Menezes testified she didn't know L.D. and they went only to the police station. Resp. Exh. 41 p. 12, 19, 30.[1]

29. Respondent takes exception to paragraph 28 of the R.O. This finding is not based on competent substantial evidence. Dr. Rasul testified that he did not have a stethoscope since his residency or in school. This was in Kansas City and Pakistan, respectfully. Ms. Rasul and Ms. Beaudoin testified that there was no stethoscope in the office. Neither Patient T.P. nor Patient A.B. 2 saw a stethoscope in the office.[2] A reasonable fact finder would conclude that A.B. was motivated to falsify her claims. Tr. p. 462 – 3, 501, 508, 639 and 735.

30. Respondent takes exception to paragraph 29 of the R.O. This finding is also not supported by competent substantial evidence as stated for paragraph 28 of the R.O. A reasonable factfinder would question the credibility of a witness whose testimony

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[1] The Department claimed they were calling Ms. Menezes to the formal hearing but she failed to appear. Her statements are admissions against the interest of the Department, an exception to the hearsay rule.

[2] Neither patient was indebted or worked for Dr. Rasul and the ALJ just ignored this testimony.

contradicted the evidence presented at hearing. In particular, the deposition testimony of D.D. is inconsistent with her testimony at the formal hearing. When confronted with the contradictions, she claimed that she didn't understand or that she couldn't understand English. An unbiased factfinder would question the credibility of such a witness. An unbiased factfinder would note that D.D.'s testimony about what she did after the alleged incident conflicted with the testimony of Ms. Menezes (instead of what D.D. claimed she told Menezes). D.D. claimed she went with Ms. Menezes to her sister-in-law's house while Ms. Menezes testified she didn't know L.D. and they went only to the police station. Tr. p. 462 – 3, 501, 508, 639 and 735.

31. Respondent takes exception to paragraph 31 of the R.O. A.B. might have contacted her boyfriend in pursuit of a secondary gain with the insurance, however, any comments would be made to obtain the secondary gain. This paragraph is not supported by competent substantial evidence because A.B. clearly testified that **"nothing was exchanged sexually wise."** An ALJ cannot ignore the testimony from patient A.B. on this issue. Further, A.B. stopped at Ms. Beaudoin's window of her office and she noted nothing unusual. Tr. p. 169, 469.

32. Respondent takes exception to paragraph 32 of the R.O. Again, the ALJ ignored the clear testimony from A.B. when she said "nothing was exchanged sexually wise." When she changed her story at the formal hearing, the ALJ should have noted this inconsistency. Instead, he just ignored the testimony. These contradictory statements were not clear and convincing evidence and are not competent substantial evidence during the review by this Board. Tr. p. 169.

33. Respondent takes exception to paragraph 34 of the R.O. Again, the ALJ ignored the testimony and the exhibit on this issue. Not only did A.B. testify that "nothing was exchanged sexually wise," she *also included this statement on the report competed by the police.* Thus, A.B. completed a statement and testified that nothing sexually wise occurred during the November 2, 2020 visit. The ALJ ignored this when he merely found that "A.B. provided a written statement to OPD . . ." An ALJ cannot accept part of a statement and then ignore the rest of it. This coupled with A.B.'s testimony demonstrated that she was inconsistent with her claims.[3] Tr. p. 169, Resp. Exh. 7.

34. Respondent takes exception to paragraph 36 of the R.O. This finding is not supported by competent substantial evidence. A.B.'s motivation was clear. After asking Dr. Rasul if he was interested in obtaining insurance, Dr. Rasul reached out to a different sales representative. A.B. aggressively sought to sign Rasul's office staff up. After successfully obtaining a commission, A.B. asked for money directly. This shows clear intent to obtain another secondary gain – cash directly from Respondent. Resp. Exh. 17, 18 and 19, Tr. p. 709.

35. Respondent takes exception to paragraph 39 of the R.O. There is no competent substantial evidence supporting these findings. A.B. emailed Dr. Rasul directly to sell him the insurance. The ALJ claims that the emails were "crafted under the supervision and guidance of her supervisor." This finding fails to examine the emails in question. When the supervisor contacted Dr. Rasul, she referred to him as Dr. Rasul.

[3] The ALJ also ignored the fact that the police did not take any action on this case. Resp. Exh. 40 p. 26 – 28.

When A.B. contacted Respondent, she used his first name. If the supervisor was training A.B., she would not train her to use the first name of the client. This is the other problem with the ALJ's findings. They lack logic and reasoning. This finding is not supported by competent substantial evidence. Resp. Exh. 17, 18 and 19, Tr. p. 709.

36. Respondent takes exception to paragraph 40 of the R.O. In this paragraph and paragraph 44, the ALJ ignores the evidence presented to him. These findings are not supported by competent substantial evidence. A.B. claimed that Dr. Rasul altered the medical record and relied on the copy of the records provided by the Department. However, Respondent offered into evidence the original set of records that contained the investigator's numbering. This exhibit showed that the record was E-signed on November 2, 2020 and generated on November 16, 2020.[4] A.B.'s feigned "shock" about the records presented by the Department was simply that – a feigned act. Tr. p. 228 – 9, Resp. Exh. 3 p. 4 – 6.

37. Respondent takes exception to paragraph 42 of the R.O. Again, the ALJ ignored the direct testimony from A.B. as well as the statement she prepared for the police. A.B. clearly stated that there was nothing sexual about any interaction with Dr. Rasul on November 2, 2020. The ALJ seemed to concentrate on the actions of Respondent's counsel rather than actually reviewing the evidence before him. This is a due process violation. See, Borges, *supra.*

[4] The Department attempted to have Respondent agree to a joint exhibit but Respondent refused, with good reason. This later copy of the records was not accurate as it was made two years later when Dr. Rasul corrected some grammatical errors. Tr. p. 712 – 5.

38. Respondent takes exception to paragraph 44 of the R.O. These findings are not supported by competent substantial evidence and simply ignore the direct testimony of A.B. as well as the written statement. A.B. clearly testified that there was nothing sexual about the interaction with Dr. Rasul. The ALJ finds her testimony credible but ignores the inconsistency in it. At one point, A.B. claims she was assaulted but then testifies clearly that there was nothing sexual about the interaction. A reasonable fact finder would determine that her testimony was not credible, as did the police. Resp. Exh. 40 p. 26 – 28 (Seamon's testimony – police did nothing at all after receiving the allegations from A.B.).

39. Respondent takes exception to paragraph 48 of the R.O. This paragraph is not supported by competent substantial evidence. Again, the ALJ ignored the records admitted in this case. E.L.'s records for the licensed mental health counselor, Mindy Sowka, were admitted into evidence without objection. E.L.'s deposition was also admitted into evidence without objection. These records indicated that E.L. contradicted her testimony. Dr. Rasul's medical record did not note taking the blood pressure. Resp. Exh. 2 p. 2 – 5, 7, Resp. Exh. 37, Tr. p. 288 -9.

40. In regard to paragraph 48, E.L.'s testimony was inconsistent and contradictory. She testified before the ALJ that she did not know Dr. Rasul's ethnicity or race. However, when she worked on the complaint with Ms. Sowka, she stated "I'm not trying to be racist or anything but he's Indican and I know how they treat women in the Indian culture. I know sometimes they think they can do whatever they want, that they

can touch women however they want." Resp. Exh. 37 and Resp. Exh. 2 p. 4, Tr. p. 288 – 9.

41. The ALJ first asked if Respondent's counsel wanted to strike this testimony. He then ignored the testimony in his R.O. The veracity of E.L. was at issue when she lied directly to the ALJ about not knowing Dr. Rasul's ethnicity. Although Dr. Rasul is Pakistani and not Indian, in E.L.'s eyes, they are the same thing. When Respondent's counsel wanted to follow up on the allegation about E.L. telling other people, including her father, the ALJ blocked this testimony. Tr. p. 291 – 2, 301 - 303.

42. Respondent takes exception to paragraph 49 of the R.O. Again, the statements made by E.L. were inconsistent in this case. Her testimony about Dr. Rasul using a stethoscope was inconsistent. She told the DOH investigator that he had a stethoscope but during the formal hearing, she claimed there could have been one but could not remember. E.L. testified that her diagnosis was not proper and that she can't recall everything. Resp. Exh. 37 p. 73, Tr. p. 269, 282.

43. Respondent takes exception to paragraph 51 of the R.O. This paragraph is not supported by competent substantial evidence. E.L. did return to the office to request additional medication. E.L. returned to the office to obtain more Lithium. Dr. Rasul's prescription records note that the prescription was changed from no refills to 1 additional refill. The records are dated about 20 minutes apart. This documentation supports Respondent's testimony and refutes E.L.'s allegations. The records from the pharmacy also indicate that E.L. obtained a prescription to obtain more Lithium. Tr. p. 662 – 665, Resp. Exh. 21 and 22.

44. Respondent takes exception to paragraph 52 of the R.O. This paragraph ignores direct evidence and is not supported by competent substantial evidence. E.L. did not make her allegations until January 29, 2020, approximately seven months after the alleged incident. This in itself might not be determinative but the records also show that this was approximately two months after Dr. Rasul refused to refill the prescription of Lithium. E.L. admitted that she was angry with Dr. Rasul when saying the derogatory comments about the Indian culture. This was a patient who emailed that if she did not get her prescription, she was "basically screwed mentally for the next week or so . . ." After being cut off from this medication and being angry with Dr. Rasul, she manufactured the complaint. Resp. Exh. 20, Exh. 2 p. 4, Tr. p. 292.

45. Respondent takes exception to paragraph 55 of the R.O. This paragraph is not supported by competent substantial evidence. E.L. testified on direct exam that she could not remember everything. However, her lack of truthfulness about Dr. Rasul's ethnicity and the other issues are apparent in her deposition. E.L. testified in her deposition that she did not have a bad relationship with a man until 2021. However, Sowka notes on January 29, **2020**, that she has a personal past **history** of spouse or partner psychological abuse. These serious contradictions in her story show a lack of truthfulness. Tr. p. 269, 282, Resp. Exh. 37 p. 58, 59, 63, 84, 91 Resp. Exh. 2 p. 5.

46. In regard to paragraph 55, the ALJ's findings are not supported by competent substantial evidence and does not acknowledge the medical opinions. He claims that the questions about the use of marijuana and Lithium was directed at suspected drug use. Both experts testified that the use of marijuana with Lithium can be

problematic and harmful. Dr. Rafaelian testified that you should not mix marijuana with psychiatric drugs like Lithium. She then testified that the long-term use of marijuana with Lithium can cause confusion and remembering things correctly. This was the Department's expert. Because this finding is not supported by competent substantial evidence, it should be stricken. Resp. Exh. 39 p. 33 – 5, Resp. Exh. 2.

47. Respondent takes exception to paragraph 56 of the R.O. This paragraph is not supported by competent substantial evidence. The ALJ ignored the testimony from the Department's expert, Dr. Rafaelian. She testified that it would be unusual for a patient to request additional medications from the doctor if that doctor had assaulted the patient. E.L. testified that Dr. Rasul called her about her request for medications in August 2019. E.L. then *demanded* more Lithium in an email to Ms. Beaudoin on October 24, 2019 and called the office. Dr. Rasul was concerned about continuing the prescription for Lithium. Both he and Ms. Beaudoin informed E.L. that she would not obtain any further medication unless she came into the office. Resp. Exh. 39 p. 38, Tr. p. 465 – 7, 674 – 5, Resp. Exh. 20, Resp. Exh. 37 p. 79.

48. Respondent takes exception to paragraph 58 of the R.O. E.L.'s testimony was contradictory, and she repeatedly stated she could not remember things. The Department's expert testified that the long-term use of marijuana with Lithium can cause confusion and problems remembering things correctly. E.L., under oath, told the ALJ that she was not aware of Dr. Rasul's ethnicity. Yet, her admissions to Ms. Sowka showed she not only put him in a category with Indians, but she also made derogatory comments

about the Indian race. This paragraph is simply not supported by the evidence. Tr. p. 269, 282, Resp. Exh. 37 p. 58, 59, 63, 84, 91 Resp. Exh. 2 p. 5.

49. Respondent takes exception to paragraphs 61 and 62 of the R.O. These paragraphs are not supported by competent substantial evidence. The ALJ ignored the testimony about the PTD program. Dr. Rasul completed a psycho-sexual evaluation as part of the PTD agreement. The result of that exam was no pathology was found and there were no recommendations by the psychiatrist. This result of this evaluation is relevant to those that are trained and experienced with these types of cases. Tr. p. 726 – 8. See, Section 120.651, F.S.

50. Respondent takes exception to paragraph 66 of the R.O. This paragraph violates the mandate that the agency is restricted to the allegations in the administrative complaint (A.C.). The PCP panel specifically denied the request to amend the administrative complaint to include "boundary issues or violations." The ALJ ignored this transcript and the reasoning behind the panel's decision. Dr. Rafaelian was relying on AMA ethical principles or a code of ethics in psychiatry both at the formal hearing and in her deposition. The Panel correctly pointed out that these principles or "code of ethics" are not found in any statute or rule governing doctors. The Department continued to ask questions from Dr. Rafaelian about boundary issues, in violation of the law on this issue. The ALJ violated established law by making findings of fact on issues not contained in the A.C.s. Tr. p. 359, 339.

CONCLUSIONS OF LAW MASKED AS FINDINGS OF FACT

51. Respondent takes exception to paragraph 70 of the R.O. It is at this point when the ALJ masks conclusions of law as findings of fact. This is error and is an attempt by the ALJ to protect his findings by mislabeling them. Dr. Rafaelian opined that it was unusual for a patient to return for medication when she alleged inappropriate touching by the doctor. Resp. Exh. 39 p. 38 Simply because a conclusion of law is masked or presented as a finding of fact by the ALJ does not insulate it from its proper status as a conclusion of law subject to review by the appellate court. Goss v. District School Board of St. John's County, 601 So. 2d 1232 (Fla. 5th DCA 1992).

52. Respondent takes exception to paragraph 72 of the R.O. Again, the ALJ tries to mask a conclusion of law as a finding of fact. This was error. This statement is not supported by competent substantial evidence nor is it reasonable. Dr. Stoper testified that A.B. aggressively interjected herself into the sale of insurance and requested money from Dr. Rasul, which he refused to provide her. He noted that A.B. had repeatedly informed Dr. Rasul about her financial stress. These are the factors that have weight. The secondary gain obtained by these benefits is just a label on the actions themselves. Further, the ALJ interprets the term secondary gain as a diagnosis rather than a description of the patient's behavior. Resp. Exh. 3, Tr. p. 605 – 08.

53. Respondent takes exception to paragraph 72 of the R.O. Again, the ALJ tries to mask a conclusion of law as a finding of fact. This was error. His conclusion about Dr. Storper is particularly suspect when both experts agreed on certain key issues. For example, both agreed that mixing marijuana and psychiatric drugs like Lithium will

be harmful and can cause memory issues. Dr. Rafaelian also testified about the secondary gain a patient can obtain. Her description of secondary gain is consistent with the actions of both E.L. and D.D. Tr. p. 602 – 3, Rafaelian Resp. Exh. 33 – 4, 44 – 5.[5]

54. Respondent takes exception to paragraph 73 of the R.O. Again, this is a conclusion of law masked as a finding of fact. It is neither supported by competent substantial evidence nor a reasonable finding. Just like paragraph 72, it ignores the testimony of Dr. Rafaelian in her deposition where the two experts agreed on a number of issues. Tr. p. 602 – 3, Rafaelian Resp. Exh. 33 – 4, 44 – 5.

55. Respondent takes exception to paragraph 76 of the R.O. The ALJ impermissibly tries to shift the burden of proof onto Respondent. Respondent is not required to explain the reasons why these complainants filed their actions and acted the way they did. See, Avalon's Assisted Living, LLC v. AHCA, 80 So. 3d 347 (Fla. 1st DCA 2012).

56. Respondent takes exception to paragraph 77 of the R.O. This is another conclusion of law masked as a finding of fact. It is a summary rather than a finding of conflicts with what Dr. Rasul testified about. It also ignores the records that support Dr. Rasul's testimony. This was not just a "he said – she said" scenario. Instead, the prescription records and emails of E.L. support Dr. Rasul's testimony about seeking more Lithium. The testimony of Patients T.P. and A.B. 2 support his testimony about there being no stethoscope in the office. The text message and testimony of Ms. Beaudoin

[5] Although the deposition of Dr. Rafaelian was admitted, it appears that the ALJ simply did not read or review it.

support the actions of D.D. in seeking additional Adderall. The medical records of A.B. and, in particular, the record for November 2, 2020 support Dr. Rasul's testimony. The medical records detail her financial stress and demand for money on November 2, 2020. The statement A.B. made to the police about "nothing exchanged sexually wise" support Dr. Rasul's testimony that nothing inappropriate, including inappropriate touching, occurred. This conclusion ignores the evidence and is not a reasonable conclusion.

57. Respondent takes exception to paragraph 78 of the R.O. This statement is not supported by competent substantial evidence. Dr. Rasul testified that he owned a stethoscope during school and his residency. He testified that he went to school in Pakistan and did his residency in Kansas. Tr. p. 735, 639.

58. Respondent takes exception to paragraph 79 of the R.O. Again, the ALJ makes a finding based on boundary issues or violations. This is contrary to established case law. The PCP specifically denied the Department's request to amend the A.C. to add boundary issues. Yet, the ALJ continued to allow the Department to question witnesses about this issue and the ALJ made findings based on it. See, Trevisani, *supra.*

59. Respondent takes exception to paragraph 80 of the R.O. This paragraph, whether a conclusion of law or masked finding of fact, is not supported by competent substantial evidence. Dr. Rasul testified that he could not remember if he or Ms. Beaudoin cancelled the policy.

60. Respondent takes exception to paragraph 81 of the R.O. Both Ms. Beaudoin and Dr. Rasul testified that the photos admitted into evidence showed the office in the

same condition as when E.L., A.B. and D.D. were his patients. This statement is not supported by competent substantial evidence and is not a reasonable conclusion. Tr. p. 760 – 2, 431 – 6.

61. Respondent takes exception to paragraph 82 of the R.O. the ALJ is making a finding or a conclusion of law concerning an issue not charged in the A.C. There are no standard of care allegations concerning medication or anything in this case. This conclusion also fails to consider the testimony that Dr. Rasul stopped the prescription of Lithium for E.L. in November 2019. Tr. p. 662 – 3.

62. Respondent takes exception to paragraph 83 of the R.O. This statement is not supported by competent substantial evidence. Dr. Rasul noted the change in the prescriptions in the system he uses, Dr. Chrono. Further, the prescription records from the pharmacy support his testimony on this issue. Again, this statement appears to exhibit a lack of a review of the exhibits in this case. Resp. Exh. 21 and 22.

63. Respondent takes exception to paragraph 84 of the R.O. This conclusion or masked finding of fact is not supported by the evidence. The ALJ appears to need measurements to support the testimony of the witnesses. However, the pictures are clear and support Dr. Rasul's testimony. This conclusion is not reasonable nor is it supported by competent substantial evidence. Resp. Exh. 23.

64. Respondent takes exception to paragraph 87 of the R.O. The ALJ issues a conclusion of law or masked finding of fact that is not supported by the evidence. The Department's exhibit was not complete and *had been tampered with.* The Department

ended up taking out certain pages from its medical records for A.B. However, the records for Respondent for A.B. were accurate. Further, there was no difference in the substance of the record. Dr. Rasul had merely cleared up some grammatical errors later. Tr. p. 10, 457, Resp. Exh. 3 compared to Petit. Exh. 3.

65. Respondent takes exception to paragraph 88 of the R.O. This conclusion of law or masked finding of fact is not supported by the evidence and is not reasonable. It also ignores the substantive evidence such as prescription records, text message, medical records, emails, testimony from staff and other patients that support his testimony. Generally, there is deference to the factfinder but when the factfinder ignores the other evidence that supports the witness, the conclusions are suspect. In this case, they should be rejected. Resp. Exh. 1 – 5, 15, 19, 21, 22, Tr. p. 423 – 71, 495 – 509, 567 – 592.

66. Respondent takes exception to paragraph 91 of the R.O. This conclusion of law or masked finding of fact is not reasonable or supported by competent substantial evidence. The ALJ determines the truthfulness of a witness, who is also a doctor in Pakistan, simply because she worked part-time at the clinic. This conclusion is not well founded. Tr. p. 497 – 509.

67. Respondent takes exception to paragraphs 92 and 93 of the R.O. This conclusion or masked finding of fact is not reasonable or supported by competent substantial evidence. Ms. Beaudoin was present when A.B., D.D. and E.L. were at the clinic on the days they alleged inappropriate touching. Her testimony about how she interacts with the patients after a visit is relevant. Her testimony about the windows in

the clinic, how one can see into the office from the parking lot, and how she can see into Dr. Rasul's office are relevant. D.D. specifically testified in her deposition that the door was open during her visit. Tr. p. 423 – 491.

68. Respondent takes exception to paragraph 96 of the R.O. This conclusion of law or masked finding of fact is not supported by competent substantial evidence or is reasonable. D.D. testified that the door was open during her entire visit. The ALJ then tries to disparage the same photos that he claimed did not represent the office when A.B., E.L, and D.D. were at the clinic. Ms. Beaudoin testified that she could see into Dr. Rasul's office when a patient was on the couch. She also testified that she could hear what was going on in the office. At no time did she hear the alleged sounds of distress or Dr. Rasul's chair being moved on the floor to the couch. Resp. Exh. 12, 23 Tr. p. 477 9, 487 – 9.

69. Respondent takes exception to paragraphs 97 and 98 of the R.O. This conclusion of law or masked finding of fact is not supported by the direct testimony of Ms. Beaudoin. The Department did not offer any witness to dispute the testimony of Ms. Beaudoin. Instead, the ALJ just claimed that her testimony did not support the fact that one can see into the office from outside. Ms. Beaudoin testified that she could see into Dr. Rasul's office when a patient was on the couch. She also testified that she could hear what was going on in the office. At no time did she hear the alleged sounds of distress or Dr. Rasul's chair being moved on the floor to the couch. Tr. p. 435 – 7.

70. Respondent takes exception to paragraph 99 of the R.O. This conclusion of law is not reasonable and is an attempt to mask a conclusion as a finding of fact. Ms.

Beaudoin testified that she could see into Dr. Rasul's office when a patient was on the couch. She also testified that she could hear what was going on in the office. At no time did she hear the alleged sounds of distress or Dr. Rasul's chair being moved on the floor to the couch. Resp. Exh. 12, 23 Tr. p. 431 - 91.

71. Respondent takes exception to paragraph 101 of the R.O. This masked finding of fact or conclusion of law is not supported by the evidence and is not reasonable. Both patient T.P. and A.B. (2) testified that nothing unusual happened on the day that E.L. claimed she was upset and later had panic attack. They also testified that there was no stethoscope in the office. The ALJ just ignores this testimony because he can find no reason why they would be motivated to testify in this manner, except that it was the truth. Tr. p. 567 – 92.

72. Respondent takes exception to paragraph 103 of the R.O. This conclusion of law is merely a comment that serves no purpose. It also ignores the testimony in this case and the evidence.

CONCLUSIONS OF LAW

73. The Department's raising of the "boundary violations or issues" permeated the entire proceedings. It is improper to consider and rule on these boundary issues when they are not plead in the A.C.s. Trevisani, *supra.*

74. The ALJ also failed to cite applicable rule in full. This was very similar to his examination of the evidence in this case. He reviewed only what he chose to review. This was a due process violation to Dr. Rasul. See, Borges, *supra*.

75. Rule 64B-9.008(2)(3) and (4), F.A.C. states:

> (2) For purposes of this rule, sexual misconduct between a physician and a patient includes, but it is not limited to:
> (a) Sexual behavior or involvement with a patient including verbal or physical behavior which:
> 1. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it,
> 2. May reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or any third party, or
> 3. **May reasonably be interpreted by the patient as being sexual.**
> (b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in paragraph (2)(a) above, and which:
> 1. Results from the use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship,
> 2. Misuses privileged information or access to privileged information to meet the physician's personal or sexual needs, or
> 3. Is an abuse or reasonably appears to be an abuse of authority or power.
> (3) Sexual behavior or involvement with a patient excludes verbal or physical behavior that is required for medically recognized diagnostic or treatment purposes when such behavior is performed in a manner that meets the standard of care appropriate to the diagnostic or treatment situation.
> (4) The determination of when a person is a patient for purposes of this rule is made on a case by case basis with consideration given to the nature, extent, and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the patient physician-relationship is terminated. (emphasis added).

76. This rule is important because if the patient (like A.B.) does not interpret anything sexual about the interaction, it is excluded from the rule and statute. A.B.

testified and included in her statement that there was nothing sexual about the interaction. Dr. Rasul denied, and noted in his medical record, nothing about inappropriate touching. There are no grounds for supporting the claim made by A.B.

77. Respondent takes exception to paragraph 113 of the R.O. This paragraph ignores the testimony of D.D. in her deposition, the evidence about demanding more Adderall after the alleged incident and her motivation to manufacture this complaint. The paragraph also ignores the testimony from A.B. and her statement to the police that there was nothing sexual about the interaction on November 2, 2020. The ALJ improperly relied on the boundary arguments from the Department, which tainted the entire record.

78. Respondent takes exception to paragraph 116 of the R.O. The ALJ only reviewed and considered part of the record. He ignored the depositions of D.D., Ms. Menezes, the prescription records for E.L., the texts from D.D., the statement and testimony from A.B., and the testimony from patients T.P., A.B. (2). He rejected the testimony from Ms. Beaudoin and Ms. Rasul without a legitimate basis. Ms. Beaudoin worked for Respondent for seven to eight years. She had no motivation to lie and, as an office manager for many years, such behavior as alleged would have caught her attention. The ALJ also improperly dismisses Mrs. Rasul's testimony. She is a doctor in Pakistan and would not jeopardize her degree or her standing by manufacturing lies. This is a case of secondary gain sought and obtained, for the most part, by three ex-patients. They obtained the drugs and were unsuccessful in obtaining money from Respondent.

79. Respondent takes exception to paragraph 117 of the R.O. This conclusion not only ignores the contradictions in the testimony of the ex-patients, but it also ignores

the prescription records, the texts, the emails and the testimony of Ms. Menezes. It also ignores the testimony of D.D. when she asked for an attorney to sue Respondent, obtained the A.C. for E.L. prior to filing her complaint and carried through with her threat to have her lawyer make demands for money. It also ignores A.B.'s testimony and her statement to the police that there was nothing sexual about the interaction on November 2, 2020. The Department had delayed this case for years hoping to build a "pattern case." The Detective, who was not called as a witness, tried to help with this set up.

80. Respondent takes exception to paragraph 118 of the R.O. The Department had initially listed the detective, the office manager for A.B., Ms. Menezes as witnesses for the formal hearing. Ms. Menezes' testimony was taken by deposition and this testimony conflicted with the testimony from D.D. D.D., as an admission, testified that Ms. Menezes considered her actions to be fraud. This is more than a "he said – she said" scenario. The prescription records for E.L., the texts from D.D. and the testimony from A.B. supply corroborating evidence for Respondent's testimony. Because of the heightened review when a professional license is at risk, more was needed from the ALJ. See, Dep't of Health v. Michael Maloy, DOAH Case no. 20 – 5210PL (3/16/21) and Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83, 86 (Fla. 1st DCA 1997)(heightened standard of review when a professional license is at risk). He ignored relevant and uncontested evidence. This paragraph is not a reasonable conclusion on this case.

81. Respondent takes exception to paragraph 120 of the R.O. The ALJ failed to consider the testimony of Patients T.P. and A.B. (2), the text messages from D.D., the email from E.L. as well as the prescription records along with the direct testimony from

A.B. A factfinder would have noted the change in story from D.D. when compared to the deposition of Ms. Menezes. This conclusion is not reasonable for this case.

82. Respondent takes exception to paragraph 121 of the R.O. Again, the ALJ failed to consider the testimony of Ms. Menezes. She clearly testified that she didn't know L.D., the sister-in-law of D.D. and did not go to her house. D.D. testified that she and Ms. Menezes went to L.D.'s house before reporting the "incident." The ALJ also, alternatively, ignored the pictures of the office. Respondent's office is highly visible and D.D. testified in her deposition that the office door was open the entire visit. Her statements were made after her intent to sue Dr. Rasul was voiced to the state attorney's office. She followed through on her threat by hiring a lawyer just before her deposition and the lawyer made demands to Respondent's insurance company. This conclusion is not reasonable based on the evidence presented.

83. Respondent takes exception to paragraph 122 of the R.O. This paragraph ignores the direct testimony from A.B. and the statement she made for the police. According to A.B., there was nothing sexual about the interaction on November 2, 2020. The police did nothing with the case. The rule makes it clear that the patient should have considered the act to be sexual in nature. When A.B. changed her story, the factfinder should have been alerted to this contradiction. Instead, he simply ignored the testimony and statement. This conclusion is not reasonable based on the evidence presented by Respondent and the direct testimony of A.B.

84. Respondent takes exception to paragraph 123 of the R.O. The records from Sowka show a different story from what E.L testified about. First, E.L. testified directly

to the ALJ that she didn't know what Dr. Rasul's ethnicity was. She also testified in her deposition that she did not have a prior spouse or partner psychological abuse history. E.L. testified that her only bad relationship happened in 2021. Sowka's records from January 2020 detail a prior spouse or partner psychological abuse. Sowka's record also details a racist and angry statement from E.L. about Dr. Rasul. Either Sowka was lying in her records or E.L. was lying in her testimony. This conclusion is not supported by reason.

85. Respondent takes exception to paragraph 125 of the R.O. Based on the above exceptions, this conclusion is not reasonable. It fails to consider all of the evidence.

86. Respondent takes exception to paragraph 126 of the R.O. Based on the above exception, this conclusion is not reasonable.

87. Respondent takes exception to paragraphs 128 - 9 of the R.O. Based on the above exceptions, this conclusion is not reasonable. The ALJ also fails to take into account the rule adequately. Basically, he states a rule without realizing the facts do not support his position. This conclusion is not reasonable in light of the evidence.

88. Respondent takes exception to paragraph 130 of the R.O. Based on the above exceptions, the tainting and reliance of the ALJ on the "boundary violations or issues," it is not a reasonable conclusion.

89. Respondent takes exception to paragraph 131 of the R.O. Based on the above exceptions, the tainting and reliance of the ALJ on the "boundary violations or issues," it is not a reasonable conclusion.

90. Respondent takes exception to the recommended penalty in this case. Based on the exception, the tainting and relance of the ALJ on the "boundary violations or issues," it is not a reasonable recommendation. A more reasonable recommendation is that Respondent did not violate Section 456.072(1)(v) as defined by Section 456.063(1) and 458.329, F.S. or Section 458.331(1)(j), or Rule 64B-9.008(2) and (4), F.A.C.

91. Respondent also reserves his objections about considering documentation that was not offered and accepted into evidence, relying on the boundary issues or "violations" that the PCP specifically denied in regard to amending to the A.C.s and any other legal issue raised herein. These issues constitute a legal error that is beyond the review authority of the Board of Medicine. See, Barfield v. Dep't of Health, 805 So. 2d 1008, 1010, 1012 (Fla. 1st DCA 2001) reh. den. (2002).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy hereof has been furnished by email to Corynn Alberto at Corynn.alberto@flhealth.gov and Kathryn Ball at Kathryn.Ball@flhealth.gov this 21st day of October, 2024.

/s/ John E. Terrel
John E. Terrel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,
Petitioner,

v.

DOAH Case Nos.: 23-2350PL

IFTIKHAR RASUL, M.D.,
Respondent.
_____/

PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

Petitioner, Department of Health, by and through the undersigned counsel, pursuant to Rule 28-106.217(3), Florida Administrative Code, hereby files its Response to Respondent's Exceptions to the Recommended Order, and in support, states the following:

I. Background

1. Respondent is a licensed physician in the State of Florida, having been issued license number ME 88613. Recommended Order, p. 4.
2. A formal administrative hearing was held to determine whether Respondent violated section 456.072(1)(v), Florida Statutes (2018-2022), and/or section 458.331(1)(j), Florida Statutes (2020-2022), as alleged in Petitioner's Administrative Complaints, and if so, what penalty should be imposed. Recommended Order, pp. 1-2.
3. On October 4, 2024, the presiding Administrative Law Judge (ALJ) entered his Recommended Order, which found that Petitioner proved by clear and

Exhibit C

convincing evidence that Respondent violated section 456.072(1)(v) and section 458.331(1)(j), as alleged in Petitioner's Administrative Complaints. Recommended Order, pp. 21-22.

4. The ALJ recommended that the Board of Medicine (Board) enter a final order finding that Respondent violated section 456.072(1)(v) and section 458.331(1)(j), revoking Respondent's license to practice medicine, imposing an administrative fine in the amount of $15,000.00, and imposing costs of investigation and prosecution of these cases. Recommended Order, p. 23.

5. On October 21, 2024, Respondent filed exceptions with the Board of Medicine.

II. Applicable Standard of Review

6. The ALJ and the Board have distinct roles in formal administrative hearings. It is the function of the ALJ to consider all the evidence presented, resolve conflicts in the evidence, assess the credibility of witnesses, draw permissible inferences from the evidence, and complete a recommended order consisting of findings of fact, conclusions of law, and a recommended penalty. See, e.g., § 120.57(k), Fla. Stat (2024); Heifetz v. Dep't. of Bus. Regul., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (citing State Beverage Dep't v. Ernal. Inc., 115 So. 2d 566 (Fla. 3d DCA 1959)); Goss v. Dist. Sch. Bd. of St. John's Cnty., 601 So. 2d 1232, 1234 (Fla. 5th DCA 1992); and Bejarano v. Dep't of Educ., Div. of Vocational Rehab., 901 So. 2d 891, 892 (Fla. 4th DCA 2005). If the evidence presented supports two inconsistent findings, it is the ALJ's role to decide the issue one way or the other. Heifetz, 475 So. 2d at 1281. The agency may not

reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. Id.

7. Parties may file exceptions to findings of fact and conclusions of law contained within the ALJ's recommended order. § 120.57(1)(k), Fla. Stat. (2024). Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record. Id.; R. 28-106.217(1) Fla. Admin. Code.
8. The Board's final order must include an explicit ruling on each exception, except that Board need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat. (2024).
9. The Board cannot reject or modify the ALJ's findings of fact unless it first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. § 120.57(1)(l), Fla. Stat. (2024).
10. Competent evidence is evidence sufficiently relevant and material to the ultimate determination "that a reasonable mind would accept it as adequate to support the conclusion reached." City of Hialeah Gardens v. Miami Dade Charter Found., 857 So. 2d 202, 204 (Fla. 3d DCA 2003) (citing DeGroot v.

Sheffield, 95 So. 2d 912, 916 (Fla. 1957)). Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred. Id.

11. The Board may only reject or modify an ALJ's conclusions of law and interpretations of administrative rules if the Board has substantive jurisdiction. See, e.g., § 120.57(1)(l), Fla. Stat. (2024); Barfield v. Dep't of Health, 805 So. 2d 1008 (Fla. 1st DCA 2001); Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140 (Fla. 2nd DCA 2001). "Jurisdiction" has been interpreted to mean "administrative authority" or "substantive expertise." See Deep Lagoon Boat Club, Ltd., 784 So. 2d at 1142.

12. While the ALJ recommends interpretations of law and/or administrative rules, the Board has ultimate discretion over matters of substantive jurisdiction. However, the Board may only reject or modify the ALJ's conclusions of law if the Board:

    a. states with particularity its reasons for rejecting or modifying such conclusions of law or interpretation of administrative rule; and

    b. makes a finding that the substituted conclusions of law or interpretation of administrative rule is as reasonable or more reasonable than that which was rejected.

§ 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

13. If a finding of fact in an ALJ's Recommended Order is improperly labeled, the label should be disregarded, and the item treated as though it were properly

labeled as a conclusion of law. Battaglia Props. v. Fla. Land & Adjudicatory Comm'n, 629 So. 2d 161, 168 (Fla. 5th DCA 1994).

III. Petitioner's Objection to Respondent's claim that the proceedings did not comply with the essential requirements of law

14. Respondent references the Emergency Restriction Order (ERO) which was entered against Respondent on April 5, 2023. However, neither the ALJ nor the Board have jurisdiction over the Department's issuance of the ERO, and the District Court of Appeal has already addressed any due process issues relating to the ERO, upholding it in part.[1]

15. Respondent also argues that the proceedings did not comply with the essential requirements of law because the ALJ made findings related to "boundary violations," which were not charged in the Administrative Complaint.

16. Respondent fails to identify the portion of the Recommended Order to which he takes exception. Furthermore, Respondent's claim is inaccurate because the ALJ did not make any specific finding of a "boundary violation" against Dr. Rasul.

17. This case involves a psychiatrist, Dr. Rasul, who treated D.D., A.B., and E.L. for various mental health conditions. The dynamics of the psychiatrist-patient relationship, including the vulnerabilities of the patients, the ethical responsibilities of the physician, and the boundaries necessary to establish trust in therapy, are relevant to the issues in this case and provide a context

[1] The State Surgeon General, or their designee, has sole authority to issue an ERO. See § 456.073(8) Fla. Stat. (2022-2024). The Surgeon General's findings in an ERO are only reviewable by the District Court. See §§ 120.60(6)(c), 120.68 Fla. Stat. (2022-2024).

by which the fact finder understands the evidence presented. That the ALJ considered evidence about the importance of boundaries within the psychiatrist-patient relationship is neither improper nor unexpected in a case involving a psychiatrist who is charged with sexual misconduct.

18. Respondent also argues the ALJ delayed the hearing by granting the Petitioner's motion to relinquish jurisdiction to amend the Administrative Complaints, failed to inquire about the proposed amendments to the complaints, and ignored the transcript of the Probable Cause Panel (PCP) relating to the Petitioner's attempt to amend the complaints.

19. In September 2023, the ALJ granted Petitioner's motion to relinquish the case to amend the Administrative Complaints. Recommended Order, pp. 2-3. The Department subsequently presented its proposed Amended Administrative Complaint to the PCP, who denied the amendments. R. Exh. 43. The matters were then re-referred to the Division of Administrative Hearings for a formal hearing on the original charges, which was properly conducted by the ALJ in June 2024. Recommended Order, p. 3.

20. Respondent provides no statute, rule, or case law to support his contention that the ALJ was required to inquire as to the substance of Petitioner's proposed amendments to the complaints—either before or after relinquishing jurisdiction. Indeed, public policy in Florida favors liberality in permitting amendments to pleadings and, absent exceptional circumstances, motions for leave to amend a pleading should be granted, and refusal to do so constitutes

an abuse of discretion. See Dep't of Health v. Khan, 350 So. 3d 87, 92 (Fla. 1st DCA 2022), reh'g denied (Nov. 14, 2022).

21. Ultimately, Respondent failed to substantiate—or even sufficiently articulate—his claim that the proceedings did not comply with the essential requirements of law. Respondent failed to identify any specific portion of the Recommended Order to which he takes exception; rather, he raises vague general complaints about the procedural history of this case and the ALJ's findings, without any coherent legal basis for such complaints.

22. Because Respondent's exception does not identify the disputed portion of the Recommended Order by page number or paragraph, the Board should not rule on it.

IV. Respondent's Exceptions to Findings of Fact

Respondent's Exception to Footnote 2

23. Respondent takes exception to the ALJ's footnote 2, which states:

> Petitioner's Proposed Recommended Order notes that its "Exhibits 1-6 and 8 were admitted into evidence." A review of the Transcript shows that Petitioner's Exhibit 7 was also admitted into evidence.

24. Respondent claims that the ALJ erred in making factual findings based on the deposition testimony of Respondent's expert, Dr. Storper, because his deposition was not admitted into evidence.

25. There is no evidence which suggests that the ALJ's belief that Dr. Storper's deposition had been admitted affected the ultimate findings in this case. Dr. Storper testified live at the hearing and his testimony was consistent with the

testimony that he gave during his deposition. Respondent does not identify any specific finding(s) of fact in which the ALJ relied upon Dr. Storper's deposition testimony, rather than his testimony at the hearing.

26. Respondent's exception to Footnote 2 of the Recommended Order is improper because the footnote is part of the ALJ's "Preliminary Statement," which summarizes the procedural history of the case, and is not a finding of fact, conclusion of law, or penalty recommendation to which a party may take exception. See § 120.57(1)(k), Fla. Stat. (2024).

27. Moreover, the exception does not identify by page number or paragraph any specific portion of the Recommended Order that Respondent believes to have been improperly tainted by consideration of Dr. Storper's deposition. See § 120.57(1)(l), Fla. Stat. (2024).

28. Accordingly, Respondent's exception to Footnote 2 is improper and the Board should not rule on it.

Respondent's Exception to Paragraph 6

29. Respondent takes exception to paragraph 6, which states:

> D.D.'s visits with Dr. Rasul took place in his office with the door closed. D.D. sat on a leather couch across from Dr. Rasul, who sat in a chair behind his desk.

30. Respondent argues this finding is not based on competent substantial evidence because D.D.'s testimony on the matter was inconsistent.

31. Respondent's exception improperly asks the Board to re-weigh the credibility of D.D.'s testimony. It is the role of the ALJ, not the Board, to weigh the

credibility of the witnesses. Heifetz, 475 So. 2d at 1281. The ALJ found D.D.'s testimony to be "clear, concise, and without equivocation," and ultimately credible and consistent. Recommended Order, pp. 5-6. Competent, substantial evidence exists to support the ALJ's findings of fact. (Tr., p. 39) Therefore, Respondent's exception to paragraph 6 should be denied.

Respondent's Exception to Paragraph 7

32. Respondent takes exception to paragraph 7, which states:

> On October 3, 2022, D.D. presented to Dr. Rasul for a follow-up appointment. During the visit, Dr. Rasul asked D.D. whether she had a "green card" and showed her his credentials on the office walls. Dr. Rasul specifically noted that the date of one of his certificates was the same year that D.D. was born.

33. Respondent argues that this finding is not supported by competent substantial evidence because D.D.'s testimony was contradictory and inconsistent with another witness.

34. The Board cannot re-weigh the credibility of the witnesses. Id. The ALJ found D.D.'s testimony to be "clear, concise, and without equivocation," and ultimately credible and consistent. Recommended Order, pp. 5-6. Competent, substantial evidence exists to support this finding. (Tr., p. 41; R. Ex. 38, p. 50) Therefore, Respondent's exception to paragraph 7 should be denied.

Respondent's Exception to Paragraph 9

35. Respondent takes exception to paragraph 9, which states:

> Dr. Rasul came out from behind his desk and approached D.D. on her right side as she sat on the couch. He took her blood pressure and placed a stethoscope under D.D.'s shirt and bra. He then touched D.D.'s left breast and nipple. D.D. testified that Dr. Rasul's hand was "all over" her breast and nipple.

36. Respondent argues that this paragraph is not based on competent substantial evidence because D.D.'s testimony was inconsistent. Within this exception, Respondent also implies that the ALJ did not meet the requisite legal criteria or experience to rule on this case.

37. Respondent bizarrely argues that "[t]he findings in this paragraph do not evidence experience in health care" by the ALJ because "[t]he manner of describing taking blood pressure is not accurate." Respondent implies that, because section 120.651, Florida Statutes, requires DOAH to appoint at least two judges that must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law, the presiding ALJ in this case should have such experience. However, Respondent cites to no statute, rule, or case law requiring an ALJ overseeing a Department case to have such specialized experience. Respondent's claim about the ALJ's experience is without merit and should not be considered.

38. As for the claims about D.D.'s credibility, it is the role of the ALJ, not the Board, to weigh the credibility of the witnesses. Id. The ALJ found D.D.'s testimony to be "clear, concise, and without equivocation," and ultimately credible and consistent. Recommended Order, pp. 5-6. Competent substantial evidence exists to support the finding of fact. (R. Ex. 8; R. Ex. 38, p. 53; Tr., pp. 42–44, 67, 90) Therefore, Respondent's exception to paragraph 9 should be denied.

Respondent's Exception to Paragraph 10

39. Respondent takes exception to paragraph 10, which states:

> Dr. Rasul also pulled D.D.'s shirt and bra away from her body exposing her left breast and nipple.

40. Respondent claims that this finding is not based upon competent substantial evidence because D.D.'s testimony was not credible.

41. It is the role of the ALJ, not the Board, to weigh the credibility of the witnesses. Id. The ALJ found D.D.'s testimony to be "clear, concise, and without equivocation," and ultimately credible and consistent. Recommended Order, pp. 5-6. Competent substantial evidence exists to support the ALJ's findings of fact. (R. Ex. 38, p. 56–57; Tr., p. 42) Therefore, Respondent's exception to paragraph 10 should be denied.

Respondent's Exception to Paragraph 12

42. Respondent takes exception to paragraph 12, which states:

> D.D., shortly after leaving Dr. Rasul's office, spoke to her friend Liana Menezes on the phone and told her what happened. Ms. Menezes testified that during the call D.D. was "crying a lot," "couldn't speak much," and was "very nervous." D.D. told Ms. Menezes that Dr. Rasul touched her breast under her bra.

43. Respondent argues that this finding is not supported by competent substantial evidence because D.D.'s testimony was contradicted by another witness, Ms. Menezes. Respondent claims that the ALJ ignored Ms. Menezes' testimony that D.D. had "personal issues."

44. Respondent's exception mischaracterizes the testimony Ms. Menezes, who clearly testified about the call with D.D. in which she emotionally reported that Dr. Rasul had touched her breasts inappropriately. (R. Ex. 41, pp. 16-18, 38)

45. The ALJ found D.D. and Ms. Menezes to be credible and consistent, and the Board cannot re-assess a witness's credibility. Id.; Recommended Order, pp. 5-6, 21. The ALJ's findings of fact are supported by competent substantial evidence. (R. Ex. 41, pp. 16–18, 38; Tr., pp. 45–46) Therefore, Respondent's exception to paragraph 12 should be denied.

Respondent's Exception to Paragraph 14

46. Respondent takes exception to paragraph 14, which states:

> OPD Detective Sierra noted that when he met with D.D. about the allegations, she was "crying her eyes out."

47. Respondent argues that Detective Sierra's statement is hearsay, which was not corroborated by any other evidence, and cannot be used to support a finding of fact. He also argues that the ALJ did not indicate where he obtained Detective Sierra's statement.

48. Respondent's argument that Detective Sierra's statement is non-corroborative hearsay is inaccurate. D.D. testified that she was crying in the car after the incident with Dr. Rasul, and Ms. Menezes also stated that D.D. was crying when she spoke to her on the phone that day. (R. Ex. 41, pp. 16–18, 38; Tr., pp. 45–46)

49. While the ALJ is not required to include citations to the record in his Recommended Order, Detective Sierra's statement can be found in the transcript of Dr. Rasul's interview with OPD, which was offered *by Respondent* and admitted as Exhibit 27. (R. Ex. 27, p. 55)

50. The ALJ's findings of fact are supported by competent substantial evidence. (R. Ex. 41, pp. 16–18, 38; Tr., pp. 45–46; R. Ex. 27, p. 55) Therefore, Respondent's exception to paragraph 14 should be denied.

Respondent's Exception to Paragraph 16

51. Respondent takes exception to paragraph 16, which states:

> Respondent's counsel tried to discredit D.D. by unsuccessfully eliciting testimony from D.D. that her medical condition, knowledge of Complaint I, and possible financial gain, motivated her allegations against Dr. Rasul.

52. Respondent argues that the paragraph is not supported by competent substantial evidence and claims that Dr. Rasul's testimony was more believable than D.D.'s.

53. The ALJ found D.D.'s testimony to be credible, and the Board cannot re-weigh witness credibility. Id.; Recommended Order, pp. 5-6. There is competent substantial evidence to support this finding. (Tr., pp. 49-50, 52-54, 100-104, 110, 112-116, 139-141; R. Ex. 41, p. 18-19) Therefore, Respondent's exception to paragraph 16 should be denied.

Respondent's Exception to Paragraph 17

54. Respondent takes exception to paragraph 17, which states:

> In an attempt to impeach D.D., Dr. Rasul's counsel suggested that D.D.'s long Covid diagnosis impaired her ability to recall the events that happened in Dr. Rasul's office on October 3, 2022. The point of counsel's inquiry was to suggest that D.D. was hallucinating with respect to Dr. Rasul's actions. That said, D.D.'s testimony about what was done to her by Dr. Rasul was clear, concise, and without equivocation, and counsel failed to offer credible evidence that D.D. had memory issues or trouble with perception at her last appointment.

55. Respondent argues that this paragraph "seems to originate from the deposition of Dr. Storper," which was mistakenly admitted by the ALJ, and therefore, cannot be relied upon to support a finding of fact.

56. The ALJ makes no mention of Dr. Storper in this paragraph. Instead, he focuses on Respondent's counsel and his suggestion during cross-examination that D.D. had memory issues due to a long Covid diagnosis. This exchange is clearly reflected in the hearing transcript. (Tr., pp. 100-104, 139-140) Thus, Respondent's argument fails and should not be considered.

57. Respondent also claims that D.D.'s testimony was inconsistent and there was no competent substantial evidence to support this finding.

58. The ALJ found that D.D. testified clearly and concisely about her experience with Dr. Rasul. Recommended Order, pp. 5-6. The Board may not make witness credibility determinations, and the ALJ's findings of fact are supported by competent substantial evidence. Id.; (Tr., pp. 49-50, 110, 100-104, 139-140) Therefore, Respondent's exception to paragraph 17 should be denied.

Respondent's Exception to Paragraph 18

59. Respondent takes exception to paragraph 18, which states:

> Dr. Rasul's counsel also sought to impeach D.D. by suggesting that she fabricated the allegations against Dr. Rasul after finding the Department's Complaint related to E.L. D.D. testified that while sitting in the car waiting for OPD, she searched Dr. Rasul's name online because she wanted to see if there were any reviews that would give insight into Dr. Rasul's behavior. During her search, she found Complaint I. Ms. Menezes corroborated D.D.'s 6 account that while waiting for OPD, D.D. went online to search for information about Dr. Rasul and found a case of another patient with a very "similar situation."

60. Respondent questions D.D.'s testimony, claiming that she was not a reliable or truthful witness, and argues that there is no competent substantial evidence to support this finding.

61. The ALJ found that D.D. testified clearly and concisely about her experience with Dr. Rasul. Recommended Order, pp. 5-6. This finding is based on competent substantial evidence and the Board cannot re-assess witness credibility. Id.; (R. Ex. 41, pp. 18–19; Tr., pp. 49–50, 110) Therefore, Respondent's exception to paragraph 18 should be denied.

Respondent's Exception to Paragraph 19

62. Respondent takes exception to paragraph 19, which states:

> Respondent offered no credible evidence that D.D.'s knowledge of E.L.'s complaint impacted her own allegations against Dr. Rasul.

63. Respondent attempts to argue that D.D.'s knowledge of E.L.'s complaint and the fact that she sought out an attorney is evidence that her claims against Respondent are not credible.

64. However, the ALJ found D.D.'s account to be credible. Recommended Order, pp. 5-6. There is competent substantial evidence to support his finding and the Board cannot re-assess the credibility of witnesses. Id.; (R. Ex. 41, pp. 18–19; Tr., pp. 49–50, 110-113) Accordingly, Respondent exception to paragraph 19 should be denied.

Respondent's Exception to Paragraph 20

65. Respondent takes exception to paragraph 20, which states:

Respondent also questioned D.D.'s credibility by suggesting that she was "looking for money" and had repeatedly sought money from him. Respondent did not offer any credible evidence in furtherance of this suggestion. While Dr. Rasul's malpractice carrier was made aware of D.D.'s allegations, the fact that D.D. may elect to pursue a civil remedy against Dr. Rasul does not, without more, impeach her credibility.

66. Respondent claims that the ALJ should have found that D.D.'s hiring of a lawyer impeached her credibility as a witness in this case. Additionally, he argues that D.D.'s testimony was inconsistent.

67. However, the ALJ found D.D. to be credible. Recommended Order, pp. 5-6. The Board cannot re-weigh a witness's credibility and there is competent substantial evidence to support this finding. Id.; (Tr. p. 52-54, 112-116, 140-141) Therefore, Respondent's exception to paragraph 20 should be denied.

Respondent's Exception to Paragraph 21

68. Respondent takes exception to paragraph 21, which states:

Respondent also sought to impeach D.D. by noting that she continued to request medication refills from Dr. Rasul without returning to his office for appointments. It is unsurprising and reasonable that D.D. did not want to return to Dr. Rasul's office after her last visit, which involved him exposing and fondling her breast, to obtain refills for her psychiatric medication. Furthermore, Dr. Rasul was clearly not overly concerned with her refusal to return to the office since he continued to refill her medication until she eventually stopped communicating with his office.

69. Respondent alleges that D.D.'s testimony was contradicted and not credible, and there is no competent substantial evidence to support this finding.

70. The ALJ found that D.D. testified clearly and credibly about her reasons for not wanting to return to Dr. Rasul's office for medication, and the Board cannot re-weigh the credibility of witnesses. Id.; Recommended Order, p. 6. Additionally, there is competent and substantial evidence to support this

finding. (Tr., pp. 130, 739) Therefore, Respondent's exception to paragraph 21 should be denied.

Respondent's Exception to Paragraph 23

71. Respondent takes exception to paragraph 23, which states:

> D.D. testified credibly regarding her October 3, 2022, appointment with Dr. Rasul and her subsequent reporting of the incident. Her testimony is consistent with her previous accounts of the incident, including her written statement to OPD, and her statements to Ms. Menezes.

72. Respondent claims that the ALJ overlooked "contradictions" in the deposition testimony of D.D. and Ms. Menezes and accuses the ALJ of being biased in his finding. Respondent also misrepresents that Petitioner "claimed" that they would call Ms. Menezes at the hearing, but she "failed to appear."

73. In fact, on the first day of the hearing, Ms. Menezes signed on to the Zoom meeting but was placed in the waiting room while another witness was testifying. By the time she was to be called, Ms. Menezes had exited the room and was no longer available. (Tr., pp. 87, 143) Petitioner notified the ALJ of the same, on the record, and stated that they would rely on her deposition testimony, which was admitted by Respondent as Exhibit 41.

74. There is no evidence which substantiates Respondent's claim that the ALJ was biased in his findings. In fact, Respondent never alleged that the ALJ was biased until he received an adverse ruling in the Recommended Order. Moreover, the ALJ found D.D. and Ms. Menezes to be credible, and there is competent substantial evidence to support this finding. (Tr., pp. 42-46, 50, 67,

90; R. Ex. 8; R. Ex. 41 p. 16-18, 38) Therefore, Respondent's exception to paragraph 23 should be denied.

Respondent's Exception to Paragraph 28

75. Respondent takes exception to paragraph 28, which states:

> Dr. Rasul placed a stethoscope under A.B.'s shirt and bra. As he did this, he touched and rubbed A.B.'s left breast and nipple with his hand.

76. Respondent argues that this finding is not based on competent substantial evidence because Dr. Rasul testified that he did not have a stethoscope, both of his employees claimed there was not a stethoscope in the office, and neither T.P. nor A.B.(2) saw a stethoscope.

77. D.D. and A.B. testified clearly and consistently about Dr. Rasul's use of a stethoscope while inappropriately touching their breasts, and the ALJ found their accounts to be credible. Recommended Order, pp. 5-6, 8-9.

78. The Board cannot re-assess witness credibility, and there is competent substantial evidence to support this finding. Id.; (Tr., pp. 42-44, 151-154) Therefore, Respondent's exception to paragraph 28 should be denied.

Respondent's Exception to Paragraph 29

79. Respondent takes exception to paragraph 29, which states:

> Dr. Rasul also pulled A.B.'s shirt and bra away from her body exposing her breast and nipple.

80. Respondent claims that this finding is not based on competent substantial evidence. However, Respondent references the testimony of D.D. and Ms. Menezes, which is not related to the factual finding in this paragraph.

81. Nonetheless, the ALJ found A.B.'s testimony to be clear and credible, and, the Board cannot re-assess credibility of witnesses. Id.: Recommended Order, pp. 8-9. There is competent substantial evidence to support this finding. (P. Ex. 3, pp. 61, 65–66; Tr., p. 152) Therefore, Respondent's exception to paragraph 29 should be denied.

Respondent's Exception to Paragraph 31

82. Respondent takes exception to paragraph 31, which states:

> At the end of her visit, A.B. felt anxious about Dr. Rasul's actions. After exiting the office, she got into her car and cried. She immediately called her boyfriend, Alex Seamon, and told him "I think I was assaulted."

83. Respondent argues that this finding is not based on competent substantial evidence and disputes the credibility of A.B.'s testimony. Respondent mischaracterizes A.B.'s testimony and claims that she said, "nothing was exchanged sexually wise."

84. A.B. did testify that she did not do anything sexual in exchange for cash given to her by Dr. Rasul during an earlier visit, but this was separate from her testimony about the visit on November 2, 2020, when Dr. Rasul inappropriately touched her breast. (Tr., pp. 169-170)

85. As to the final appointment in which Dr. Rasul touched her inappropriately, the ALJ found A.B.'s testimony to be consistent and credible. Recommended Order, pp. 8-9.

86. The Board cannot re-assess a witness's credibility, and there is competent substantial evidence to support this finding. Id.; (Tr., p. 154-155) Therefore, Respondent's exception to paragraph 31 should be denied.

Respondent's Exception to Paragraph 32

87. Respondent takes exception to paragraph 32, which states:

> Mr. Seamon testified that A.B. called him from her car after her appointment with Dr. Rasul. She was crying and "obviously distraught." He remembers her saying, "I think I just got assaulted."

88. Respondent argues this finding is not based on competent substantial evidence because A.B. allegedly made "contradictory statements." Respondent also mischaracterizes A.B.'s testimony by stating that she said, "nothing was exchanged sexually wise."

89. A.B. did testify that she did not do anything sexual in exchange for cash given to her by Dr. Rasul during an earlier visit; however, this testimony was unrelated to the call with Mr. Seamon on the date of the incident. (Tr. p. 169-170)

90. There is competent substantial evidence to support this finding. (Tr. p. 154-155) Therefore, Respondent's exception to paragraph 32 should be denied.

Respondent's Exception to Paragraph 34

91. Respondent takes exception to paragraph 34, which states:

> While sitting in her car after the appointment, A.B. called OPD, who met her in a parking lot not far from Dr. Rasul's office. A.B. provided a written statement to OPD detailing what happened with Dr. Rasul.

92. Rather than arguing that there is no competent substantial evidence to support the finding, Respondent alleges that the ALJ ignored certain evidence.

93. Respondent claims that A.B. said "nothing was exchanged sexually wise," and reported the same to the police. This is a blatant mischaracterization of A.B.'s account. Her statement to OPD clearly shows that when she said this, she was referring to a previous appointment in which Dr. Rasul gave her money, *not* the last appointment on November 2, 2020, when A.B. was sexually assaulted. (R. Ex. 7)

94. A.B. consistently reported, to OPD, to Mr. Seamon, and during her deposition and hearing testimony, that Dr. Rasul inappropriately touched her breasts during her last appointment. Her account never wavered. (R. Ex. 7; R. Ex. 36; Tr., pp. 157-158; 169-170, 172-173)

95. The ALJ weighed all the evidence in this case and found A.B.'s testimony to be credible. Recommended Order, pp. 8-9. There is competent substantial evidence to support this finding. (R. Ex. 7; R. Ex. 36; Tr., pp. 157-158, 169-170, 172-173) Therefore, Respondent's exception to paragraph 34 should be denied.

Respondent's Exception to Paragraph 36

96. Respondent takes exception to paragraph 36, which states:

> As with D.D., Respondent unsuccessfully attempted to impeach A.B.'s testimony by suggesting she had financial motives in making the allegations against Dr. Rasul.

97. Respondent argues that there is no competent substantial evidence to support this finding.

98. The ALJ found A.B.'s testimony to be credible, and the Board may not re-weigh evidence or make witness credibility determinations. Id.; Recommended Order, pp. 8-9. There is competent substantial evidence to support this finding. (Tr., pp. 160-164, 208-218) Therefore, Respondent's exception to paragraph 36 should be denied.

Respondent's Exception to Paragraph 39

99. Respondent takes exception to paragraph 39, which states:

> A.B. acknowledged that she earned a commission on the sale of the policy to Dr. Rasul but clarified that it wasn't substantial. She testified that the conversation with Dr. Rasul about the insurance occurred organically during one of her appointments. She never tried to persuade him to buy a policy. Dr. Rasul expressed an interest, and she responded. The direct emails she sent to Dr. Rasul were crafted under the supervision and guidance of her supervisor at Aflac.

100. Respondent alleges that there is no competent substantial evidence to support the findings and accuses the ALJ of lacking logic and reasoning.

101. Respondent makes this accusation about the ALJ based on his own assumptions about what A.B.'s supervisor would have trained A.B. to do, rather than on any evidence in the record.

102. The ALJ found A.B.'s testimony to be credible, and the Board may not re-weigh evidence or make witness credibility determinations. Id.; Recommended Order, pp. 8-9. Despite Respondent's claims, there is competent and substantial evidence to support the ALJ's findings. (Tr., p. 162-164) Therefore, Respondent's exception to paragraph 39 should be denied.

Respondent's Exception to Paragraph 40

103. Respondent takes exception to paragraph 40, which states:

> Counsel also sought to impeach A.B. by asking her about Dr. Rasul's November 2, 2020, visit note, in which he documented that A.B. was asking him for financial assistance. When confronted with the note, A.B. was visibly stunned by what Dr. Rasul had written and emphatically denied ever asking Dr. Rasul for money.

104. Respondent argues that there is no competent substantial evidence to support this finding and claims that the ALJ ignored evidence that supports his position. He also disputes that A.B.'s reaction was genuine, thus calling into question her credibility as a witness.

105. The ALJ found A.B. to be credible, and the Board cannot re-assess a witness's credibility. Id.; Recommended Order, pp. 8-9. There is competent and substantial evidence to support the ALJ's findings. (R. Ex. 33, p. 4; Tr., pp. 166-167, 219-220, 228, 238) Therefore, Respondent's exception to paragraph 40 should be denied.

Respondent's Exception to Paragraph 42

106. Respondent takes exception to paragraph 42, which states:

> Despite counsel's attempts to discredit A.B. regarding the Aflac policy and alleged request for financial assistance, no credible evidence was offered to prove that A.B. was untruthful in her allegations against Dr. Rasul.

107. Respondent argues that the ALJ concentrated on the actions of Respondent's counsel instead of "actually reviewing the evidence before him," and describes this as a "due process violation." However, Respondent misses the point of this paragraph. The ALJ previously made detailed findings of fact

relating to the Aflac policy and the alleged request for financial assistance in paragraphs 37 through 41. In the subject paragraph, the ALJ merely finds that Respondent's efforts to impeach A.B. on these points were unsuccessful.

108. The ALJ found A.B. to be credible, and it is not the Board's responsibility to re-assess the credibility of a witness. Id.; Recommended Order, pp. 8-9. Moreover, there is competent substantial evidence to support this finding. (R. Ex. 33, p. 4; Tr., pp. 166-167, 219-220, 228, 238) Therefore, this exception should be denied.

Respondent's Exception to Paragraph 44

109. Respondent takes exception to paragraph 44, which states:

> A.B. testified credibly regarding the November 2, 2020, appointment with Dr. Rasul and her subsequent reporting of the incident. Her testimony is consistent with her previous accounts of the incident, including her written statement to OPD, and her statements to Mr. Seamon.

110. Respondent argues that there is no competent substantial evidence and specifically disputes A.B.'s credibility. He claims that A.B. "clearly testified that there was nothing sexual about the interaction with Dr. Rasul." This is a mischaracterization of A.B.'s testimony, wherein she specifically detailed the way Dr. Rasul touched her breasts inappropriately.

111. The ALJ found A.B.'s testimony to be clear, concise, and credible. Recommended Order, pp. 8-9. The Board cannot re-assess a witness's credibility. Id.

112. There is competent substantial evidence to support the finding. (R. Ex. 7; R. Ex. 36; Tr., pp. 157-158, 169-170, 172-173) Therefore, Respondent's exception to paragraph 44 should be denied.

Respondent's Exception to Paragraph 48

113. Respondent takes exception to paragraph 48, which states:

> On June 25, 2019, E.L. presented to Dr. Rasul for a follow-up visit. During the appointment, Dr. Rasul told E.L. that he wanted to take her blood pressure. He had never taken E.L.'s blood pressure during any of her previous sessions.

114. Respondent alleges that this paragraph is not supported by competent substantial evidence. He claims that the ALJ ignored records that were admitted into evidence, and that those records contradicted E.L.'s testimony.

115. Respondent's exception fails because there is competent substantial evidence to support this finding. (P. Ex. 1, p. 35-37; Tr. p. 254) The ALJ found E.L.'s testimony about her appointment on June 25, 2019, to be credible, and it is not the Board's responsibility to re-assess the credibility of a witness. Id.; Recommended Order, p. 11. Therefore, Respondent's exception to paragraph 48 should be denied.

Respondent's Exception to Paragraph 49

116. Respondent takes exception to paragraph 49, which states:

> Dr. Rasul came from behind his desk and approached E.L. on her right side as she sat on the couch. After taking E.L.'s blood pressure, Dr. Rasul talked to E.L. about her anatomy. He took her right hand and started counting down her ribs from the top of her chest until he was inside her bra. E.L. removed her hand, but Dr. Rasul kept his hand inside her bra and touched her left breast and nipple.

117. Respondent does not argue that there is not competent substantial evidence to support this claim. Instead, Respondent argues that E.L.'s statements were inconsistent, and she could not recall everything. However, the record is very clear that E.L.'s statements about the June 25, 2019, visit with Dr. Rasul have remained consistent since she originally reported the assault. (R. Ex. 37, pp. 67–68; Tr., pp. 254–258)

118. The ALJ found E.L.'s testimony to be credible and consistent. Recommended Order, p. 11. There is competent substantial evidence to support the finding. (R. Ex. 37, p. 67-68; Tr., p. 254-258) Therefore, Respondent's exception to paragraph 49 should be denied.

Respondent's Exception to Paragraph 51

119. Respondent takes exception to paragraph 51, which states:

E.L. did not return to Dr. Rasul's office after June 25, 2019.

120. Respondent claims that this paragraph is not supported by competent substantial evidence. He claims that Dr. Rasul's testimony and medical records refute E.L.'s testimony on this issue. However, the ALJ found E.L.'s testimony to be clear and credible. Recommended Order, p. 11.

121. There is competent substantial evidence to support this finding. (P. Ex. 1; Tr. p. 259) Therefore, Respondent's exception to paragraph 51 should be denied.

Respondent's Exception to Paragraph 52

122. Respondent takes exception to paragraph 52, which states:

E.L. was shocked and overwhelmed by Dr. Rasul's actions. She internalized what Dr. Rasul had done to her and did not talk about his actions until she disclosed the events to her therapist, Melinda Sowka, L.M.H.C., in January 2020.

123. Respondent argues that this paragraph ignores direct evidence and is not supported by competent substantial evidence. He claims that E.L.'s complaint against Dr. Rasul was "manufactured" due to her anger with him not refilling her prescription. This claim improperly requests that the Board re-assess the credibility of E.L.'s testimony, which the ALJ found to be clear and credible. Recommended Order, p. 11.

124. There is competent substantial evidence to support this finding. (R. Ex. 37, p. 55, 68, 97; Tr. p. 255) Therefore, Respondent's exception to paragraph 52 should be denied.

Respondent's Exception to Paragraph 55

125. Respondent takes exception to paragraph 55, which states:

Dr. Rasul sought to impeach E.L.'s testimony by citing to unfounded accusations of drug use. E.L. admitted that she had used marijuana in the past, but she denied ever having a drug problem. There is no documentation in Dr. Rasul's June 25, 2019, visit note that he suspected E.L. was under the influence of any substance, and ultimately counsel failed to show that any alleged drug use affected E.L.'s ability to recall or perceive the events which occurred during her appointment on June 25, 2019.

126. Respondent argues that this paragraph is not supported by competent substantial evidence and attacks E.L.'s credibility. He also claims that the ALJ ignored testimony from the Department's expert that long-term use of marijuana with Lithium can cause confusion and remembering things correctly.

127. The ALJ found E.L.'s testimony to be credible, and there is competent substantial evidence to support the finding. Recommended Order, p. 11. (P. Ex. 1; Tr., p. 296-301) Therefore, Respondent's exception to paragraph 55 should be denied.

Respondent's Exception to Paragraph 56

128. Respondent takes exception to paragraph 56, which states:

> E.L. was also questioned about her communications with Dr. Rasul's office following the June 25, 2019, visit – specifically, that she made several requests for medication refills but refused to return for an appointment. E.L. did not recall the communications. Again, it is unsurprising and reasonable that E.L. did not want to return to Dr. Rasul's office after her last visit, which involved him inappropriately touching her breast, to obtain refills for her psychiatric medication. Furthermore, as with D.D., Dr. Rasul was clearly not overly concerned with E.L.'s refusal to return to the office since he continued to refill her medication until she eventually stopped communicating with his office.

129. Respondent claims that this finding is not supported by competent substantial evidence. Respondent claims that the ALJ ignored testimony from the Department's expert, who stated it would be "unusual for a patient to request additional medications from the doctor if that doctor had assaulted the patient."

130. However, the ALJ found E.L.'s testimony to be credible and the Board may not re-weigh the credibility of a witness. Id.; Recommended Order, p. 11. There is competent substantial evidence to support this finding. (Tr. p. 283-287, 738) Therefore, Respondent's exception to paragraph 56 should be denied.

Respondent's Exception to Paragraph 58

131. Respondent takes exception to paragraph 58, which states:

E.L. testified credibly regarding the June 25, 2019, visit with Dr. Rasul. Her testimony is consistent with her previous accounts of the incident, including the written allegations in the complaint form submitted by Ms. Sowka.

132. Respondent claims that this paragraph is not supported by competent substantial evidence and disputes the ALJ's finding that E.L. testified credibly.

133. The Board cannot re-weigh the evidence and credibility of a witness. Id. The ALJ found E.L. to be credible, and there is competent substantial evidence to support the finding. (P. Ex. 1; Tr. pp. 249, 254-258, 399-402; R. Ex. 6; R. Ex. 37, p. 58) Therefore, Respondent's exception to paragraph 58 should be denied.

Respondent's Exception to Paragraphs 61 and 62

134. Respondent takes exception to paragraphs 61 and 62, which state:

On April 18, 2024, Dr. Rasul completed the PTD program, and on May 8, 2024, the criminal case against him was dismissed.

The dismissal of criminal charges against Dr. Rasul is irrelevant to the credibility of D.D. or whether her allegations against Dr. Rasul are true.

135. Respondent argues that these paragraphs are not supported by competent substantial evidence. He claims that the ALJ ignored testimony about the PTD program, which was relevant to the issues in this case.

136. Contrary to Respondent's claim, the finding reflects that the ALJ did consider the evidence regarding Dr. Rasul's criminal case and PTD program, but did not find it to be relevant to the credibility of D.D.

137. There is competent substantial evidence to support the finding, and the Board cannot re-weigh evidence and witness credibility. Id.; (P. Ex. 8; R. Ex.

35, 44) Therefore, Respondent's exception to paragraphs 61 and 62 should be denied.

Respondent's Exception to Paragraph 66

138. Respondent takes exception to paragraph 66, which states:

> The Department's expert testified that psychiatrists are governed by a more stringent set of ethical guidelines than other physicians because of the vulnerabilities of psychiatric patients. The relationship between a psychiatrist and a patient must be based on trust. If trust is broken, the therapeutic nature of the relationship is damaged.

139. Respondent argues that this paragraph "violates the mandate that the agency is restricted to the allegations in the administrative complaint," and that "boundary issues or violations" were not part of the charges. He claims that the ALJ violated established law by making findings of fact on issues not contained in the Administrative Complaint.

140. The ALJ did not find that Dr. Rasul violated a boundary and does not attempt to discipline Respondent for doing so. Rather, this finding summarizes the expert's description of the psychiatrist-patient relationship, which is relevant to add context to the allegations in this case.

141. The Board may not discipline a physician for acts or omissions not pled in the administrative complaint. See Trevisani v. Dep't of Health, 908 So. 2d 1108, 1108 (Fla. 1st DCA 2005). However, this does not mean that the ALJ may only make findings of fact about matters specifically alleged in the complaint. The Respondent cites to no case law prohibiting the ALJ from doing so.

142. There is competent substantial evidence to support this finding. (Tr., pp. 334–336, 339) Therefore, Respondent's exception to paragraph 66 should be denied.

Respondent's Exception to Paragraph 70

143. Respondent takes exception to paragraph 70, which states:

> According to Dr. Storper, E.L. and D.D.'s attempts to obtain medications without having to come in for appointments could be secondary gain. Importantly, however, Respondent's expert also admitted that it would not be unusual for a patient who experiences sexual assault in a medical office to avoid returning to that office for treatment.

144. Respondent inaccurately claims that this paragraph is a conclusion of law masked as a finding of fact when it is a summary of the expert's opinion regarding the reasons why E.L. and D.D. attempted to obtain their prescriptions without returning to Dr. Rasul's office.

145. There is competent substantial evidence to support this paragraph. (Tr., pp. 602-610, 629) Therefore, Respondent's exception to paragraph 70 should be denied.

Respondent's Exception to Paragraph 72

146. Respondent takes exception to paragraph 72, which states:

> While it is possible that A.B. was motivated in the manner suggested by Dr. Storper, his opinion in this regard is based on a mere "possibility" rather than the requisite "probability" and is therefore of no evidentiary value when assessing the credibility of A.B.'s testimony.

147. Respondent improperly claims that this paragraph is a conclusion of law masked as a finding of fact and argues that the statement is not supported by competent substantial evidence.

148. The ALJ's finding is based on his assessment of Dr. Storper's testimony regarding A.B.'s involvement in the sale of insurance to Dr. Rasul. While Dr. Storper speculated about the possible motives of patients, he admitted that he had no personal knowledge of the allegations and could not opine on the credibility of the allegations against Dr. Rasul. (Tr. p. 620) As with each of the other witnesses, the ALJ's assessment of Respondent's expert's credibility is a finding of fact, not a conclusion of law.

149. The Board cannot re-weigh the evidence and the credibility of witnesses, and there is competent substantial evidence to support this finding. (Tr., pp. 602, 605, 629) Therefore, Respondent's exception to paragraph 72 should be denied.

Respondent's Exception to Paragraph 73

150. Respondent takes exception to paragraph 73, which states:

Dr. Storper's testimony was speculative and ultimately unpersuasive.

151. Respondent improperly claims that this paragraph is a conclusion of law masked as a finding of fact and argues that the statement is not supported by competent substantial evidence.

152. The ALJ's finding is based upon his assessment of Dr. Storper's testimony, specifically regarding the patients' motivations for filing complaints against Dr. Rasul. The ALJ is responsible for weighing the credibility of witnesses, not the Board. As with each of the other witnesses, the ALJ's

assessment of Respondent's expert's credibility is a finding of fact, not a conclusion of law.

153. There is competent substantial evidence to support this finding. (Tr., p. 602-610, 629) Therefore, Respondent's exception to paragraph 73 should be denied.

Respondent's Exception to Paragraph 76

154. Respondent takes exception to paragraph 76, which states:

> Dr. Rasul spent much time testifying about each of the patient's medical diagnoses and the treatment he rendered to them but offered no credible explanation as to why the patients have made these allegations against him.

155. Respondent improperly claims that this paragraph is a conclusion of law masked as a finding of fact and argues that the ALJ impermissibly tried to shift the burden of proof onto Respondent.

156. In his conclusions of law, the ALJ clearly outlines that the Petitioner has the burden of proof to prove the charges in the Administrative Complaints by clear and convincing evidence. Recommended Order, pp. 17-18. There is no indication that the ALJ shifted any burden to Dr. Rasul.

157. Dr. Rasul was asked about the patients' allegations on cross-examination and could not offer any convincing explanation for why the allegations are not true. The ALJ's finding reflects his assessment of Dr. Rasul's credibility when answering those questions and his inability to persuasively rebut the testimony of the patients. The Board cannot re-weigh

the ALJ's assessment of Dr. Rasul's credibility or that of the patients. Heifetz, 475 So. 2d at 1281.

158. There is competent substantial evidence to support this finding. (Tr., pp. 735-760) Therefore, Respondent's exception to paragraph 76 should be denied.

Respondent's Exception to Paragraph 77

159. Respondent takes exception to paragraph 77, which states:

Much of Dr. Rasul's testimony was unclear, inconsistent, and not persuasive.

160. Respondent again improperly argues that this finding is a conclusion of law masked as a finding of fact. However, it is clearly the ALJ's finding regarding the credibility of Dr. Rasul's testimony, something that the Board cannot re-assess or re-weigh. Id.

161. There is competent substantial evidence to support this finding. (Tr., pp. 735-760) Therefore, Respondent's exception to paragraph 77 should be denied.

Respondent's Exception to Paragraph 78

162. Respondent takes exception to paragraph 78, which states:

On direct examination, Dr. Rasul testified he has never kept a stethoscope in his office and does not remember if he has ever owned one. Yet, on cross-examination, when asked whether he has ever owned a stethoscope, he answered "not for a while."

163. Respondent claims there is no competent substantial evidence to support this finding. However, this finding is a clear reflection of Dr. Rasul's testimony on direct and cross examination, and the Board cannot re-weigh the evidence and witness credibility. Id.

164. There is competent substantial evidence to support this finding. (Tr., pp. 683, 735–736) Therefore, Respondent's exception to paragraph 78 should be denied.

Respondent's Exception to Paragraph 79

165. Respondent takes exception to paragraph 79, which states:

> During the hearing, Dr. Rasul claimed that before buying the Aflac policy, he requested someone else's contact information from Aflac because he did not want A.B. to be involved. Even so, he never advised A.B. that it was inappropriate to deal with her directly, and he willingly attended a Zoom meeting, at which A.B. was present, to discuss the insurance. Additionally, he never explored any other insurance options outside of Aflac to avoid involvement with A.B.

166. Respondent claims that the ALJ inappropriately made a finding based on boundary issues or violations, which were not charged in the Administrative Complaints.

167. During the hearing, Respondent attempted to damage A.B.'s credibility by insinuating that she had tried to sell an insurance policy to Dr. Rasul for her own financial benefit. The ALJ's finding describes his assessment of Dr. Rasul and the inconsistencies between his testimony and his actions during the transaction.

168. The finding is an evaluation of Dr. Rasul's credibility on this issue, and not a finding about boundary violations.

169. There is competent substantial evidence to support the ALJ's finding. (Tr., pp. 700, 707, 743–745, 749–750) Therefore, Respondent's exception to paragraph 79 should be denied.

Respondent's Exception to Paragraph 80

170. Respondent takes exception to paragraph 80, which states:

> Dr. Rasul also claimed he didn't remember whether he purchased a policy from Aflac. He was impeached by his deposition testimony in which he clearly stated that he bought a policy from Aflac and canceled it several months later because his office manager did not want to have to pay for it.

171. Respondent claims that this finding is not supported by competent substantial evidence. However, it is clear, that Dr. Rasul testified differently at the hearing than in his deposition and was impeached.

172. The ALJ's finding relates specifically to Dr. Rasul's credibility, and the Board cannot re-assess this. Id. Additionally, there is competent substantial evidence to support this finding. (P. Ex. 6, p. 80–81; Tr., pp. 745–752) Therefore, Respondent's exception to paragraph 80 should be denied.

Respondent's Exception to Paragraph 81

173. Respondent takes exception to paragraph 81, which states:

> Dr. Rasul's counsel offered photos of Dr. Rasul's office to establish the layout of the inside and the view from outside. When asked who took the photos, Dr. Rasul said they were a combination of pictures taken by him and his attorneys. He could not specify when the pictures were taken and failed to establish that they accurately portrayed what his office looked like at the time of the patients' allegations.

174. Respondent argues that this statement is not supported by competent substantial evidence and is not a reasonable conclusion.

175. The ALJ is tasked with weighing the evidence, not the Board. Id. There is competent substantial evidence to support this finding. (R. Ex. 23; Tr. p. 740-742) Therefore, Respondent's exception to paragraph 81 should be denied.

Respondent's Exception to Paragraph 82

176. Respondent takes exception to paragraph 82, which states:

> Dr. Rasul testified about the importance of seeing patients before refilling prescriptions. For example, he noted that E.L.'s medication had a risk for toxicity, and that it was important to keep a "close eye" on it. Yet on cross examination, he admitted that he continued to refill E.L.'s prescription for months without appointments, until she eventually stopped communicating with his office. Dr. Rasul did the same for D.D. when she refused to return for an appointment after her last visit.

177. Respondent claims that the ALJ is making a "finding or conclusion of law" concerning standard of care, which is not charged in the Administrative Complaints.

178. Respondent's argument is inaccurate. The finding does not attempt to determine whether Respondent met the standard of care, but rather notes the contrast between Dr. Rasul's testimony and his actions while treating D.D. and E.L. and assesses the impact of this discrepancy on Respondent's credibility.

179. The Board cannot re-assess the credibility of witnesses. Id. There is competent substantial evidence to support this finding. (Tr., pp. 650, 674, 738–739) Therefore, Respondent's exception to paragraph 82 should be denied.

Respondent's Exception to Paragraph 83

180. Respondent takes exception to paragraph 83, which states:

> Dr. Rasul also claimed that E.L. approached him after her appointment on June 25, 2019, to request another month's prescription. However, there is no documentation of this request in the visit note for June 25, 2019, and when asked about it on cross-examination, Dr. Rasul stated, "we do not document those minor things."

181. Respondent argues that this statement is not supported by competent substantial evidence and insinuates that the ALJ did not review all the evidence in the case.

182. However, there is competent substantial evidence to support this finding by the ALJ. (R. Ex. 22; Tr., pp. 669–670, 738) Therefore, Respondent's exception to paragraph 83 should be denied.

Respondent's Exception to Paragraph 84

183. Respondent takes exception to paragraph 84, which states:

> Respondent offered inconclusive and unclear testimony about his office chair – specifically, that he could not have rolled it over to the couch at the time of the incidents because it did not fit within the space in his office. In support, he relied on a photo of a chair in his office between the desk and the couch. Whether the chair would fit remains unclear as Respondent failed to provide any measurements or dimensions for the space. Furthermore, at least one of the patients said that the chair in the photos was different from the one she remembered.

184. Respondent inaccurately asserts that this finding is not based on competent substantial evidence, and the ALJ appeared to "need measurements" to support the testimony of the witnesses.

185. It is the role of the ALJ to weigh the evidence and determine the credibility of witnesses, including considering whether testimony is sufficiently detailed to be persuasive. Id. Contrary to Respondent's claims, there is competent substantial evidence to support the ALJ's finding. (R. Ex. 23, Tr., pp. 70, 638, 639) Therefore, Respondent's exception to paragraph 84 should be denied.

Respondent's Exception to Paragraph 87

186. Respondent takes exception to paragraph 87, which states:

> However, during A.B.'s testimony, she noted that Dr. Rasul's visit note for her last appointment on November 2, 2020, was not signed until November 2022. A review of the patients' records reflect many occasions in which Dr. Rasul signed his visit note months or even years after the date of the appointment. Counsel tried to clear up this discrepancy, but Dr. Rasul's testimony was confusing and not persuasive.

187. Respondent inaccurately argues that this finding is a conclusion of law masked as a finding of fact that is not supported by the evidence. He further accuses Petitioner of tampering with the records, even though no evidence was offered at the hearing to substantiate this claim.

188. The ALJ's finding is an assessment of Dr. Rasul's credibility based on competent substantial evidence. (P. Ex. 1–3; Tr., pp. 653–659, 712-717) The Board cannot re-weigh the credibility of a witness. Id. Therefore, Respondent's exception to paragraph 87 should be denied.

Respondent's Exception to Paragraph 88

189. Respondent takes exception to paragraph 88, which states:

> Overall, Dr. Rasul's testimony was not credible, distinctly remembered, precise, or lacking in confusion as to the material facts at issue. There were instances when his testimony was inconsistent or contradicted by other persuasive documentary evidence or testimony. None of his testimony convincingly rebutted the testimony of the Department's witnesses, including the patients at issue.

190. Respondent claims that this is a conclusion of law masked as a finding of fact, is not supported by the evidence, and is not reasonable.

191. The ALJ's finding is an assessment of the credibility of Dr. Rasul's testimony, and the standard of review does not permit the Board to re-weigh witness credibility. Id.

192. There is competent substantial evidence to support the ALJ's finding. (Tr., pp. 421-765) Therefore, Respondent's exception to paragraph 88 should be denied.

Respondent's Exception to Paragraph 91

193. Respondent takes exception to paragraph 91, which states:

> Mrs. Rasul['s] testimony is of limited evidential value as it appears that she is completely financially dependent on Dr. Rasul and the money that he generates from his medical practice.

194. Respondent improperly claims that this is a conclusion of law masked as a finding of fact that is not reasonable or supported by competent substantial evidence.

195. Mrs. Rasul testified that she is married to Dr. Rasul, and her only employment is with Serene Behavioral Health, which Respondent owns. The finding is an accurate description of Mrs. Rasul's testimony.

196. It is the ALJ, not the Board, who is tasked with assessing the credibility of witnesses and the weight of the evidence. Id. There is competent substantial evidence to support this finding. (Tr., pp. 495, 498-502, 509) Therefore, Respondent's exception to paragraph 91 should be denied.

Respondent's Exception to Paragraphs 92 and 93

197. Respondent takes exception to paragraphs 92 and 93, which state:

Dr. Rasul also offered the testimony of Melissa Beaudoin, his receptionist and office manager. Ms. Beaudoin has worked at Serene Behavioral Health for seven or eight years. She has no personal knowledge of the allegations in these cases.

Through Ms. Beaudoin's testimony, counsel sought to prove that Dr. Rasul did not have the opportunity to touch patients inappropriately because Ms. Beaudoin is able to see and hear what is happening inside Dr. Rasul's office. Ms. Beaudoin referenced a photo with a view of Dr. Rasul's office door from her desk and testified that she can see into Dr. Rasul's office. The door in the photo has a vertical window in its top left side.

198. Respondent claims that these are conclusions of law masked as findings of fact which are not reasonable or supported by competent substantial evidence.

199. Contrary to Respondent's claims, the above statements are obviously findings of fact and are clearly proven through Ms. Beaudoin's testimony and the photos offered by Respondent. There is competent substantive evidence to support this finding. (R. Ex. 23, #17; Tr., p. 429) Therefore, Respondent's exception to paragraphs 92 and 93 should be denied.

Respondent's Exception to Paragraph 96

200. Respondent takes exception to paragraph 96, which states:

E.L., A.B., and D.D. each credibly testified that the office door was closed during their visits. This photo proves that even if the door were open during appointments, Ms. Beaudoin could not witness an interaction between Dr. Rasul and a patient if the patient was sitting on the couch.

201. Respondent argues this is a conclusion of law masked as a finding of fact that is not reasonable or supported by competent substantial evidence. His exception is essentially a disagreement with the ALJ's assessment of the evidence.

202. The Board cannot re-assess the evidence presented at hearing, and there is competent substantial evidence to support the ALJ's finding. (R. Ex. 23, #6, Tr. p. 39, 150, 250) Accordingly, Respondent's exception to paragraph 96 should be denied.

Respondent's Exception to Paragraphs 97 and 98

203. Respondent takes exception to paragraphs 97 and 98, which state:

> Ms. Beaudoin also stated that from the building's parking lot you can see into Dr. Rasul's office windows. Two photos taken from outside the office were referenced. The photos are taken from the side of the building and not directly outside of Dr. Rasul's office. Dr. Rasul's office windows are tinted and reflect the parking lot. Respondent failed to establish, through either the photos or Ms. Beaudoin's testimony, that the office was easily seen from outside the building.
>
> Ms. Beaudoin also claimed that she can hear Dr. Rasul and patients inside his office from her desk, even when his door is closed. This testimony is irrelevant as none of the patients testified that they vocalized any distress during the incidents with Dr. Rasul.

204. Respondent inaccurately claims that these are conclusions of law masked as findings of fact which are not supported by the direct testimony of Ms. Beaudoin, and further argues that the Department did not offer any witness to dispute her testimony.

205. Contrary to Respondent's assertion, Petitioner offered testimony from each of the patients who stated that Dr. Rasul's office door was closed during appointments. None of the patients testified that they verbalized distress (which allegedly would have been heard by Ms. Beaudoin) during the inappropriate touching of their breasts by Dr. Rasul.

206. Furthermore, the findings reflect the ALJ's assessment of the weight of the evidence (photos) presented, which cannot be re-weighed by the Board. Id.

207. There is competent substantial evidence to support the findings. (Tr. p. 435, 488; R. Ex. 23, #18-19) Based on the foregoing, Respondent's exception to paragraphs 97 and 98 should be denied.

Respondent's Exception to Paragraph 99

208. Respondent takes exception to paragraph 99, which states:

> Ultimately, Ms. Beaudoin offered no relevant evidence disproving the allegations. Additionally, any consideration given to her testimony is weighed against her potential for bias, as she is financially dependent on Dr. Rasul as her employer.

209. Respondent improperly claims that this is a conclusion of law masked as a finding of fact and is not reasonable.

210. The finding is the ALJ's assessment of the weight and credibility of Ms. Beaudoin's testimony, and the standard of review does not permit the Board to reassess the weight of this evidence. Id.

211. There is competent substantial evidence to support the ALJ's finding. (Tr., p. 422, 473-492) Therefore, Respondent's exception to paragraph 99 should be denied.

Respondent's Exception to Paragraph 101

212. Respondent takes exception to paragraph 101, which states:

> A.B.(2) and T.P. had appointments at Serene Behavioral Health on the afternoon of June 25, 2019, the same day as E.L.'s last visit. Neither of them noticed anything out of the ordinary while in the office that day. E.L. never stated that she was visibly upset or distraught as she left the office on June 25, 2019, so their testimony was irrelevant.

213. Respondent improperly claims this is a conclusion of law masked as a finding of fact which is not supported by the evidence and not reasonable. He also accuses the ALJ of ignoring the testimony of A.B.(2) and T.P.

214. To the contrary, this finding reflects the ALJ's consideration and assessment of A.B.(2) and T.P.'s testimony when weighed against the testimony of E.L.

215. The Board is not permitted to re-weigh evidence, including the credibility of witnesses. Id. There is competent substantial evidence to support this finding. (Tr., pp. 569–570, 572, 588–590) Therefore, Respondent's exception to paragraph 101 should be denied.

Respondent's Exception to Paragraph 103

216. Respondent takes exception to paragraph 103, which states:

> Neither Respondent nor any of his witnesses provided testimony which discredited or disproved the patients' allegations against him.

217. Respondent argues this is a conclusion of law which is "merely a comment that serves no purpose," and it ignores the testimony and evidence.

218. First, Respondent's exception is legally insufficient, as it fails to include any citations to the record to identify which evidence the ALJ supposedly ignored, as required. § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule of this exception. Id.

219. Second, this paragraph is a clear finding of fact, wherein the ALJ assessed all the testimony presented at the hearing by Respondent and determined its weight.

220. The Board does not have jurisdiction to re-weigh evidence and witness credibility and there is competent substantial evidence to support the finding. Heifetz, 475 So. 2d at 1281; (Tr., pp. 422- 495-509, 523-593)

221. Because Respondent's exception to paragraph 103 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

V. Respondent's Exceptions to Conclusions of Law

Respondent's Exception to Paragraph 113

222. Respondent takes exception to paragraph 113, which states:

> Section 458.331(1)(j) provides that exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity constitutes grounds for disciplinary action. A patient is presumed incapable of giving free, full, and informed consent to sexual activity with his or her physician. There was no evidence offered establishing that the patients consented to having their breasts and nipples touched by Dr. Rasul.

223. Respondent claims "the ALJ improperly relied on the boundary arguments from the Department, which tainted the entire record" and ignored testimony.

224. First, Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule of this exception. Id.

225. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

226. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

227. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

228. The ALJ's conclusion makes no reference to any "boundary" issues, but rather applies the applicable law to the evidence presented at the hearing, as set forth in the findings of fact.

229. Because Respondent's exception to paragraph 113 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 116

230. Respondent takes exception to paragraph 116, which states:

> Patients D.D., A.B. and E.L. each credibly testified that Dr. Rasul touched their breasts in a sexual manner under the guise of examining them during an appointment. Dr. Rasul did this by exploiting the trust that these patients put in him as a licensed physician.

231. Respondent argues the ALJ only considered part of the record, ignored other evidence, and improperly weighed the credibility of the patients' testimony.

232. First, Respondent's exception is legally deficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule on this exception. Id.

233. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

234. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

235. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

236. Respondent's exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

237. Because Respondent's exception to paragraph 116 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 117

238. Respondent takes exception to paragraph 117, which states:

> The testimony of three patients, having no prior connection, about almost identical experiences with Dr. Rasul, points to a pattern of inappropriate conduct by Dr. Rasul. Furthermore, each of their accounts has remained consistent despite the years that have passed since the incidents.

239. First, Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule on this exception. Id.

240. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

241. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

242. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

243. Respondent argues the ALJ only considered part of the record, ignored other evidence, and improperly weighed the credibility of the patients' testimony. He also accuses the Department of delaying the case for years,

hoping to "build a pattern case," and alleges that "the Detective," who was not called as a witness, "tried to help with this setup."[2]

244. There is no evidence in the record to substantiate Respondent's outlandish accusations against the Department and Detective Sierra and Respondent does not even attempt to provide any. Regardless, these accusations do not equate to any cogent alternative conclusion of law that the Board could entertain.

245. Because Respondent's exception to paragraph 117 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 118

246. Respondent takes exception to paragraph 118, which states:

> Although not required, the Department offered the credible testimony of Ms. Menezes, Mr. Seamon, and Ms. Sowka to corroborate the testimony of D.D., A.B., and E.L., respectively, regarding their incidents with Dr. Rasul.

247. Respondent argues this is not a reasonable conclusion and accuses the ALJ of ignoring "relevant and uncontested evidence."

248. First, Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule on this exception. Id.

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[2] Respondent is presumably referring to Detective Sierra from OPD, who took a statement from D.D. R. Ex. 7

249. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

250. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

251. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

252. Respondent's exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ. Respondent's argument about the heightened standard of review is irrelevant to this conclusion of law, which deals with the corroborating evidence offered by Petitioner.

253. Because Respondent's exception to paragraph 118 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 120

254. Respondent takes exception to paragraph 120, which states:

> Dr. Rasul's defense largely amounts to mere suggestions that the victims had ulterior motives in fabricating allegations against him and that, had they been

true, his staff would have witnessed the illicit conduct. However, the testimony of Dr. Rasul and his other witnesses was largely unpersuasive and failed to rebut the credible testimony of the patients.

255. Respondent argues this conclusion is "not reasonable for this case," and accuses the ALJ of failing to consider certain evidence.

256. First, Respondent's exception is legally deficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule on this exception. Id.

257. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

258. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

259. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

260. Respondent's exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

261. Because Respondent's exception to paragraph 120 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 121

262. Respondent takes exception to paragraph 121, which states:

> Regarding D.D.'s allegations that Dr. Rasul touched her breast and nipple during the appointment on October 3, 2020, Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v) by engaging in, or attempting to engage in, sexual misconduct, as defined and prohibited in section 456.063(1), and violated section 458.331(1)(j) for exercising influence within a patient-physician relationship for the purposes of engaging a patient in sexual activity, as defined and prohibited by section 458.329 and rule 64B8-9.008 as charged in Complaint II.

263. Respondent claims this conclusion is "not reasonable based on the evidence presented, specifically challenging the testimony of witnesses, and accusing the ALJ of ignoring other evidence.

264. First, Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule on this exception. Id.

265. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

266. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

267. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

268. Respondent's exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

269. Because Respondent's exception to paragraph 121 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 122

270. Respondent takes exception to paragraph 122, which states:

> Regarding A.B.'s allegations that Dr. Rasul touched her breast and nipple during the appointment on November 2, 2020, Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v) by engaging in, or attempting to engage in, sexual misconduct, as defined and prohibited in section 456.063(1), and violated section 458.331(1)(j) for exercising influence within a patient-physician relationship for the purposes of engaging a patient in sexual activity, as defined and prohibited by section 458.329 and rule 64B8-9.008 as charged in Complaint II.

271. Respondent argues that this conclusion is "not reasonable based on the evidence presented by Respondent and the direct testimony of A.B."

272. First, Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule of this exception. Id.

273. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

274. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

275. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

276. Respondent's exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

277. Because Respondent's exception to paragraph 122 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 123

278. Respondent takes exception to paragraph 123, which states:

> Regarding E.L.'s allegations that Dr. Rasul touched her breast and nipple during the appointment on June 25, 2019, Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v) by engaging in, or attempting to engage in, sexual misconduct, as defined and prohibited in section 456.063(1).

279. First, Respondent's exception is legally deficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024). The Board therefore need not rule on this exception. Id.

280. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

281. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

282. The Board does not have substantive jurisdiction to re-weigh evidence and witness credibility. Moreover, Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

283. Respondent's exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

284. Because Respondent's exception to paragraph 123 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 125

285. Respondent takes exception to paragraph 125, which states:

> As for section 456.063(1), rule 64B8-8.001(4)(b) provided that it is considered an aggravating factor in sexual misconduct cases in which the relationship

between the licensee and the patient involved psychiatric diagnosis or treatment, and revocation is an appropriate penalty.

286. First, Respondent's exception is legally insufficient, as it fails to identify the appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024).

287. Respondent claims this is not a reasonable conclusion because it fails to consider all the evidence, but he does not articulate how it is unreasonable or what evidence was not considered by the ALJ. The exception therefore also does not identify any legal basis for the exception. See id.

288. Due to these deficiencies, the Board need not rule of this exception. Id.

289. Second, although Respondent concedes that this paragraph is a conclusion of law, he erroneously attempts to apply the standard of review for findings of fact by arguing about sufficiency of evidence.

290. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

291. Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion. The exception is nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

292. Because Respondent's exception to paragraph 125 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 126

293. Respondent takes exception to paragraph 126, which states:

> Rule 64B8-8.001(3) also provided aggravating and mitigating factors that may be considered in determining a penalty outside the disciplinary guidelines. Resort to these factors is unnecessary because the recommended penalty is within the guidelines. Moreover, any mitigating factors that might be present are greatly outweighed by the aggravating factors, including the harm to the patients and the repeated nature of the sexual misconduct.

294. Respondent's exception is legally insufficient, as it fails to identify the appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024).

295. Respondent claims this is not a reasonable conclusion because it fails to consider all the evidence, but he does not articulate how it is unreasonable or what evidence was not considered by the ALJ. The exception therefore also does not identify any legal basis for the exception. See id.

296. Due to these deficiencies, the Board need not rule of this exception. Id.

297. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

298. Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion. The exception is

nothing more than an attempt to have the Board re-weigh the evidence because Respondent disagrees with the ALJ.

299. Because Respondent's exception to paragraph 126 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraphs 128 and 129

300. Respondent takes exception to paragraphs 128 and 129, which state:

> Rule 64B8-8.001(2)(j) provided that the penalty authorized for a violation of section 458.331(1)(j) ranges from a one-year suspension to be followed by a period of probation and a reprimand, and an administrative fine of $5,000, to revocation and an administrative fine of $10,000. Revocation is the recommended penalty for a second violation of section 458.331(1)(j).
>
> Rule 64B8-8.001(1) provides that "multiple counts of the violated provisions ... may result in a higher penalty than that for a single, isolated violation."

301. Respondent's exception is legally insufficient, as it fails to identify the appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024).

302. Respondent argues that based on the previous exceptions, this conclusion is not reasonable. He also accuses the ALJ of failing to adequately interpret the rule. However, Respondent does not articulate why the conclusion is not reasonable or how the ALJ failed to adequately interpret the rule, aside from stating that the ALJ "fails to take into account the rule adequately" and "states a rule without realizing the facts do not support his position." The exception therefore also does not identify any legal basis for the exception. See id.

303. Due to these deficiencies, the Board need not rule of this exception. Id.

304. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

305. Respondent's exception contains only a vague assertion that the ALJ misapplied the Board's rule. Respondent also offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

306. Because Respondent's exception to paragraphs 128 and 129 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 130

307. Respondent takes exception to paragraph 130, which states:

> Each of these patients sought treatment from Dr. Rasul to help with mental health issues. Dr. Rasul used his position as a psychiatrist to exploit their vulnerabilities and the trust they placed in him by inappropriately touching their breasts under the guise of checking their hearts.

308. Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024).

309. Respondent claims this is not a reasonable conclusion "based on the above exceptions" and the "tainting and reliance of the ALJ on the boundary violations or issues." Respondent fails to explain why the conclusion is not

reasonable and/or what "boundary violations or issues" the ALJ relied on in making this finding. The exception therefore also does not identify any legal basis for the exception. See id.

310. Due to these deficiencies, the Board need not rule of this exception. Id.

311. Contrary to Respondent's claims, the ALJ did not make any findings of "boundary violations" against Respondent, but rather discussed the dynamic of an appropriate psychiatrist-patient relationship to add context to the nature of the allegations in this case and the appropriate penalty for those allegations, which were proven by clear and convincing evidence.

312. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

313. Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

314. Because Respondent's exception to paragraph 130 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Paragraph 131

315. Respondent takes exception to paragraph 131, which states:

> Revocation of Dr. Rasul's medical license is the only appropriate penalty given the reprehensible nature of his repeated violations.

316. Respondent's exception claims this is not a reasonable conclusion "based on the above exceptions" and the "tainting and reliance of the ALJ on the boundary violations or issues."

317. Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024).

318. Respondent fails to explain why the conclusion is not reasonable and/or what "boundary violations or issues" the ALJ relied on in making this finding. The exception therefore also does not identify any legal basis for the exception. See id.

319. Due to these deficiencies, the Board need not rule of this exception. Id.

320. Contrary to Respondent's claims, the ALJ did not make any findings of "boundary violations" against Respondent, but rather discussed the dynamic of an appropriate psychiatrist-patient relationship to add context to the nature of the allegations in this case and the appropriate penalty for those allegations, which were proven by clear and convincing evidence.

321. The Board may only modify a conclusion of law if it has substantive jurisdiction and makes a finding that the substituted conclusion of law is as reasonable or more reasonable than that which was rejected. § 120.57(1)(l), Fla. Stat. (2024); Barfield, 805 So. 2d at 1011.

322. Respondent offers no discernible alternative conclusion of law that might be as or more reasonable than the ALJ's conclusion.

323. Because Respondent's exception to paragraph 131 does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied.

Respondent's Exception to Recommended Penalty

324. Respondent takes exception to the recommended penalty and claims that it was not a reasonable recommendation because the ALJ relied on the "boundary violation issues."

325. Respondent's exception is legally insufficient as it fails to identify any appropriate and specific citations to the record. See § 120.57(1)(k), Fla. Stat. (2024).

326. Respondent fails to explain why the recommended penalty is not reasonable and/or what "boundary violation issues" the ALJ relied on in making the conclusion. The exception therefore also does not identify any legal basis for the exception. See id.

327. Due to these deficiencies, the Board need not rule of this exception. Id.

328. It is within the province of the ALJ to weigh evidence, make witness credibility determinations, draw reasonable inferences from the evidence presented, and make penalty recommendations. The Board may not reduce or increase the ALJ's recommended penalty without a review of the complete record and without stating with particularity its reasons. § 120.57(1)(l), Fla. Stat. (2024).

329. Respondent's exceptions do not cite any mitigating factors or other record evidence that, when viewed within the disciplinary guidelines, would provide a basis for the Board to reduce the recommended penalty.

330. Respondent argues that a more reasonable recommendation would be a dismissal of the charges.

331. Based on the cumulative evidence in this case, where Petitioner proved by clear and convincing evidence that Respondent committed sexual misconduct against three different women, the ALJ's penalty is more reasonable and appropriate. As set forth by the ALJ, Respondent exploited the trust of three vulnerable psychiatric patients for his own sexual gratification. This repeated egregious conduct demands the most severe penalty.

332. Section 456.072(2), Florida Statutes (2024) provides in pertinent part that:

> In determining what action is appropriate, the board, or department when there is no board, **must first consider what sanctions are necessary to protect the public** or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. (Emphasis added)

333. Only the penalty of revocation is sufficient to ensure that the public is protected from future harm by Respondent. Any lesser penalty, designed to rehabilitate Respondent, would expose the public to needless danger from this physician, who has already shown a willingness to exploit his position in the most reprehensible of ways.

334. Because Respondent's exception to the recommended penalty does not comply with the requirements of section 120.57(1)(k), the Board should not rule on it. In the alternative, it should be denied

IV. Conclusion

Respondent's exceptions failed to establish grounds for modification or rejection to the Findings of Fact, Conclusions of Law, and Recommended Penalty set forth in the Recommended Order and/or failed to meet the standard of review of this Board. For the foregoing reasons, Petitioner respectfully urges the Board to deny each of Respondent's Exceptions that it elects to rule upon.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy hereof has been furnished to John Terrel, Esq. at john@jsh-pa.com, Rick Strong, Esq. at rick@jsh-pa.com, and Jami Kimbrell at jami@jsh-pa.com this 31st day of October 2024.

Corynn Alberto
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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. **Case Number 2020-04497**

IFTIKHAR RASUL, M.D.,

RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health hereby files this Administrative Complaint before the Board of Medicine against Respondent Iftikhar Rasul, M.D. and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to section 20.43, Florida Statutes; chapter 456, Florida Statutes; and chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 88613.

3. Respondent's address of record is 6150 Metrowest Boulevard, Suite 101, Orlando, Florida 32835.

4. On November 27, 2017, Patient EL ("EL"), a then 19-year-old adult female, presented to Respondent at Serene Behavioral Health Psychiatry, in Orlando, Florida, to establish psychiatric care.

5. EL reported a history of anxiety with manic episodes since the age of 14.

6. Respondent diagnosed EL with Bipolar Disorder Type 1 and prescribed her Wellbutrin and lithium.

7. From November 27, 2017, to June 25, 2019 ("the treatment period), EL saw Respondent regularly for management of her Bipolar Disorder and medications.

8. During the treatment period, EL tolerated the prescribed medications well, without any side effects.

9. On June 25, 2019, EL presented to Respondent for a follow-up visit.

10. During the visit, Respondent advised EL that he wanted to take her blood pressure.

11. Respondent had never taken EL's blood pressure during any of her previous appointments.

12. After taking EL's blood pressure, Respondent then moved his hand into EL's bra and touched EL's left breast and nipple.

13. Section 456.072(1)(v), Florida Statutes (2018), subjects a licensee to discipline for engaging or attempting to engage in sexual misconduct as defined and prohibited in Section 456.063(1), Florida Statutes (2020).

14. Section 456.063(1), Florida Statutes (2018), defines sexual misconduct in the practice of a health care profession as a violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

15. Respondent used his professional relationship with EL to engage or attempt to engage EL in, or to induce or attempt to induce EL to engage in, verbal or physical sexual activity outside the scope of the Respondent's

professional practice as a physician, by touching EL's breast and nipple during the appointment on June 25, 2019.

16. Based on the foregoing, Respondent violated section 456.072(1)(v), Florida Statutes (2018), by engaging or attempting to engage in sexual misconduct, as defined and prohibited in section 456.063(1).

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

[signature on following page]

SIGNED this 8th day of January 2021.

Scott A. Rivkees, M.D.
State Surgeon General

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Amanda Mathis
DATE: JAN 08 2021

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PCP Date: January 8, 2021

PCP Members: Steven Falcone, M.D.; Kevin Cairns, M.D.

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
PETITIONER,

v.

Case No's.: 2022-40855
2022-40854

IFTIKHAR RASUL, M.D.,
RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, the Department of Health (Department) files this Administrative Complaint before the Board of Medicine (Board) against Respondent, Iftikhar Rasul, M.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to section 20.43, Florida Statutes (2022); and chapters 456 and 458, Florida Statutes (2022).

2. At all times material to this Complaint, Respondent was licensed to practice as a medical doctor within the State of Florida, having been issued license number ME 88613.

3. At all times material to this Complaint, Respondent's address of record was 6150 MetroWest Boulevard, Suite 101, Orlando, Florida 32835.

4. At all times material to this Complaint, Respondent was the

Founder and Medical Director of Professional Psychiatric Associates, Inc., doing business as Serene Behavioral Health Services (Serene) in Orlando, Florida.

5. At all times material to this Complaint, Respondent practiced medicine at Serene.

Facts Related to Patient A.B.[1]

6. On or about October 12, 2018, Patient A.B., a then 25-year-old woman, presented to Respondent at Serene to establish psychiatric care.

7. Respondent diagnosed Patient A.B. with recurrent major depressive disorder[2] and panic disorder with claustrophobia.

8. From October 12, 2018, through November 2, 2020, Patient A.B. regularly saw Respondent for management of her diagnoses and medications.

9. On November 2, 2020, Patient A.B. presented to Respondent for a follow-up appointment.

10. During this appointment, Respondent advised Patient A.B. that

[1] Facts related to Patient A.B. are addressed in DOH v. Iftikhar Rasul, M.D., DOH Case No.: 2022-40855.
[2] Major depressive disorder is a mental condition characterized by persistently depressed mood or loss of interest in activities, resulting in significant impairment in daily life. *What is Depression*, American Psychiatric Association, https://www.psychiatry.org/patients-families/depression/what-is-depression (last visited March 21, 2023).

he wanted to check her heart rate utilizing a stethoscope.

11. Respondent used an ungloved hand to move the chestpiece[3] underneath Patient A.B.'s shirt and bra.

12. Respondent then pulled Patient A.B.'s shirt and bra away from her body and exposed her breasts and nipples to Respondent's view.

13. Under the guise of checking Patient A.B.'s heart rate, Respondent touched, grabbed, cupped, and/or rubbed Patient A..'s breast with his hand and/or fingers.

14. Respondent had no bona fide medical purpose to place his hand underneath Patient A.B.'s bra; to expose Patient A.B.'s breasts and nipples; or to touch, grab, cup, and/or rub Patient A.B.'s breast.

Facts Related to Patient D.D.[4]

15. On or about July 11, 2022, Patient D.D., a then 27-year-old woman, presented to Respondent at SBHS to establish psychiatric care.

16. Respondent diagnosed Patient D.D. with history of combined type attention-deficit hyperactivity disorder, depressive disorder, and anxiety.

[3] The chestpiece, also known as the head, is round in shape and is the central part of the device. This is the part of the instrument placed against a patient's body. It is responsible for detecting, capturing, and transferring sounds to the headset.

[4] Facts related to Patient D.D. are addressed in DOH v. Iftikhar Rasul, M.D., DOH Case No.: 2022-40854.

17. From July 11, 2022, through October 3, 2022, Patient D.D. regularly saw Respondent for management of her diagnoses and medications.

18. On October 3, 2022, Patient D.D. presented to Respondent for a follow-up appointment.

19. During this appointment, Respondent informed Patient D.D. that he wanted to check her heart rate using a stethoscope.

20. Respondent initially placed the chestpiece on the center of Patient D.D.'s chest.

21. Respondent then informed Patient D.D. that he couldn't hear her heartbeat, and that he needed to place the chestpiece on her ribs to listen to her heart rate.

22. Respondent used an ungloved hand to move the stethoscope chestpiece[5] underneath Patient D.D.'s shirt and bra.

23. Respondent then pulled Patient D.D.'s shirt and bra away from her body exposing her breasts and nipples to Respondent's view.

24. Under the guise of checking Patient D.D.'s heart rate, Respondent touched, grabbed, cupped, and/or rubbed Patient D.D.'s breast

[5] The chestpiece is placed against a patient's chest and consists of three parts: the diaphragm, the bell, and the stem.

and nipple with his hand and/or fingers.

25. Patient D.D. immediately reported this incident to law enforcement.

26. Patient D.D. participated in a controlled call[6] with law enforcement.

27. During this controlled call, after Patient D.D. expressed that she was uncomfortable during the October 3, 2022, appointment, because Respondent pulled her shirt and touched her breast, Respondent responded and said to Patient D.D. "you have a nice tits [sic]." Patient D.D. responded, "Sorry?" Respondent, responded "I said, you have a nice tits [sic]."

28. Respondent had no bona fide medical purpose to place his hand underneath Patient D.D.'s bra; to expose Patient D.D.'s breasts and nipples; to touch, group, grab, cup, and/or rub Patient D.D.'s breast or nipple; or to comment on Patient D.D.'s breasts.

COUNT I

29. Petitioner realleges and incorporates paragraphs 1-14 as if fully set forth herein.

[6] An investigative technique where the alleged victim places a recorded call to the suspect at the direction of law enforcement.

30. Section 456.072(1)(v), Florida Statutes (2020), authorizes discipline against a physician for engaging or attempting to engage in sexual misconduct as defined and prohibited in section 456.063(1), Florida Statutes (2020).

31. Section 456.063(1) states that:

> Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

32. Section 458.331(1)(j), Florida Statutes (2020), authorizes discipline for exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

33. Section 458.329, Florida Statutes (2020), provides that:

> The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or

> attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

34. Rule 64B8-9.008(1), F.A.C., provides, in pertinent part, that sexual contact with a patient is sexual misconduct and is a violation of section 458.329 and 458.331(1)(j).

35. Rule 64B8-9.008(2), F.A.C., provides that sexual misconduct between a physician and a patient includes, but it is not limited to:

> (a) Sexual behavior or involvement with a patient including verbal or physical behavior which:
>
> 1. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it,
> 2. May reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or any third party, or
> 3. May reasonably be interpreted by the patient as being sexual.
>
> (b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in paragraph (2)(a), above, and which:
>
> 1. Results from the use or exploitation of trust, knowledge, influence, or emotions derived from the professional relationship,
> 2. Misuses privileged information or access to privileged information to meet the physician's personal or sexual needs, or

3. Is an abuse or reasonably appears to be an abuse of authority or power.

36. Rule 64B8-9.008(4), F.A.C., provides that:

> The determination of when a person is a patient for purposes of this rule is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the patient physician-relationship is terminated.

37. Respondent used the physician-patient relationship and/or exercised influence within the physician-patient relationship to engage or attempt to engage Patient A.B. in sexual activity outside of the scope of professional practice by:

a. placing his hand underneath Patient A.B.'s bra;

b. touching, grabbing, cupping, and/or rubbing Patient A.B.'s breast; and/or

c. pulling Patient A.B.'s shirt and bra away from her body and exposing her breasts and/or nipples.

38. Based on the foregoing, Respondent violated section 456.072(1)(v) as defined and prohibited in section 456.063(1) and/or

violated section 458.331(1)(j) as defined and prohibited in section 458.329 and/or rule 64B8-9.008.

COUNT II

39. Petitioner realleges and incorporates paragraphs 1-5 and 15–27 as if fully set forth herein.

40. Section 456.072(1)(v), Florida Statutes (2022), authorizes discipline against a physician for engaging or attempting to engage in sexual misconduct as defined and prohibited in section 456.063(1), Florida Statutes (2022).

41. Section 456.063(1) states that:

> Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

42. Section 458.331(1)(j), Florida Statutes (2022), authorizes discipline for exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed

to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

43. Section 458.329, Florida Statutes (2022), provides that:

> The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

44. Rule 64B8-9.008(1), F.A.C., provides, in pertinent part, that sexual contact with a patient is sexual misconduct and is a violation of section 458.329 and 458.331(1)(j).

45. Rule 64B8-9.008(2), F.A.C., provides that sexual misconduct between a physician and a patient includes, but it is not limited to:

> (a) Sexual behavior or involvement with a patient including verbal or physical behavior which:
>
> 1. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it,
> 2. May reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or any third party, or
> 3. May reasonably be interpreted by the patient as being sexual.

(b) Sexual behavior or involvement with a patient not actively receiving treatment from the physician, including verbal or physical behavior or involvement which meets any one or more of the criteria in paragraph (2)(a), above, and which:

1. Results from the use or exploitation of trust, knowledge, influence, or emotions derived from the professional relationship,
2. Misuses privileged information or access to privileged information to meet the physician's personal or sexual needs, or
3. Is an abuse or reasonably appears to be an abuse of authority or power.

46. Rule 64B8-9.008(4), F.A.C., provides that:

> The determination of when a person is a patient for purposes of this rule is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services from a physician is not determinative of this issue. A person is presumed to remain a patient until the patient physician-relationship is terminated.

47. Respondent used the physician-patient relationship and/or exercised influence within the physician-patient relationship to engage or attempt to engage Patient D.D. in sexual activity outside of the scope of professional practice by:

a. placing his hand underneath Patient D.D.'s bra;

b. touching, grabbing, cupping, and/or rubbing Patient D.D.'s breast and/or nipple;

c. pulling Patient D.D.'s shirt and bra away from her body and exposing her breasts and/or nipples; and/or

d. commenting on Patient D.D.'s breasts.

48. Based on the foregoing, Respondent violated section 456.072(1)(v) as defined and prohibited in section 456.063(1) and/or violated section 458.331(1)(j) as defined and prohibited in section 458.329 and/or rule 64B8-9.008.

[Remainder of page intentionally left blank.]

WHEREFORE, Petitioner respectfully requests that the Board enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 24th, day of April, 2023.

Joseph A. Ladapo, MD, PhD
Surgeon General and Secretary

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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Elizabeth Eubanks
DATE: April 24, 2023

PCP Meeting: 4/21/23
PCP Members: El-Bahri, Vila, & Romanello

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.