IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

OMAR KHALID HASAN, M.D.,

Petitioner,

v.

WEST VIRGINIA BOARD OF MEDICINE,

Respondent.

2017 JUL 20 AM 11:23

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Civil Action No. 17-AA-53
Judge Tod J. Kaufman

Order Staying the West Virginia Board of Medicine's June 21, 2017 Final Order

On July 18, 2017, this Court held a hearing on the *Motion for Immediate Stay of Administrative Order*. The Petitioner, Omar Khalid Hasan, M.D. ("Dr. Hasan"), and the Respondent, West Virginia Board of Medicine ("the Board"), appeared by counsel. Having reviewed the record, the Petitioner's Motion and requested relief, the Board's response, the argument of counsel and applicable law, this Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. This matter originated on September 15, 2014 when Dr. Hasan's former patient submitted a complaint questionnaire with the Board that alleged a sexual relationship during the course of her treatment. Dr. Hasan denied the allegations.

2. The Board appointed Herschel H. Rose, III, Esquire to serve as its Hearing Examiner and empowered him to examine witnesses under oath, rule on evidentiary questions, conduct the hearing, and make proposed findings of fact and conclusions of law. *See* W. Va. C.S.R. § 11-3-14.1

3. A four-day hearing was held on April 25-28, 2017. The Board was represented by the Office of the West Virginia Attorney General. The Hearing Examiner questioned witnesses, observed the witnesses' demeanor, and assessed their credibility. The Board's members were not present at the hearing to observe the witnesses' demeanor and assess their credibility. At the close of the hearing, the Board and Dr. Hasan submitted proposed findings of fact and conclusions of law.

4. On June 13, 2017, the Hearing Examiner issued an 83-page proposed order. The Hearing Examiner analyzed the testimony of each witness and concluded that the Board did not prove by clear and convincing evidence that a sexual relationship occurred. The Hearing Examiner's proposed order did not suspend or revoke Dr. Hasan's medical license.

5. The Board held a special meeting at 4:30 p.m. on June 19, 2017. Notwithstanding the Hearing Examiner's proposed order, the Board issued a separate order on June 21, 2017. Instead of accepting the findings of its appointed Hearing Examiner, the Board's order differed substantially from the parties' proposed orders and sharply criticized the Hearing Examiner's findings.

6. The Board's order imposed a one-year suspension on Dr. Hasan's medical license and revoked Dr. Hasan's medical license effective July 24, 2017.

7. On July 6, 2017, Dr. Hasan filed a Petition for Appeal of the Board's order, and a separate motion requesting an immediate stay of the Board's order pending the appeal.

8. The Board responded to Dr. Hasan's request for a stay on July 10, 2017. The Board argued that this Court does not have authority to grant a stay during the administrative appeal pursuant to West Virginia Code § 30-1-9. Additionally, the Board argued that West Virginia Code § 30-3-14(l) counsels against a stay in this case.

9. Dr. Hasan filed a reply brief in support of his request for a stay on July 17, 2017. Dr. Hasan argued that this Court is authorized to grant a stay of the Board's order pursuant to West Virginia Code § 29A-5-4(c) and Rule 3 of the *West Virginia Rules of Procedure for Administrative Appeals*. Dr. Hasan further argued that considerations of irreparable injury, preservation of status, preservation of rights, and due process necessitate granting a stay in this case.

Conclusions of Law

10. The West Virginia Medical Practice Act, codified at West Virginia Code § 30-3-1 et seq., specifically references the State Administrative Procedures Act ("APA") for purposes of invoking judicial review of a disciplinary action by the West Virginia Board of Medicine. Specifically, West Virginia Code § 30-3-14(l) provides that "[a]ny person against whom disciplinary action is taken pursuant to this article has the right to judicial review as

provided in articles five and six [§§ 29A-5-1 et seq. and 29A-6-1 et seq.], chapter twenty-nine-a of this code[.]"

11. The APA provides this Court with express authority to grant a stay pending appeal of an agency's order. West Virginia Code § 29A-5-4(c), titled "Judicial review of contested cases," provides:

> The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his petition, may apply to such circuit court for a stay of or supersedeas to such final order or decision. **Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.**

W. Va. Code § 29A-5-4(c) (emphasis added).

12. Additionally, the *West Virginia Rules of Procedure for Administrative Appeals* "govern the procedures in all circuit courts for judicial review of final orders or decisions from an agency in contested cases that are governed by the Administrative Procedures Act, W. Va. Code § 29A-5-et. seq." W. Va. R. Pro. Admin. App. 1(a). Rule 3(a) provides that "[a]ny person desiring to obtain a stay of enforcement [of a state agency final order or decision] ... may file a written motion with the circuit court after the Petition has been filed." W. Va. R. Pro. Admin. App. 3(a).

13. In this case, Dr. Hasan appealed the Board's order pursuant to West Virginia Code § 29A-5-(c). Both West Virginia Code § 29A-5-4(c) and Rule 3 of the *West Virginia Rules of Procedure for Administrative Appeals* expressly provide this Court with the authority to grant a stay of the Board's order.

14. The West Virginia Supreme Court has noted, without disapproval, several occasions in which a circuit court granted a stay of an order from the Board revoking a doctor's license to practice medicine. *See, e.g., Pritchard v. Catterson*, 184 W. Va. 542, 546, 401 S.E.2d 475, 479 (1990) ("[O]ver the objection of the Board [of Medicine], the Logan County Circuit Court entered an order granting Pritchard's motion for a stay[.]"); *Devrnja v. W. Virginia Bd. of Med.*, 185 W. Va. 594, 596, 408 S.E.2d 346, 348 (1991) ("Dr. Devrnja appealed to the Circuit Court of Kanawha County. A stay of execution was granted on January 26, 1989, pending appeal in the Kanawha County Circuit Court."); *Clark v. W. Virginia Bd. of Med.*, 2013 W. Va. 394, 508 S.E.2d 111 (1998) ("Dr. Clark obtained a stay of the Board's order in September 1994

and appealed the order to circuit court."). This Court was provided no authority where the West Virginia Supreme Court determined that a circuit court unlawfully granted a stay of the suspension or revocation of a medical license.

15. Having determined that this Court has authority to grant a stay, this Court must now determine whether a stay is appropriate. Professor Alfred S. Neely, IV's treatise, *Administrative Law in West Virginia*, is instructive regarding considerations for courts to consider regarding a stay.

16. Prof. Neely stated that useful and definitive considerations include "the elements of irreparable injury, preservation of status and preservation of rights." A. Neely, *Administrative Law in West Virginia* § 5.55 at 433-34 (1982). "These indicate that the consequences of immediate effectiveness to the appealing party are to be considered, weighed in the balance and possibly resolved in a stay." *Id.*

17. The first element is irreparable injury. The Board's order suspends Dr. Hasan's medical license effective July 24, 2017, and requires him to transfer the care of thousands of patients. These patients rely on Dr. Hasan for continued treatment through several clinics, hospitals, and his office. Absent a stay, these patients would be forced into the care of another psychiatrist instead of their preferred psychiatrist or discontinue care altogether. Accordingly, this Court finds that the public would be irreparably injured absent a stay.

18. Further, Dr. Hasan would be irreparably injured absent a stay. Dr. Hasan would lose thousands of patients. Moreover, Dr. Hasan would be deprived of his medical practice and means of livelihood. This Court notes that Dr. Hasan's competency to practice medicine has not been questioned by the Board. The Board has not considered Dr. Hasan a threat to the public, as it did not take summary action against his license pending the administrative hearing as permitted by W. Va. C.S.R. 11-3-10.16. Additionally, the irreparable injury to the Board is non-existent or minimal. Therefore, the element of irreparable injury weighs heavily in favor of a stay.

19. The second element is the preservation of status. The stay will maintain the status quo by allowing thousands of patients to continue treating with Dr. Hasan. A stay is necessary for Dr. Hasan to serve and treat his patients during the pendency of the appeal. This Court is also mindful that this matter originated on September 15, 2014. Dr. Hasan continued to treat his patients and practice without restriction throughout the course of the proceedings. A

stay of the imposition of the sanction for a couple of months, pending the resolution of this appeal, is a relatively minor delay. Therefore, the preservation of status also weighs in favor of a stay.

20. The third element is the preservation of rights. A stay will preserve Dr. Hasan's right to practice medicine. The West Virginia Supreme Court has long recognized that "the right to practice the profession of medicine and surgery is a valuable franchise in the nature of a 'property right.'" Syl., *West Virginia State Medical Ass'n v. Public Health Council of West Virginia*, 125 W. Va. 152, 23 S.E.2d 609 (1942). Accordingly, the preservation of rights weighs in favor of a stay.

21. After considering and weighing the elements of irreparable injury, preservation of status, and preservation of rights, this Court concludes that a stay is fair and appropriate in this case.

Accordingly, this Court GRANTS Petitioner's *Motion for Immediate Stay of Administrative Order*. This Court ORDERS that the West Virginia Board of Medicine's June 21, 2017 Final Order in West Virginia Board of Medicine Complaint No. 14-89-S is STAYED until further order of this Court.

The exceptions and objections of the parties to this Order are reserved. The Clerk of this Court is directed to provide copies of this Order to all parties of record.

ENTER this 20 day of July, 2017.

The Honorable Tod J. Kaufman

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 20th DAY OF July 2017
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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June 21, 2017

VIA HAND DELIVERY and CERTIFIED MAIL
Omar Khalid Hasan, M.D.
[redacted]

RE: ***West Virginia Board of Medicine, Petitioner v. Omar Khalid Hasan, M.D., Respondent***
Complaint No. 14-89-W

Dear Dr. Hasan:

Enclosed please find a copy of the Final Order of the West Virginia Board of Medicine in the above-referenced matter. A copy of this Order is being provided to you and to your counsel of record via hand delivery and certified mail.

The Board's Final Order imposes, among other terms and conditions, a one year suspension upon your license to practice medicine and surgery in West Virginia. To facilitate the transition of care for your current patients, the period of suspension imposed by the enclosed Order shall begin at 12:01 am on Monday, July 24, 2017.

The enclosed Order is a final order in a contested case. You are hereby notified that you have the right to appeal the Board's final order, however there are important deadlines associated with your ability to appeal this order. Should you have any questions or concerns regarding your right to appeal the Board's Order, or the time frames and procedure for doing so, you are strongly encouraged to consult your attorneys.

For the Board,

Mark A. Spangler

Mark A. Spangler

Enclosure

cc: Stuart A. McMillan, Esquire (via hand delivery and certified mail with enclosure)
Counsel for Respondent

Greg S. Foster, Assistant Attorney General (via hand delivery and certified mail with enclosure)
Counsel for Petitioner

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICNE

Petitioner,

v.

Complaint No. 14-89-S

OMAR KHALID HASAN, M.D.

Respondent

FINAL ORDER

This proceeding arises pursuant to the West Virginia Medical Practice Act at W. Va. Code §30-1-1 *et seq.* It is a disciplinary proceeding involving the status of the license to practice psychiatry in the state of West Virginia of Omar Khalid Hasan, M.D. The West Virginia Board of Medicine (hereinafter "Board") is the duly authorized state agency to oversee and conduct physician disciplinary hearings pursuant to the provision of W. Va. Code §30-4-14.

Pursuant to W. Va. Code §11-3-18.2, and upon review of the record in the above-styled matter, a quorum of the Board at its scheduled meeting on June 19, 2017, and upholds the Board's Counts I, III, V, and VI:

> Counts I and III concerning whether an inappropriate sexual relationship existed between Dr. Hasan and M.B. [1]
>
> Count V concerning engaging in malpractice and/or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician by failing to consider the clinical significance of his outside office communications with M.B.
>
> Count VI concerning the departure for and failed to conform to the standard of acceptable and prevailing medical practice and the ethics of the medical

[1] The Compliant is referred to as M.B. to protect her confidentiality.

profession by failing to keep written records justifying the course of treatment for M.B.

The Board does not uphold Counts II and IV in the complaint.

Count II concerning whether Dr. Hasan violated or failed to conform to the standards of acceptable principles of medical ethics of the American Medical Association with regard to the termination of the physician-patient relationship.

Count IV concerning engaging in malpractice and/or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician by failing to appropriately respond to M.B.'s report of suicidal ideation.

PROCEDURAL BACKGROUND

The Board issued its original Complaint and Notice of Hearing in this matter on December 2, 2016, scheduling the hearing on February 1 and 2, 2017. On December 15, 2016, Respondent, Omar Khalid Hasan, M.D. ("Dr. Hasan"), filed his motion to continue the hearing in order to retain an expert witness to testify on the issue of documentation. Said motion was granted by the Hearing Examiner by Order dated January 18, 2017. In conjunction therewith, Dr. Hasan executed a waiver relinquishing his right to challenge the timeliness of the Board's final ruling on the grounds that the Board did not issue a Final Order in this matter within 126 days of November 28, 2016, as previously ordered by the West Virginia Supreme Court of Appeals in *West Virginia Ex. Rel. O.H. M.D. v. West Virginia Board of Medicine,* 792 S.E.2d 638 (W. Va. 2016). The Hearing Examiner's January 18, 2017 Order rescheduled the hearing for April 25-28, 2017, pursuant to the parties' agreement. The deadline for the Board to issue a Final Order was tolled during the length of the continuance.

By Motion dated January 4, 2017, Dr. Hasan filed a Motion to Dismiss or, in the Alternative, Motion for More Definite Statement. By Order entered February 27, 2017, the Hearing Examiner denied the Motion to Dismiss, but granted the Motion for a More

Definite Statement for the reasons set forth in his Order. The Board timely issued an Amended Complaint on March 12, 2017, in accordance with the Hearing Examiner's order.

The hearing in this matter convened and proceeded before Hearing Examiner H. Hershel Rose III, on April 25, 26, 27 and 28, 2017, in the Hearing Room of the West Virginia Board of Medicine, 101 Dee Drive, Charleston, West Virginia. The case on behalf of the Board was presented by Greg S. Foster, Assistant Attorney General. The Board appeared through its Executive Director, Mark Spangler. Dr. Hasan appeared and was represented by counsel, Stuart McMillian and Josh Johnson of Bowles Rice LLP.

The Board called, and testimony was received from eight (8) witnesses: Art Hand; Investigator Michael Kidd; Complainant M.B.; Ahmed Faheem, M.D.; Robert Weinstein, M.D. (expert witness); Jeff Benfield; Kellie Aromin, PA; and Glenna Meadows.

Dr. Hasan called, and testimony was received from eleven (11) witnesses: John Ahearne (expert witness); Ben Levitan (expert witness); Michelle Pilkington; Respondent Dr. Hasan; Sarah Beth Janney; Thomas Gutheil, M.D. (expert witness); Surayia Hasan; Michael Johnson; Rabiya Hasan; Jennifer Johnson; and Irene Wasylyk.

At the hearing, the Board submitted twenty-three (23) exhibits that were admitted into evidence and made part of the record. Dr. Hasan submitted twenty-six (26) exhibits that were admitted into evidence and made part of the record.

The public hearing was transcribed, and the parties were given the opportunity to request a copy of the transcript. W. Va. Code R. §11-3-12.3 (2010). At the conclusion of the hearing, the Hearing Examiner ordered the parties to submit proposed findings of fact and conclusions of law on or before May 25, 2017. The Hearing Examiner was advised that the Board's deadline to issue a Final Order is June 25, 2017. On May 25, 2017, the parties submitted their Proposed

Findings of Fact and Conclusions of Law. The hearing examiner signed his proposed order on June 13, 2017.

FINDINGS OF FACT

1. Dr. Hasan is a psychiatrist that practices at Raleigh Psychiatric Services in Beckley, West Virginia, since 2007. (Tr. Vol. III at 133.)

2. On or about September 11, 2014, the Board received a Complaint Questionnaire from M.B., a former patient of Dr. Hasan's. In the Complaint Questionnaire, M.B. alleged she had a sexual relationship with Dr. Hasan while she was Dr. Hasan's patient. (Bd. Ex. 9.)

3. M.B. was called as a witness to testify at the hearing. M.B. began seeing Dr. Hasan on November 29, 2011, Dr. Hasan was to monitor her medication plan and M.B. was referred to someone else for counseling and psychological testing. M.B. sought treatment due her issues with anxiety. (Tr. Vol. I at 218; Hasan's Resp. to Compl.)

4. M.B. further testified regarding deeper issues that stemmed from events during her childhood. M.B. was abandoned by her mother at the age of 6. After her parents separated, M.B.'s mother dropped her off at her grandmother's house and M.B. never saw her again. At the age of 15, M.B. was sexually abused by a step uncle. M.B. was also a victim of physical abuse by her father when she was 18 or 19 years old. (Tr. Vol. I at 218.)

5. M.B.'s professional relationship with Dr. Hasan began to change to a more personal relationship in or about January of 2013, when they began flirting during her office visits and then began communicating through text messages. (Tr. Vol. I at 218-220.)

6. M.B.'s phone number at that time was (304) 573-6918. (Tr. Vol. I at 221.)

7. M.B. testified that she gave Dr. Hasan her phone number in January of 2013. Shortly thereafter, Dr. Hasan sent M.B. a text message on the first day of her fourth semester of nursing school, wishing her good luck. (Tr. Vol. I at 219.)

8. M.B.'s testimony regarding the first text message is consistent with Dr. Hasan's AT&T phone records, which show that the first text message between the two was sent by Dr. Hasan to M.B. on January 23, 2013. (Bd. Ex. 3 at p. 28, item 978.)

9. M.B. testified that their initial text messages were flirtatious. (Tr. Vol. I at 220.)

10. M.B. testified that shortly after they began text messaging, the relationship turned sexual. M.B. testified that she and Dr. Hasan first kissed during an office visit in January of 2013. (Tr. Vol. I at 220-221.)

11. In the month of January 2013, according to Dr. Hasan's own AT&T records shows that he texted M.B. 60 times and M.B. texted Dr. Hasan 72 times. (Bd. Exhibit 3.)

12. Then, in late January or early February 2013, M.B. testified that she met Dr. Hasan at a house on Union Hall Road in Beckley. The house on Union Hall Road was vacant and owned by Dr. Hasan's parents. (Tr. Vol. I at 221; Bd. Ex. 2.)

13. M.B. testified that she and Dr. Hasan had intercourse and oral sex the first time he brought her to the house on Union Hall Road. They met in the morning and were at the house for approximately forty-five (45) minutes. (Tr. Vol. I at 224-225.)

14. In the month of March, 2013, according to Dr. Hasan's own AT&T records texted M.B. 287 times and M.B. texted Dr. Hasan 411 times. (Bd. Ex 3.)

15. In April 2013, Dr. Hasan downloaded two applications for secret messaging. (Bd. Ex. 21.)

16. In April 2013, Dr. Hasan initiated a phone call to M.B. that lasted 31 minutes and 30 seconds. (Bd. Ex. 5.)

17. In May 2013, Dr. Hasan initiated two phone calls to M.B. totaling 55 minutes and 45 seconds. (Bd. Ex. 5.)

18. In June 2013, Dr. Hasan initiated three phone calls to M.B. lasting a total of 49 minutes and 32 seconds. (Bd. Ex. 5.)

19. In August 2013, according to Dr. Hasan's own AT&T records he texted M.B. 622 times and M.B. texted Dr. Hasan 622 times. (Bd. Ex. 3.)

20. In August 2013, Dr. Hasan initiated seven phone calls to M.B. totaling almost six hours. (Bd. Ex. 5.)

21. In September 2013, according to Dr. Hasan's own AT&T records that he texted M.B. 167 times and M.B. texted Dr. Hasan 182 times. (Bd. Ex. 3.)

22. In October 2013, Dr. Hasan initiated a phone call to M.B. lasted 21 minutes and 52 seconds. (Bd. Ex. 5.)

23. M.B. testified that she and Dr. Hasan met a house on Union Hall Road on five (5) or six (6) occasions, the last time being in October or November of 2013. M.B. testified that every time they went to the Union Hall Road house they had intercourse and/or oral sex. (Tr. Vol. I at 225-226.)

24. M.B. testified that Dr. Hasan told her that the Union Hall Road house was owned by his father and that he had to get the keys to the house from his parents. (Tr. Vol. I at 225.)

25. This was confirmed by Surayia Hasan, Dr. Hasan's mother, who testified that the property is owned by her and Dr. Hasan's father, and that the keys to the property are kept at their home. (Tr. Vol. IV at 58-59.)

26. M.B. described the Union Hall Road property at the hearing. M.B.'s description of the property was mostly accurate and consistent with the description provided by the Board's investigator Michael Kidd and the photographs submitted as evidence during the hearing. M.B. correctly testified that the driveway to the house was

located at the end of Union Hall Road at a dead end. M.B. correctly testified that it has a private driveway and that the house is set back in the woods and cannot be seen from Union Hall Road. M.B. correctly testified that the driveway was paved and curved leading up to the house. M.B. correctly testified that upon arriving at the house, the house is on the left side of the driveway and tennis courts are in view. M.B. correctly testified that there was a garage door, and to the right of the garage door was a door that led into the garage. M.B. correctly testified that after entering the garage, one may enter into the house proper by turning right and walking up steps. M.B. correctly testified that upon first entering the house, there is some shelving, and then the first room entered is the kitchen. M.B. correctly testified that there is an island in the kitchen, and then past the kitchen is a living room with wood floors. From this room, M.B. correctly testified that there was a hallway that leads to a bedroom on the right.[2] (Tr. at Vol. I 221-226 (M.B.'s testimony)); (Tr. Vol. I at 52-66 (Mr. Kidd's testimony; Bd. Ex. 2)). Furthermore, M.B. testified that it was cold in the house and it seemed that the utilities were not turned on. (Tr. at Vo. I p. 310.) Dr. Hasan acknowledged that the utilities were not turned on at the Union Hall road house. (Hasan's Resp. to Compl. p. 5). She knew the house had no furniture in it. (Ra. At Vol. II at 166). She knew that initially there was a chain gate to enter the property, but was replaced by a gate. GET CITE

27. In sum, M.B. demonstrated personal knowledge of the Union Hall Road premises that could only be obtained by being personally present in the interior of the house.

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[2] M.B. incorrectly recalled that there was fireplace in the home and did not remember a stone wall.

28. M.B. further testified that she and Dr. Hasan met at Lowe's parking lot in Beckley on various occasions. She would park her car and get into Dr. Hasan's Black Escalade. At these meetings they talked and kissed, but did not have sex. (Tr. Vol. 1 at 226-227.)

29. M.B. testified that she and Dr. Hasan met at Tamarack parking lot in October or November of 2013. They met early in the morning after M.B. had finished a night shift (7 p.m. to 7 a.m.) at nearby Heartland of Beckley, where she was working at the time. Dr. Hasan was leaving Raleigh General Hospital that morning. M.B. testified that they talked and kissed in Dr. Hasan's vehicle, but did not have sex. (Tr. Vol. I at 228.)

30. M.B. testified that she and Dr. Hasan met at the parking lot of the Raleigh County Convention Center. Dr. Hasan gave M.B. a necklace at this meeting. M.B. identified the necklace at the hearing, which was submitted into evidence as Bd. Ex. 6. Dr. Hasan denied giving M.B. the neckless and stated that M.B. must have stolen it from his office, but on the other hand he testified that it was a different color and had remained in his office since 2012. (Tr. Vol 3 at 276; Hasan's Resp. to Compl. p. 4.)

31. M.B. testified that she and Dr. Hasan kissed in his vehicle, but did not have sex. (Tr. Vol. I at 228-230.)

32. Dr. Hasan and M.B. met at the Sleep Clinic that was operated by Dr. Hasan. On April 25, 2017, after being pushed by Dr. Hasan's counsel for dates of events that happened some three years earlier, M.B. suggested that the meeting at the Sleep Clinic happened in the early hours of August 3, 2013, but admitted it might not be the exact date. (Tr. Vol. I at 294.) It was her recollection after having been there over three years earlier. (Tr. Vol. at 230.)

33. M.B. testified that she and Dr. Hasan had stopped having a sexual relationship in May, June and July of 2013 because Dr. Hasan said he felt guilty and was afraid of losing his children. M.B. testified that their sexual relationship resumed at the Sleep Clinic. (Tr. Vol. I at 230-232.) Glenna Meadows, a friend of M.B.'s, testified that M.B. told her that she was meeting Dr. Hasan at the Sleep Clinic and called Ms. Meadows the next day saying that she had met Dr. Hasan at the clinic and had sex. (Tr. Vol. II at 184, 200.)

34. There were times when the Sleep Clinic was empty. (Tr. Vol. at 323.)

35. According to Stephanie Kennedy who was the quality manager at the clinic and performed sleep studies there was a patient at the clinic the night of August 2, 2014, into August 3, 2014. (Tr. Vol. III at 328.) When doing a sleep study there was always two techs at the clinic with Ms. Kennedy. (Vol III at 317, 324.) They came in around 7:00 pm and leave the next morning sometime between 6:00 am and 8:00 am. (Vol. III at 323.)

36. In spite of the fact that Ms. Kennedy testified that she was doing a sleep study at the clinic during the night and early morning in question, she testified that there were no techs present. (Tr. Vol. III at 328.)

37. At the Sleep Clinic, M.B. saw Dr. Hasan's tattoo on his right arm and asked him what it meant. Dr. Hasan explained to M.B. that it meant Pakistan for his mother, India for his father, and West Virginia for himself. M.B. accurately described the meaning of Dr. Hasan's tattoo, which he showed at the hearing. The tattoo depicts the Moon and Star from the Pakistani State Flag (for Dr. Hasan's mother), the Wheel of Progress from the Indian Flag (for Dr. Hasan's father), and Montani Semper Liberi ("Mountaineers are always free", for Dr. Hasan) (Tr. Vol. I at 232; Tr. Vol. III at 213-214.)

38. Glenna Meadows, a friend of M.B., testified that M.B. told her that she and Dr. Hasan met for sex at the Sleep Center. (Tr. Vol. II at 184.)

39. On November 26, 2013, Dr. Hasan initiated two phone calls to M.B. lasting a total of about 42 minutes. (Bd. Ex. 5.)

40. Pursuant to a review of Dr. Hasan's own AT&T records, for just the last 5 ½ month period Dr. Hasan texted M.B. 2,222 times and M.B. texted Dr. Hasan 4,161 times. In just the last two weeks of December and the first week in January, 2014, Dr. Hasan texted M.B. 557 times and M.B. texted Dr. Hasan 595 times. (Bd. Ex. 3.)

41. Dr. Hasan represented that his relationship with M.B. began to change in December of 2013. Dr. Hasan had two office visits with M.B. in December 2013 — on December 2 and December 26. There is no indication that there was any change in the relationship or any conflict. There is no mention of M.B.'s feelings or of M.B.'s alleged inappropriate conduct. There is no mention of any text message communications with M.B. Both records state that M.B. is not psychotic and does not warrant psychiatric admission, which contradicts Dr. Hasan's assertions in his Response that M.B.'s perception of their relationship was not based upon fact, but upon a conjured sexual extra-marital affair. (Tr. at 110-115· Bd. Ex. 17, 18.)

42. On December 16, 2013, in a text from Dr. Hasan to M.B. he stated that he wanted M.B. in his life because she made him feel special, worthwhile, and important, but he was afraid of losing his children. He was sad when he was unable to kiss M.B. (Bd. Ex. 1.) According to Dr. Hasan's own AT&T records he and M.B. exchanged 62 text messages on December 16, 2013 supporting M.B.'s text messages in Board Exhibit 1 that contained the contents of the text messages. (Bd. Ex 3.)

43. On December 17, 2013 he told M.B. that she was beautiful, but that he did not want to argue. He declared his love for her and she did likewise. He acknowledged that he had done the wrong thing and that he was sorry and felt like a bad person. (Bd. Ex 1.) According to Dr. Hasan's own AT&T records he and M.B. exchanged over 100 text messages on December 17, 2013, supporting M.B.'s text messages in Board Exhibit 1 that contained the contents of the text messages. (Bd. Ex 3.)

44. On December 19, 2013, Dr. Hasan apologized to M.B. and M.B. begged him to block her number because she was not strong enough to do it herself. He said that he still loved M.B. and would always think about her wonderful qualities she had and miss her. (Bd. Ex 1.) According to Dr. Hasan's own AT&T records he and M.B. exchanged text messages on December 19, 2013, supporting M.B.'s text messages in Board Exhibit 1 that contained the contents of the text messages. (Bd. Ex 3.)

45. On December 28, 2013, Dr. Hasan texted M.B. that he did not want to fight; that M.B. made him happy, but then things went to hell and he became petrified of losing his children. According to Dr. Hasan's own AT&T records he and M.B. exchanged approximately 85 text messages on December 28, 2013, supporting M.B.'s text messages in Board Exhibit 1 that contained the contents of the text messages. (Bd. Ex 3.)

46. Although in January 2014 Dr. Hasan blocked text messages from M.B. they started to communicate through text applications. (Bd. Ex. 21.)

47. On January 6, 2014 M.B. texted Dr. Hasan stating that she was much worse off now than when she first saw him. Their relationship brought back many memories from which M.B. thought she had recovered. She texted to Dr. Hasan that all he wanted was sex and that she felt like a whore and wanted to be dead. (Bd. Ex 1.) According to Dr. Hasan's

own AT&T records he and M.B. exchanged approximately 130 text messages on January 6, 2014, supporting M.B.'s text messages in Board Exhibit 1 that contained the contents of the text messages. (Bd. Ex 3.)

48. M.B. testified that their last meeting occurred at a Microtel Inn in Beckley on January 6 or 7, 2014, around 4:30 p.m. until approximately 8:00 p.m. At the Microtel Inn they discussed M.B.'s concerns with their relationship and her belief that Dr. Hasan did not care about her. M.B. testified that they did not have sex. (Tr. Vol. I at 232-33.)

49. M.B. testified that while at the Microtel Inn she looked at Dr. Hasan's phone and saw his wife's phone number and memorized it. Afterwards she called Dr. Hasan's wife, Irene Wasylyk. M.B. told Dr. Hasan's wife, "I don't know where your husband was telling you he was but he has been with me at the Microtel Inn for the last few hours." M.B. then hung up before Dr. Hasan's wife could respond. (Tr. Vol. I at 234-236.)

50. Dr. Hasan denied meeting M.B. at the Microtel Inn on January 7, 2014. A medical note was produced that indicated Dr. Hasan was at his office at Raleigh Psychiatric Services in Beckley W.Va. at approximately 5:00 p.m. on January 7, 2014, not Microtel Inn as M.B. testified. (Tr. Vol. III at 185-186; Resp. Ex. 21.) However, this directly contradicts Dr. Hasan's own statement in his *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* filed on April 18, 2017, in which he asserted that he was at the New River Health Clinic from 3:00 p.m. to 7:00 p.m. (See *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* at p. 3.) Furthermore, Mike Johnson, the office manager of Raleigh Psychiatric Services, testified that the billing records indicate that Dr. Hasan was at New River Clinic for four (4) hours on January 7, 2014. As Dr.

Hasan cannot be in two places at once, neither of these records are reliable to account for Dr. Hasan's whereabouts on January 7, 2014.

51. Dr. Hasan's last visit with M.B. was on January 31, 2014, at Beckley ARH after M.B. had admitted herself due to suicidal ideations. At this time M.B. requested a transfer of care to Dr. Faheem. Dr. Hasan's medical notes do not indicate any abnormal behavior by M.B. leading up to her admission. There is no indication of conflict with M.B. There is no mention of M.B.'s feelings or of inappropriate conduct. There is no mention of any text message communications with M.B. There is no explanation why M.B. requested a transfer to a new psychiatrist. There is no mention of delusion. (Tr. Vol. II at 117-118; Bd. Ex. 19.)

52. Moreover, Ms. Wasylyk testified that she was with Dr. Hasan on January 7, 2014, at 5:30 for dinner at the Cracker Barrel, to Krogers, and then home where she and Dr. Hasan stayed. (Vol. IV at 108.) She testified that she was still at home when she received the phone call from M.B. disclosing that she had just been with Dr. Hasan at the Microtel Inn. *Id.* Dr. Hasan cannot be three places at one time.

53. Ms. Wasylyk and other members of Dr. Hasan's family told Mr. Kidd, an investigator, that they spotted a vehicle that looked like M.B.'s and saw a female in the car, but were not 100% sure it was M.B. (Tr. Vol. I at 173-174.) In spite of this Ms. Wasylyk testified at the hearing that she saw a Black Jeep Cherokee with a red-haired driver over 20 times. (Tr. Vol. IV at 171.)

54. According to Dr. Hasan's AT&T records he exchanged over 220 text messages on January 7, 2014 with M.B. (Bd. Ex. 3.)

55. M.B. and Dr. Hasan continued to exchange text messages subsequent to their last meeting at Microtel on or about January 7, 2014. However, because M.B. had called Dr. Hasan's wife after the Microtel meeting, M.B. testified they began communicating through various text messaging applications that disguised their true phone numbers. (Tr. Vol. I at 239-241; Bd. Ex. 1.) This is consistent with the fact that Dr. Hasan had purchased this type of application that allowed the hiding of true phone numbers. (Bd. Ex 21.)

56. In January 2014, Dr. Hasan stopped responding to M.B.'s texts and phone calls for a period of time. (Tr. Vol. I at 241; Board Ex. 3.)

57. Dr. Hasan admitted to engaging in extensive text messaging with M.B. He testified that the nature of the text messaging changed in December of 2013. Dr. Hasan testified that M.B. became upset, agitated and more hostile. Dr. Hasan failed to document these events in the medical record. (Tr. Vol. III at 149-150.)

58. Dr. Hasan testified that the volume of text messages he received from M.B. increased dramatically subsequent to their office visit on December 2, 2013. Her texts were irritable and angry. Dr. Hasan responded to the texts in an attempt to help her. Dr. Hasan failed to document these events in the medical record. (Tr. Vol. III at 150-152; Bd. Ex. 18.)

59. Dr. Hasan testified that he spoke with M.B. regarding the volume of texts at their office visit on December 26, 2013. Dr. Hasan testified that he felt she had been contacting him too much. Dr. Hasan failed to document these events in the medical record. (Tr. Vol. III at 151-152; Bd. Ex. 18.)

60. Dr. Hasan went out of the country from late December 2013 until early January 2014. When he returned he had a "large slew" of messages from M.B. On January

6 and January 7 of 2014, Dr. Hasan and M.B. exchanged hundreds of text messages. Dr. Hasan testified that M.B. was not doing well and wanted to meet with him. Dr. Hasan did not document any of these events in the medical record. (Tr. Vol. III at 154-155.)

61. Dr. Hasan denies receiving any text messages related to meeting M.B. at Microtel. (Tr. Vol. III at 155.)

62. After extensive text messaging on January 7, 2014, Dr. Hasan testified that he told M.B. that he could not continue to communicate with her in this fashion, that it was too intrusive, and that she needs to communicate with him through the office only. Dr. Hasan informed M.B. that he was going to block her number. Dr. Hasan did not document any of these events in the medical record. (Tr. Vol. III at 157; Bd. Ex. 19.)

63. On January 7, 2014, M.B. called Dr. Hasan's wife, Ms. Wasylyk, and indicated that she was having an affair with Dr. Hasan. Dr. Hasan did not document this event in the medical record. (Tr. Vol. III at 220.)

64. After January 7, 2014, Dr. Hasan testified that he began receiving a large number of text messages from M.B. from random phone numbers. M.B. was telling Dr. Hasan that she needs him to contact her and that she wanted to see him. Dr. Hasan did not document these events in the medical record. (Tr. Vol. III at 158-159.)

65. In January of 2014, Dr. Hasan testified that M.B. was exhibiting threatening and harassing behavior towards his family. He testified that M.B. was driving by his house on a regular basis, at least thirty (30) times, in a black jeep. Dr. Hasan testified that it was a very volatile situation. Dr. Hasan did not document any of these events in the medical record. (Tr. Vol. III at 170-171.)

66. On January 30, 2014, Dr. Hasan was contacted by the Beckley ARH Emergency Department and informed that M.B. was admitted to Beckley ARH. Dr. Hasan saw M.B. in the seclusion room at Beckley ARH the following morning on January 31, 2014. At this time M.B. requested to be transferred to Dr. Faheem. Dr. Hasan did not document any inappropriate or abnormal behavior by M.B. in December 2013/January 2014 in the medical record for this final meeting. (Tr. at Vol. III at 162-170; Bd. Ex. 19.)

67. Dr. Hasan's lack of documentation violates the standard of care on a severe level and could be indicative of intentional concealment. (Tr. Vol. II at 124-125.)

68. Dr. Hasan did not attempt to have any communication with Dr. Faheem regarding M.B. following the transfer of care. (Tr. Vol. III at 170.)

69. Dr. Hasan denies having had a sexual relationship with M.B. and denies ever meeting M.B. outside the office or hospital. This is not credible based upon the evidence and testimony produced at the hearing. (Tr. Vol. III at 174-175.)

70. Dr. Hasan denied meeting M.B. at the Microtel Inn on January 7, 2014. A medical note was produced that allegedly indicated Dr. Hasan was at his office at Raleigh Psychiatric Services at approximately 5:00 p.m. on January 7, 2014. (Tr. Vol. III at 185-186; Resp. Ex. 21.)

71. However, this directly contradicts Dr. Hasan's own assertion in his *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* filed on April 18, 2017. Therein, Dr. Hasan asserted that he was at the New River Health Clinic ("New River") from 3:00 p.m. to 7:00 p.m. (See *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* at p. 3.)

72. M.B. was married at the time she had a sexual relationship with Dr. Hasan. In January of 2014, after Dr. Hasan had stopped responding to M.B., M.B. disclosed to her husband that she had been having an affair with Dr. Hasan. (Tr. Vol. I at 246-247.)

73. M.B. began to have suicidal ideations after Dr. Hasan ceased communications with her. M.B. disclosed her suicidal thoughts to a friend, who convinced M.B. to go to the hospital. M.B. complied, and on January 30, 2014, M.B. checked herself into Beckley ARH Hospital. (Tr. Vol. I at 249-250; Bd. Ex. 10, 19.)

74. M.B. was still Dr. Hasan's patient when she checked herself into Beckley ARH on January 30, 2014. Dr. Hasan saw M.B. at Beckley ARH on the morning of January 31, 2014. At that time, M.B. requested that she be transferred to the care of Dr. Ahmed Faheem. (Tr. Vol. I at 250-251; Bd. Ex. 10, 19.)

75. Upon requesting a change to Dr. Faheem, M.B. spoke to a counselor and disclosed that she had been having an affair with Dr. Hasan. (Tr. Vol. I at 251.)

76. Upon seeing Dr. Faheem later that day, M.B. disclosed her affair with Dr. Hasan to Dr. Faheem. (Tr. Vol. II at 13-14; Bd. Ex. 10.)

77. In February 2014, Dr. Hasan texted M.B. 287 times and M.B. texted Dr. Hasan 340 times. (Bd. Ex 1.)

78. On February 2, 2014, Dr. Hasan communicated with his legal counsel.

79. M.B. was discharged from Beckley ARH on February 3, 2014. (See Bd. Ex. 10.)

80. A couple of weeks later, on February 20, 2014, M.B. attempted to commit suicide by overdosing on prescription medications. M.B. testified that on the day of the overdose, she went to the house of her friend, Glenna Meadows, to give her a package

containing gifts she received from Dr. Hasan. While at Ms. Meadows' house, M.B. attempted to call Dr. Hasan from Ms. Meadows' phone and left a voicemail requesting that Dr. Hasan call her back. Dr. Hasan did not return her call. That night, after M.B. had returned home, she sent a text to Dr. Hasan stating that she wanted him to be the last person she said goodbye to. Dr. Hasan did not respond to M.B.'s voicemail or text. M.B. then overdosed in an attempt to commit suicide. (Tr. Vol. I at 248-249, 253-254.)

81. M.B.'s husband found her lying unconscious in their bathroom and called an ambulance. M.B. was transported to Beckley ARH where she was placed on life support. M.B. survived. M.B. was transferred to Highland Hospital for her recovery. (Tr. Vol. I at 254; Tr. Vol. II at 38-40, 153; Bd. Ex. 12, 13.)

82. M.B. and her husband subsequently divorced due to her affair with Dr. Hasan. (Tr. Vol. I at 254.)

83. According Dr. Hassan's in March 2014 M.B. threatened to file suit him. (Hasan's Resp. to Compl.)

84. M.B. provided her cell phone to her attorney, who then provided M.B.'s phone to Second Creek Technologies ("Second Creek") to extract text messages from her phone. (Tr. Vol. I at 236.)

85. On March 16, 2014, the text messages on M.B.'s phone were extracted by Second Creek and placed into a Spreadsheet identified as Bd. Ex. 1. M.B. testified that she had changed her phone number in January of 2014 to the phone number listed on the cover sheet of Bd. Ex. I (304-228-7639). (Tr. Vol. I at 236-237; Bd. Ex. 1.)

86. M.B. testified that she reviewed the content of the text messages contained in Bd. Ex. 1 and they were accurate representations of text communications between her and Dr.

Hasan. M.B. denied that any of the text messages contained in Bd. Ex. 1 were manipulated. (Tr. Vol. I 236-237.)

87. Bd. Ex. 1 contains thousands of text messages that M.B. testified were exchanged between she and Dr. Hasan. The texts began on December 16, 2013, and the last text from Dr. Hasan to M.B. was on January 22, 2014. Dr. Hasan denies the authenticity of the text messages in Bd. Ex. 1 and asserts they were largely manipulated by M.B. even though Second Creek found no evidence of manipulation on her phone. (Bd. Ex. 1; Tr. Vol. I at 32; Vol. III at 242-289.)

88. The volume of text messages in Bd. Exs. 1 and 3 is staggering. The content of the texts in Bd. Ex. 1 depict the deterioration of an inappropriate sexual relationship between Dr. Hasan and M.B. As the relationship ended in January 2014, the texts follow the final stages of their relationship, including one final meeting at Microtel on January 7, 2014. (Bd. Ex. 1.)

89. A reading of the text messages in Bd. Ex. 1 gives credence to their authenticity. The general back and forth and dynamic of the relationship as depicted in the texts is very real. Dr. Hasan's texts generally attempt to avoid conflict and dissipate hostility and frustration coming from M.B. Dr. Hasan is often delicately tending to M.B.'s feelings, who needs constant reassurance that Dr. Hasan cares for her. Dr. Hasan attempts to communicate through reason, while M.B.'s communications are largely based on emotion. For example, Dr. Hasan states he is not a "lovey touchy guy."[3] Dr. Hasan further expresses concern that M.B. is not suited to be around his children, and he states that they argue in an unhealthy manner.[4] When considering the texts in their entirety, it is difficult to fathom how

[3] Bd. Ex. 1, p. 200, text no. 5267
[4] Bd. Ex. 1, p. 199-200, text nos. 5247, 5259; p. 215, text no. 5663.

M.B. could manipulate texts to create a back and forth dialog with such diametrically opposed perspectives. (Bd. Ex. 1.)

90. The authenticity of the texts is reinforced because they often refer and correspond to specific events and dates, in addition to containing personal information about Dr. Hasan. There are texts about Dr. Hasan going to a birthday dinner for his father on December 16, his father's actual birthday.[5] There are texts about Dr. Hasan going to a Christmas event for his children and about Dr. Hasan reading to kids during bedtime.[6] There are texts about Dr. Hasan going out of the country over the New Year,[7] and Dr. Hasan confirmed that he went to Aruba.[8] There are texts about Dr. Hasan's grandfather passing before Dr. Hasan was born, which Dr. Hasan confirmed as true.[9] There are texts about Dr. Hasan's "hole-in-one" golf ba11.[10] There are texts about Dr. Hasan's work schedule on given days, such as the number of ECTs performed and appointments at the New River Clinic, that were confirmed as accurate.[11] To manipulate all or parts of thousands of text messages with such intimate detail, and to mesh "real" texts with allegedly "manipulated" texts to form a coherent and authentic dialog would be a massive undertaking on an extreme level, and is not plausible. (Bd. Ex. 1.)

91. M.B. testified that she continued to send Dr. Hasan text messages after she had attempted suicide and retained an attorney. However, M.B. denied that she sent a text to Dr. Hasan in May of 2014 stating that she promised to say she lied about the "sex stuff" if Dr. Hasan would talk to her. (Tr. Vol. 1 at 256; see Hasan Ex. 11.)

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[5] Bd. Ex. 1, p. 192, text nos. 5063-5070.
[6] Bd. Ex. 1, p. 192, text no. 5076; p. 198, text no 5207-5222.
[7] Bd. Ex. 1, p. 213, text no. 5617.
[8] Tr. Vol. III at 244.
[9] Bd. Ex. 1, p. 194, text nos. 5117-5119; Tr. Vol. III at 247.
[10] Bd. Ex. 1, p. 194, text no. 5106.
[11] Bd. Ex. 1, p. 243-247; Bd. Ex. 22, 23.

92. At this time Dr. Hasan had purchased different applications that could create false e-mails as if actually sent or received. On April 6, 2014, Dr. Hasan purchased FAKE SMS! Fake conversation - text messages. (Bd. Ex. 21.)

ART HAND, SECOND CREEK TECHNOLOGIES

93. The Board subpoenaed Art Hand of Second Creek Technologies to testify at the hearing. Second Creek provides technology and computer forensics related services, including the extraction of text messages from cell phones. (Tr. Vol. I at 20.)

94. To extract text messages from a cell phone, Second Creek employs a device called a Cellebrite Forensic UFED ("Cellebrite"), a device built specifically for extracting information from cell phones. Cellebrite is built to locate where text messages are stored on a device, read that information and extract it onto an external device, such as a thumb drive or computer. Cellebrite is capable of locating and extracting text messages that have been deleted but not yet overwritten by new messages. (Tr. Vol. I at 21-23.)

95. Mr. Hand testified that the text message spreadsheet identified as Bd. Ex. 1 was created by Second Creek upon the extraction of text messages from a Samsung Galaxy S3 cellphone. The cover page of the Spreadsheet contains the serial number of the Cellebrite device used for the extraction. Mr. Hand confirmed that the serial number on the Spreadsheet of Bd. Ex. 1 (5569465) matches the serial number for his Cellebrite device, which confirmed that Bd. Ex. 1 was created by Second Creek.[12] (Tr. Vol. I at 25-26.)

[12] The redactions in Bd. Ex. 1 were made by M.B.'s attorney, who then produced a redacted copy to the Board.

96. Mr. Hand testified that he obtained the cell phone from the paralegal of J.R. Carter[13], an attorney with Bucci, Bailey & Javins. (Tr. Vol. I at 27.)

97. The cover page of Bd. Ex. 1 shows that the phone number for the Samsung Galaxy S3 cell phone at the time of extraction was (304) 228-7639. This was M.B.'s new phone number at the time of the extraction. In January of 2014, M.B. had changed her number from (304) 573-6918 to (304) 228-7639, but kept her phone. (Bd. Ex. 1; Tr. Vol. I at 236-237.)

98. Mr. Hand testified that the text messages extracted were those that existed on the phone at the time of extraction, and not necessarily related only to the (304) 228-7639 number. Mr. Hand testified that if the cell phone previously had a different phone number, text messages sent to that previous phone number could be extracted if still stored on the phone. (Tr. Vol. I 28-29.)

99. Bd. Ex. 1 identifies the date and time of the text messages as "GMT -5", which means Greenwich Meridian Time minus five (5). Mr. Hand testified that GMT -5 equates to Eastern Standard Time ("EST"), as EST is five hours behind GMT. Mr. Hand further testified that GMT equates to UTC, i.e., Universal Time. (Tr. Vol. I at 30.)

100. Mr. Hand testified that there will be a slight variation of "slush time" in two cell phones' call detail records when comparing the specific time a text message is sent and received between the phones. This "slush time" may vary from milliseconds up to one minute. This is due to the amount of time it takes to send and receive a message, and also because there are multiple clocks running at the same time. Each cell tower has its own clock, each phone has

[13] J.R. Carter was M.B.'s attorney.

its own clock and the billing and authorization systems for the cell phones all have their own clocks. (Tr. Vol. I at 34-35, 38.)

101. Mr. Hand testified that there was no evidence or red flags indicating user manipulation during the extraction. (Tr. Vol. I at 39-43.)

MICHAEL KIDD, INVESTEGATOR

102. Michael Kidd is a private investigator that was contracted by the Board to investigate this matter and was called as a witness by the Board at the hearing.

103. Mr. Kidd confirmed through an investigatory search that the phone number (304) 573-6918 was registered to M.B. (Tr. Vol. I at 74-75; Bd. Ex. 4.)

104. The cell phone records for Dr. Hasan's phone number at (304) 640-8688 were subpoenaed from AT&T. The AT&T records show Dr. Hasan's text message communications and phone calls from January 1, 2013 through June 1, 2014. (Bd. Ex. 3, 5.)

105. The AT&T text message from Dr. Hasan records show the time and date of text messages sent and received from Dr. Hasan's phone in UTC time (five hours ahead of EST), but do not show the content of the text messages. (Bd. Ex. 3.)

106. The AT&T records from Dr. Hasan's phone show that the first text message communication between Dr. Hasan and M.B.'s number at (304) 573-6918 was sent by Dr. Hasan to M.B. on January 23, 2013. (Bd. Ex. 3, item 978.)

107. Mr. Kidd reviewed a sampling of Dr. Hasan's AT&T text message records from January 1, 2013 through January 7, 2014, and calculated the number of text messages between Dr. Hasan and M.B. In the sampling, Mr. Kidd reviewed Dr. Hasan's text messages from January 23, 2013 through March 31, 2013; August 1, 2013 through September 30, 2013; and December 16, 2013 through January 7, 2014. Thus, over the course of approximately one year,

Mr. Kidd reviewed only about five and a half months (less than half) of text messages. (Tr. Vol. I at 88-95.)

108. In the approximate five and a half months of texts reviewed by Mr. Kidd of Dr. Hasan's phone, there were a total of 4,161 of texts between Dr. Hasan and M.B. Specifically, Dr. Hasan sent 1,939 texts to M.B. and M.B. sent 2,222 texts to Dr. Hasan in just five and a half months. (Tr. Vol 1 at 95; Bd. Ex. 3.)

109. On many days Dr. Hasan and M.B. texted each other continuously throughout the entire day, amounting to hundreds of texts in a single day. (Tr. Vol. 1 at 96-101; Bd. Ex. 3.)

110. Mr. Kidd also conducted a review of Bd. Ex. 1, text messages on M.B.'s phone, to determine if the dates and times of the text messages between Dr. Hasan and Dr. Hasan's AT&T Records. All texts he reviewed in Bd. Ex. 1 that are indicated as being sent to and from Dr. Hasan's AT&T phone number (i.e., 304-640-8688) corresponded to texts between Dr. Hasan and M.B. in the AT&T records. (Tr. Vol. I at 101-108; Bd. Ex. 1, 3.)

111. In addition to text messaging, Dr. Hasan and M.B. also communicated by phone calls, though not at the same frequency. At least thirty-five (35) phone calls were *originated* by Dr. Hasan, and several phone calls originated by Dr. Hasan lasted over an hour in length. (Bd. Ex. 5.)

AHMED FAHEEM, M.D.

112. Ahmed Faheem, M.D., was called by the Board to testify at the hearing. Dr. Faheem is M.B.'s treating psychiatrist now. (Tr. Vol. II at 5-6.)

113. Dr. Faheem is also the President of the Board. (Tr. Vol. II at 5-6.)

114. As the President of the Board, Dr. Faheem was recused from this disciplinary matter from day one. On a few occasions, because Dr. Faheem is the Board President, he was

informed by the former executive director of the Board that he was required to sign subpoenas seeking documents related to this matter. Dr. Faheem did not obtain or see any documents received by the Board in response to said subpoenas. (Tr. Vol. II at 50-52.)

115. M.B. was transferred to the care of Dr. Faheem on or about January 31, 2014, after she checked herself into Beckley ARH for suicidal ideations and requested a transfer from Dr. Hasan. (Tr. Vol. II at 7-10.)

116. On January 31, 2014, Dr. Faheem was contacted by Beckley ARH administration and requested to take M.B. as a patient. Upon speaking with the counselors who had already spoken with M.B., Dr. Faheem was made aware of M.B.'s allegations against Dr. Hasan prior to seeing M.B. (Tr. Vol II at 8-10.)

117. Dr. Faheem first saw M.B. at Beckley ARH on February 1, 2014, along with his PA, Kellie Aromin. At this time M.B. disclosed to Dr. Faheem that she had been having a sexual relationship with Dr. Hasan. (Tr. Vol. II at 13-14.)

118. Dr. Faheem saw M.B. at his office for the first time on February 18, 2014. M.B. denied that she was having suicidal ideations. (Tr. Vol. II at 29-30; Bd. Ex. 11.)

119. M.B. attempted suicide by overdose on February 20, 2014. This took Dr. Faheem by surprise as M.B had not given him any impression of suicide risk at their office visit two days prior. (Tr. Vol. II at 31.)

120. Dr. Faheem ordered M.B. to be transferred from Beckley ARH to Highland Hospital for recovery. (Tr. Vol. II at 4] -42.)

121. Dr. Faheem withheld Dr. Hasan's identity in his Beckley ARH medical charting of M.B.'s allegations. Dr. Faheem did this to protect Dr. Hasan, who was an active physician at Beckley ARH, due to the seriousness of the allegations and because nurses have access to the

charts. Nor did Dr. Faheem identify Dr. Hasan in his medical charting at Beckley ARH a few weeks later after M.B. was readmitted upon attempting suicide. Nor did Dr. Faheem identify Dr. Hasan when M.B. was transferred to Highland Hospital for recovery after her attempted suicide. (Tr. Vol. II at 17-19, 25, 34-36, 43-44; Bd. Ex. 10, 12, 13.)

122. Dr. Faheem continues to treat M.B. as a patient to this day. Dr. Faheem testified that M.B.'s allegations against Dr. Hasan have remained consistent throughout his treatment and that he does not find M.B. to be delusional. Dr. Faheem further testified that he has reviewed M.B.'s medical history and that at no time has M.B. ever been found to be delusional or psychotic. (Tr. Vol. II at 48-50, 94-95.)

ROBERT WETTSTEIN M.D.

123. The Board called Dr. Robert Wettstein, M.D. to testify at the hearing. Dr. Wettstein is a physician and psychiatrist that was retained by the Board to review documents concerning this matter and opine as to whether Dr. Hasan met the standard of psychiatric care in this treatment of M.B., and specifically with regard to documentation. (Tr. Vol. II at 97-98.)

124. Dr. Wettstein graduated from UCLA medical school in 1976. He completed five additional years of training in Chicago to be a psychiatrist, including a Forensic Psychiatry Fellowship. Dr. Wettstein completed his medical training in 1981 and specializes in Psychiatry and Forensic Psychiatry. Dr. Wettstein currently has a clinical appointment as a professor at the University of Pittsburgh, wherein he teaches Psychiatric residents and Forensic Psychiatric Fellows in law and ethics in Psychiatry. In particular, Dr. Wettstein's classes include course work regarding documentation and record-keeping in

Psychiatry. Dr. Wettstein also teaches classes in Medical Ethics and Psychiatric Ethics. (Tr. Vol. II at 98-99; Bd. Ex. 14.)

125. With no objection raised by Dr. Hasan, Dr. Wettstein was qualified as an expert witness in psychiatric documentation. Dr. Wettstein was properly qualified to provide expert testimony in this proceeding in the area of psychiatric documentation. (Tr. Vol. II at 97-100; Bd. Ex. 14.)

126. Dr. Wettstein's opinions are based on a reasonable degree of medical certainty. Dr. Wettstein's opinions were offered with knowledge that Dr. Hasan's treatment of M.B. was pharmacotherapy as opposed to psychotherapy. (Ir. Vol. II at l 19-120, 122-123.)

127. Dr. Wettstein credibly testified that documentation is a central part of the practice of medicine in general, as well as in psychiatry. Documentation serves numerous purposes, including the documenting of the patient's condition and course of symptoms over time. It is important to document the intervention and treatment that occurs, and the patient's response to the treatment. (Tr. Vol. II at 102-104.)

128. Dr. Wettstein credibly testified that a psychiatrist is to document any significant contact with the patient, both inside and outside of the office. This includes telecommunications, such as text messages or phone calls, which may be significant to the patient's presentation or treatment. If there are substantive clinical issues with regard to the patient communicated through text messaging or phone calls, those should be documented. Any significant outside of the office electronic communication is an adjunct to ongoing treatment. Ultimately, the purpose of the documentation is to assist with the treatment. (Tr. Vol. II at 103-106.)

129. Dr. Wettstein credibly testified that the proper documentation of a text message is to print out a copy of the text message and add it to the formal record in hard copy. (Tr. Vol. II at 104-105.)

130. Dr. Wettstein credibly opined that a psychiatrist is to document any conflict that may arise with a patient. (Tr. Vol. II at 103.)

131. The factual background on which Dr. Wettstein based his opinion are, in part, those set forth by Dr. Hasan in his Response to M.B.'s complaint. In pertinent part, Dr. Hasan represented in his Response the following:

> As treatment progressed into December 2013, Dr. Hasan realized that the patient-physician relationship changed and evolved into a more personal tone. Dr. Hasan recognized that the Complainant's view and expectations of him changed dramatically. Dr. Hasan realized this change through the incessant text messages. In fact, Dr. Hasan's office staff had warned him that the Complainant was developing an obsession with him.
>
> Instead of ending the professional relationship at that point, as Dr. Hasan admits he should have, Dr. Hasan continued treating and communicating with the Complainant. Dr. Hasan frequently exchanged text messages. At some point, his texting served only as a means to placate her. This approach failed and only escalated the tension. Ultimately, the Complainant's perception of his interaction with her was not based upon fact, but upon a conjured sexual extra-marital affair. The Complainant's behavior had become extreme and obsessive. At that point, Dr. Hasan realized his professional services could not continue and planned to terminate the patient-physician relationship at the Complainant's next appointment. Dr. Hasan advised the Complainant to contact him through his office only. In early January 2014, he blocked text messages and phone calls from Complainant to his business cellular phone. The Complainant did not communicate with Dr. Hasan's office. In late January 2014, the Complainant presented to Beckley Appalachian Regional Hospital and requested another physician then. At this time, the patient-physician relationship was terminated.

(Tr. Vol. II at 107-115; Bd. Ex. 17.)

132. None of the above was documented by Dr. Hasan in the medical record. Dr. Wettstein credibly opined that all of the foregoing is significant and should have been documented in the medical record. (Tr. Vol. II at 107-115.)

133. Dr. Wettstein reviewed Dr. Hasan's medical records with regard to M.B. and did not find any documentation of text messages or phone calls between Dr. Hasan and M.B. (Tr. Vol. II at 106.)

134. Dr. Wettstein credibly opined that if the relationship changed between Dr. Hasan and M.B., it is essential to document such in the medical record. If M.B.'s feelings about Dr. Hasan changed or became more personalized, it was essential to document that in the medical record. (Tr. Vol. II at 109-110.)

135. Dr. Wettstein credibly opined that if there were incessant text messages from M.B., such was essential to document in the medical record. If the office staff indicated that M.B. was becoming obsessed with Dr. Hasan, such was essential to document in the medical record. (Tr. Vol. II at 110.)

136. Dr. Wettstein credibly opined that if Dr. Hasan was considering ending the professional relationship due to abnormal patient conduct, such is highly significant and should be documented in the medical record. The fact that they continued to communicate via text message during this time, as well as the significance of such communications, should have been documented in the medical record. (Tr. Vol. II at 112-114.)

137. Dr. Wettstein credibly opined that if M.B. fantasized about an ongoing sexual affair and Dr. Hasan was aware of such, it should have been documented in the medical record. If M.B.'s behavior was extreme and obsessive, that should have been documented in the medical record. If Dr. Hasan planned to terminate the doctor/patient relationship, that

should have been documented in the medical record. If Dr. Hasan advised M.B. to contact him through the office only, that should have been documented in the medical record. If Dr. Hasan blocked her text messages and phone calls, that should have been documented in the medical record. (Tr. Vol. II at 114-115.)

138. Dr. Wettstein credibly testified that a patient's request to be transferred to another psychiatrist is a significant event that should be documented in detail in the medical record. Dr. Hasan's notes only state that M.B. "is requesting transfer to the services of Dr. Faheem and we will do so." Dr. Wettstein credibly opined that Dr. Hasan's documentation regarding the transfer is insufficient because Dr. Hasan does not explain the reasons for the transfer request or his approach to that request. (Tr. Vol. II at 119; Bd. Ex. 19.)

139. Dr. Wettstein credibly opined that these are not simple documentation mistakes. The scenario Dr. Hasan has represented is complex. Not only has Dr. Hasan failed to document M.B.'s conduct, but he has failed to document any treatment plan to address the issues with M.B. (Tr. Vol. II at 115-116.)D

140. Dr. Wettstein credibly opined that over 4,000 text messages in a year is an exceptional amount of text communications between and doctor and patient. (Tr. Vol. II at 120.)

141. Dr. Wettstein credibly opined that the severity of Dr. Hasan's lack of documentation could be indicative of intentional concealment. (Tr. Vol. II at 124-125.)

142. Dr. Wettstein credibly opined Dr. Hasan's lack of documentation violates the standard of psychiatric care on a severe level. (Tr. Vol. II at 119-120.)

JEFFREY BENFIELD

143. Jeffrey Benfield ("Mr. Benfield") was called by the Board to testify at the hearing. Mr. Benfield is a registered nurse and was married to M.B. when she was seeking

treatment from Dr. Hasan. Mr. Benfield and M.B. divorced due to M.B.'s affair with Dr. Hasan. (Tr. Vol. II at 142-144.)

144. Mr. Benfield was suspicious that M.B. was having an affair with Dr. Hasan. M.B. referred to Dr. Hasan as "Omar" and texted with him regularly. (Tr. Vol. II at 145-147.)

145. In January of 2014, M.B. confessed to having an affair with Dr. Hasan after Mr. Benfield asked if she was cheating on him. (Tr. Vol. II at 147.)

146. Mr. Benfield testified that M.B. has never been delusional and is not a liar. (Tr. Vol. II at 148.)

KELLIE AROMIN, P.A.

147. Kellie Aromin ("Ms. Aromin") was called by the Board to testify at the hearing. Ms. Aromin was a nurse for ten (10) years and has been a physician's assistant in psychiatry for the past eleven (11) years. Ms. Aromin is employed by Dr. Faheem at Appalachian Psychiatric Services and also does rounds with Beckley ARH. (Tr. Vol. II at 167.)

148. On January 31, 2014, Ms. Aromin was doing rounds with Dr. Syed at Beckley ARH around 6:30 a.m. They were looking for a patient and was directed to go to the seclusion room. She and Dr. Syed went to the seclusion room and opened the door, at which time Ms. Aromin observed Dr. Hasan with a patient. They realized they had the wrong room and shut the door. (Tr. Vol. II at 168-169.)

149. Ms. Aromin later learned that the patient in the room with Dr. Hasan was M.B. Ms. Aromin recalled that M.B. was lying on the bed and Dr. Hasan was squatted down talking to M.B., with his face very close to M.B.'s head. (Tr. Vol. II at 169-170.)

150. The following day, Ms. Aromin went with Dr. Faheem to see M.B. M.B. was still in the seclusion room. M.B. disclosed to Ms. Aromin and Dr. Faheem that she had been having an affair with Dr. Hasan. (Tr. Vol. II at 173-174.)

151. Ms. Aromin testified that in her twenty-one (21) years of experience, she has never seen a doctor that close to a patient in the seclusion room. She found it odd and testified that it seemed different than a normal doctor/patient relationship. It appeared that Dr. Hasan may have been consoling her or "trying to put out some fires before they get out of hand." She also found it unusual for Dr. Hasan to be at the hospital so early. (Tr. Vol. II at 170-171, 174.)

GLENNA MEADOWS

152. Glenna Meadows was called by the Board to testify at the proceeding. Ms. Meadows has known M.B. since M.B. was eighteen years old. (Tr. Vol. II at 181-182.)

153. Ms. Meadows testified that M.B. told her about the affair with Dr. Hasan while it was ongoing. M.B. would talk to Ms. Meadows about meeting Dr. Hasan shortly after, and sometimes before, the meetings occurred. M.B. told Ms. Meadows about meeting Dr. Hasan at the house on Union Hall Road, the Sleep Clinic, Tamarack and Microtel. (Tr. Vol. II at 182185.)

154. Throughout, Ms. Meadows' testimony regarding the meetings was consistent with M.B.'s testimony.

135. Ms. Meadows also overhead M.B. talking on the phone at her house. M.B. would go into the bedroom but Ms. Meadows had thin walls and could overhear M.B. talking, though she could not hear the person on the other end. Ms. Meadows heard M.B.

upset and crying on the phone, begging the other person not to commit suicide. M.B. told Ms. Meadows she was talking to Dr. Hasan. (Tr. Vol. II at 187-188.)

136. At one point, M.B. gave Ms. Meadows an envelope that contained items Dr. Hasan had given M.B. The enveloped contained a T-Shirt and a necklace. M.B. gave the envelope to Ms. Meadows because she did not want her husband to find the items. Ms. Meadows stored the envelope in her gun cabinet until M.B. came by a month later to retrieve it. (Tr. Vol. II at 189-190.)

137. Ms. Meadows testified that she has never known M.B. to be delusional. (Tr. Vol. II at 190.)

JOHN AHEARNE

138. Dr. Hasan called John Ahearne ("Mr. Ahearne") to testify at the hearing. Mr. Ahearne analyzed Dr. Hasan's cell phone and extracted text messages from the phone. (Tr. Vol. III at 7-10.)

139. Mr. Ahearne was provided with Dr. Hasan's phone on May 1, 2014. Thus, Mr. Ahearne's opinion with regard to the authenticity of text messages extracted from Dr. Hasan's phone does *not* pertain to any text messages received by Dr. Hasan after May 1, 2014, including the alleged text message that M.B. promised to say she lied about the "sex stuff" if Dr. Hasan would talk to her. This message appeared on Dr. Hasan's phone *after* he purchased different applications that could create false e-mails as if actually sent or received. (Tr. Vol. 1 at 256; Hasan Ex. 11; Bd. Ex. 21; Tr. Vol. III at 26-27.) There is no evidence that M.B. purchased said applications and, if fact, Mr. Legg found no manipulation on her phone as previously cited.

140. The AT&T records reflected that Dr. Hasan sent and/or received over 40,000 text messages from January 1, 2013 through May 1, 2014, the latter being the date Dr. Hasan's phone was provided to Mr. Ahearne. (Bd. Ex. 3; Resp. Ex. 14.)

141. Yet, Mr. Ahearne was only able to recover ninety-six (96) text messages from Dr. Hasan's phone, twenty (20) of which were duplicates. (Tr. Vol. III at 32; Resp. Ex. 14.)

142. Mr. Ahearne testified that only 96 text messages were recovered because text messages had been erased due to a factory default reset performed on Dr. Hasan's phone on April 25, 2014, a mere week before the phone was provided to Mr. Ahearne. (Tr. Vol. III at 34-36; Resp. Ex. 14.)

143. A factory default reset erases everything on a cell phone, including all text messages, pictures and the web browsing history. (Tr. Vol. III at 35.)

144. Mr. Ahearne testified that a factory default reset can be performed intentionally by the user. Further, before a user performs a factory default reset, the phone specifically warns the user that proceeding with the reset will cause everything on the phone to be lost. (Tr. Vol. III at 35-36, 51.)

145. Mr. Ahearne could not positively testify that there was no user manipulation with regard to text messages he extracted from Dr. Hasan's phone. It is unclear how a nominal amount of text messages between Dr. Hasan and M.B., all of which pre-dated the factory default reset, were still on the phone. (Tr. Vol. III at 42-44.) Again, the review by Mr. Ahearne was done after Dr. Hasan installed applications on his phone that enabled the creation of false messages.

146. Although Mr. Ahearne believed that possible applications existed that could be downloaded on a Samsung Galaxy S3 to edit text messages, none were found on M.B.'s phone or was there any evidence of manipulation. (Tr. Vol. I at 32, 42.)

147. Although he testified that he knew of no similar applications for an iPhone they do exist.

BEN LEVITAN

148. Dr. Hasan called Ben Levitan ("Mr. Levitan") to testify as a witness. Mr. Levitan purported to testify that the text messages in Bd. Ex. 1 that included text messages form M.B.'s phone were manipulated due to inconsistent character counts.

149. Mr. Levitan's testimony and opinion is not credible or reliable. Mr. Levitan misrepresented himself as an engineer at the hearing, as he does not hold an engineering degree. Further, the demonstrative exhibit he provided at the hearing, and upon which he based his opinion, was established to be incorrect and unreliable. (Tr. Vol. III at 96-116; 121-122.)

150. Mr. Levitan was unable to point to any incoming text message from Dr. Hasan's (304)640-8688 number that had an inconsistent character count, as all incoming messages from this number that exceeded 151 characters truncated into a second message. The incoming messages did not exceed 151 characters until Dr. Hasan began communicating through text messaging applications. Mr. Levitan could not dispute the Board's contention that text message applications are not subject to the same character counts, if any, as normal text messages sent through a provider. (Tr. Vol. III at 96-116; Bd. Ex. 1.)

151. Further, Mr. Levitan acknowledged that he is not an expert in Cellebrite, and could not dispute the Board's contention that outgoing messages sent by M.B. would not be truncated (due to the amount of characters) when extracted from M.B.'s phone by a Cellebrite device. Moreover, Mr. Levitan's testimony that outgoing messages should be truncated was contrary to his own Affidavit dated March 3, 2015. (Tr. Vol. III at 96-116.)

152. For the foregoing reasons, this Board does not find Mr. Levitan's opinion regarding the authenticity of the text messages in Bd. Ex. 1 to be credible or reliable.

153. Dr. Hasan denied giving M.B. a necklace. (Tr. Vol. III at 176-177.) M.B. identified the necklace at the hearing, which was submitted into evidence as Bd. Ex. 6. Dr. Hasan stated that M.B. must have stolen it from his office, but on the other hand he testified that it was a different color and had remained in his office since 2012. (Tr. Vol 3 at 276; Hasan's Resp. to Compl. p. 4.) Again, his testimony is not credible.

154. Dr. Hasan did not deny that there were over 4,000 text messages between himself and M.B (in only the five and a half months counted). (Tr. Vol. III at 215.)

155. A number of text messaging applications were downloaded to Dr. Hasan's phone in 2013 and 2014. In the order they were downloaded, these include:

a. "CoverMe Private Texting Messenger" (April 11, 2013)

b. "Private Life Texting — Send secret SMS messages" (April 11, 2013)

c. "Talkatone — Free SMS Text Messages, WiFi Texti..." (July 2, 2013)

d. "TigerText Secure Messaging for Business" (August 24, 2013)

e. "TigerTextPRO — HIPAAText for Healthcare" (August 24, 2013)

f. "Burner — Free U.S. Number for text messages, ch...) (purchased 8 Credit Pack for $4.99) (January 5, 2014)

g. "Text Free: Free Texting App and Free Calling App." (i.e., Pinger) (January 5, 2014)

h. "textPlus Free Text + Calls: Free Texting + Free P..." (January 13, 2014);

i. "WhatsApp Messenger" (January 13, 2014)

j. "Blink! - Secret Messaging" (January 13, 2014)

k. "my SMSfriend - the next generation SMS" (January 13, 2014)

l. "Masked" (January 13, 2014)

m. "Voxox - Call, Text, SMS, Fax Translate" (January 13, 2014)

n. "Wifi Texting" ($0.99) (January 24, 2014)

o. "TextMet Free Texting and Messaging + Free Ph..." (January 24, 2014)

p. Fake SMS! (downloaded on April 6, 2014)

q. Fake Conversation - Text Messages and Upgrade to Pro Version ($0.99) (both downloaded April 6, 2014)

(Bd. Ex. 21.)

156. Dr. Hasan testified that many of these text message applications can be used to send text messages with an alternative phone number in order disguise one's true phone number. (Tr. Vol. III at 230-231.)

157. Dr. Hasan's testimony regarding the downloading and use of the text messaging applications is not credible. He testified that these applications were downloaded by either himself or his wife in order to figure out how M.B. was sending him text messages from random numbers. However, by his own testimony, he did not receive random number text messages from M.B. until after January 7, 2014, after many of the applications had already been downloaded to his phone. Also, his wife testified that she did not download any text message applications until sometime after she received the phone call from M.B. on January 7, 2014. (Tr. Vol. III at 158-159; 225-231; Vol. IV at 125-126.) Again, Dr. Hasan's testimony is not credible.

THOMAS GUTHEIL, M.D.

158. Dr. Hasan called Dr. Thomas Gutheil. He was qualified as an expert witness in the field of forensic psychiatry. (Tr. Vol. IV at 31.)

159. Dr. Gutheil testified that if a patient begins to have an emotional attachment to their psychiatrist and communicates the same to the psychiatrist, such should be documented. (Tr. Vol. IV at 36-37.)

160. Dr. Gutheil testified that if a patient is alleging that she is having an extra marital affair with the psychiatrist, and communicates the same to the psychiatrist, such should be documented. (Tr. Vol. IV at 37-38, 41-43.)

161. Dr. Gutheil testified that if the patient and psychiatrist exchanged over 4,000 text messages over the course of a year, such should be documented. (Tr. Vol. IV at 38-39.)

162. Dr. Gutheil testified that over 4,000 text messages between a patient and psychiatrist is excessive. (Tr. Vol. IV at 40.)

163. Dr. Gutheil testified that if a patient is stalking a psychiatrist, such should be documented. (Tr. Vol. IV at 47-48.)

164. Dr. Gutheil testified that if a patient and a psychiatrist have a sexual relationship, and the psychiatrist cuts off communication with the patient, you would expect the patient's attempts to communicate with the psychiatrist to increase. (Tr. Vol. IV at 48.)

165. Dr. Gutheil testified that in his experience of reviewing over 300 hundred cases of patients alleging inappropriate relationships with their psychiatrist, he has never seen false allegations on such an extravagant scale as the present case, based on the sheer volume of text messages. With respect to the volume of communications involved in this matter, Dr. Gutheil admitted that "this is a record." (Tr. Vol. IV at 50-52.)

MICHELLE PILKINGTON, P.A.

166. Michelle Pilkington is a physician assistant, but not a P.A. in Dr. Hasan's office, whose office was across the hall from Dr. Hasan. (Tr. Vol. III at 122, 124.)

167. She saw Dr. Hasan only on Wednesday mornings. (Tr. Vol. III at 124.)

168. She never saw unprofessional behavior from Dr. Hasan. (Tr. Vol. III at 126.)

STEPHANIE KENNEDY

169. Stephanie Kennedy is an employee of Dr. Hasan and works as the quality control manager at the Sleep Clinic.

170. After being asked repeatedly by Dr. Hasan's counsel for dates of events that happened some three years earlier, M.B. suggested that the meeting at the Sleep Clinic happened in the early hours of August 3, 2013, but admitted it might not be the exact date. (Tr. Vol. I at 294.) It was her recollection after having been there over three years earlier. (Tr. Vol. at 230.)

171. Ms. Kennedy testified that M.B. was not there on said date.

172. Glenna Meadows, a friend of M.B.'s, testified that M.B. told her that she was meeting Dr. Hasan at the Sleep Clinic and told Ms. Meadows the next day that they had met at the Sleep Clinic and had sex. (Tr. Vol. II at 184, 200.)

173. According to testimony there were times when the Sleep Clinic was empty. (Tr. Vol. at 323.)

174. Ms. Kennedy who performed sleep studies at the Clinic testified that there was a patient for a sleep study the night of August 2, 2014, into August 3, 2014. (Tr. Vol. III at 328.) She testified that a sleep study was done there was always two techs at the clinic with her. (Vol III at 317, 324.)

175. In spite of the fact that Ms. Kennedy testified that she was doing a sleep study at the clinic during the night and early morning in question requiring two techs to be

present, she testified that there were no techs on the evening of August 2, 2014, into the morning hours of August 4, 2014. (Tr. Vol. III at 328.)

ALAN KENNEDY

176. Alan Kennedy was the Program Director for the West Virginia Sleep Center. (Tr. Vol. III at 293.)

177. He alleged that he gave a tour of the facility to M.B. after Dr. Hasan hired an attorney. (Tr. Vol III at 308:14-22).

178. By February 2, 2014, Dr. Hasan had hired an attorney, therefore, the tour could not have taken place in 2013 as one of the years suggested by Mr. Kennedy. (Hasan's Response to Complaint.)

179. After the alleged tour Mr. Kennedy found on picture of M.B. on facebook. (Tr. Vol. III at 302.)

180. Mr. Kennedy testified that each day up to four tours of the facility are given. Between the time that Mr. Kennedy was hired at the Sleep Clinic in early 2013, and when he recognized M.B.'s picture in 2014 there had been a possible 1,360 tours and yet he could pick out M.B. as one out of the 1,360. According to Mr. Kennedy's testimony the alleged tour could have taken place even much later, thereby, making the odds of being able to recognize M.B. even worse. (Tr. Vol. III at 293-294.)

181. No sign in sheet was provided at the hearing and no camera recordings were provided even though there are functioning cameras running in the facility. (Tr. Vol. III at 297.)

CONCLUSIONS OF LAW

1. W. Va. Code § 30-3-14(i) gives the Board pf Medicine authority to impose sanctions when a person is found "unqualified because of any of the grounds set forth in subsection (c) on this section. W. Va. Code § 30-3-14(c) allows the Board to determine a person to be unqualified for numerous reasons. *Berlow, M.D. v. West Virginia Board of Medicine* 193 W. Va. 666, 669, 458 S.E.2d 469, 472 (1995).

2. The function of a hearing officer is to preside at the hearing and to cause to be prepared a record of the hearing and shall prepare findings of fact and conclusions of law for submission to the Board. *Id.*

3. The Board may adopt, modify or reject such findings of fact and conclusions of law. *Id.*

4. The Board, not the hearing examiner, shall be a regulatory and disciplinary body for the practice of medicine. W. Va. Code § 30-3-5.

5. Although the Board is not required to accept the recommendations of a hearing examiner, it must present a reasonable articulate decision. *Berlow* at 473 citing *Citizens Bank of Weirton v. Board of Banking*, 160 W.Va. 220, 230, 233 S.E. 2d 719, 736 (1977).

6. Counts I and III are concerned with whether an inappropriate sexual relationship existed between Dr. Hasan and M.B that would violate the standards of acceptable principles of medical ethics. The Examiner failed to find that there was a sexual relationship between Dr. Hasan and M.B. primarily relying on the testimony of Dr. Hasan who he found to be credible. (*Recommended Decision* at 60.) The only finding made by the hearing Examiner in support of the finding of credibility was "even when certain responses were adverse to his interests, the [Dr. Hasan] responded candidly, emphatically, and without hesitation." *Id.* No examples in support of this one sentence were given. Dr. Hasan was not credible:

a. Dr. Hasan testified at the hearing that he deleted the messages from his iPhone before he knew of any possible action by the Board. This statement is contradicted by Dr. Hasan himself. He knew that a possible complaint was going to be filed against him in March 2014 when he hired a lawyer. (Tr. Vol. III pp. 199-200.) According to Dr. Hasan's own expert witness Dr. Hasan deleted messages on his iPhone on April 25, 2014. (Tr. Vol III, pp. 35, 38, 46, 200.) Respondent acknowledged that he deleted the messages. (Tr. Vol III, p. 200.) Therefore, he deleted critical evidence from his iPhone *after* he knew that M.B. threatened legal action.

b. The Board submitted a copy of the relevant text messages from M.B.'s phone. Many of the messages exchanged between Dr. Hasan and M.B. were sexually explicit supporting that there was a sexual relationship between Dr. Hasan and M.B. (Bd. Ex. 1). Had Dr. Hasan not deleted the text messages off his iPhone just days before it was examined they could have been reviewed to see if they were consistent with the text messages retrieved from M.B.'s phone. But, of course, the messages cannot be retrieved because Dr. Hasan deleted them just a few days after he learned that a complaint concerning his relationship with M.B. was likely forthcoming. In spite of the spoliation of critical evidence by Dr. Hasan, the Examiner found Respondent to be credible and truthful.

c. In early April 2014, only weeks after Dr. Hasan knew that M.B. was considering filing a complaint against him, Dr. Hasan purchased and downloaded on his iPhone applications including Fake Conversation Text Message, Fake SMS, and an application upgrading Fake Conversation Text Message. (Tr. Vol III pp. 199-200, 227-228). Additionally, he downloaded applications that erased messages without a trace. (Tr. Vol III p, 228). The Hearing Examiner did *not* refer to these applications purchased by Dr. Hasan much less that they were purchased

before Dr. Hasan allegedly received a text messages from M.B., "I promise to tell the truth I lied about the sex thing if you just talk to me" that she denied sending.

d. The reason that Dr. Hasan gave as to why he downloaded these applications was "[t]o figure out how text messages could be manipulated." (Tr. Vol III p. 199.) Dr. Hasan's testimony regarding the downloading and use of the text messaging applications was again not credible. By his own testimony, he did not receive random number text messages from M.B. until after January 7, 2014, after many of the applications had already been downloaded to his phone. Also, Ms. Wasylyk, his wife, testified that she did not download any text message applications until sometime after she received the phone call from M.B. on January 7, 2014. (Tr. Vol. III at 158-159; 225-231; Vol. IV at 125-126.)

e. One witness testified that the best way to determine if a text message downloaded from a phone was actual sent and/or received was to compare it to Dr. Hasan's iPhone. (Tr. Vol. I at 39, 41.) However, Dr. Hasan deleted his messages just days before his phone was going to be searched for text messages. This too was ignored by the Hearing Examiner in finding Dr. Hasan's testimony to be credible.

f. The AT&T record for Dr. Hasan's iPhone containing the date of all text messages received and sent by him was subpoenaed by the Board in July 2015. (Bd. Ex. 3.) It contained the phone numbers, dates and times, but not the contents. (Tr. Vol. I at 66.) It was expected that the dates and times would match. (Tr. Vol. I at 34.) Dr. Hasan's AT&T records matched up with the dates and times with M.B.'s text messages. (Vol. I at 108.) This too is not credible and ignored by the Hearing Examiner in making his conclusion and recommendations.

g. The dates and times on Dr. Hasan's AT&T records matched with the sexually explicit text messages downloaded from M.B.'s phone, yet Dr. Hasan denied sending them and this fact was never mentioned by the Hearing Examiner.

h. Dr. Hasan denied meeting M.B. at Microtel Inn on January 7, 2014, at around 4:30 pm. for three or four hours. A medical note was produced that allegedly indicated Dr. Hasan was at his office at Raleigh Psychiatric Services at approximately 5:00 p.m. on January 7, 2014. (Tr. Vol. III at 185-186; Resp. Ex. 21). However, this directly contradicted Dr. Hasan's own assertion in his *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* filed on April 18, 2017. Therein, Dr. Hasan asserted that he was at the New River Health Clinic ("New River") from 3:00 p.m. to 7:00 p.m. (See *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* at p. 3). Furthermore, Mike Johnson, the office manager of Raleigh Psychiatric Services, testified that the billing records indicate that Dr. Hasan was at New River for four (4) hours on January 7, 2014. The evidence and testimony establishes that Dr. Hasan could not have arrived at New River that day until approximately 3:00 p.m. (Tr. Vol. IV at 81-85; Tr. Vol. III at 182183; Resp. Ex. 18; Bd. Ex. 23.) Dr. Hasan cannot be in two places at once. To make Dr. Hasan's testimony even more contrived his wife testified that he was with her during this time period. None of these records or testimony were reliable to account for Dr. Hasan's whereabouts on January 7, 2014. In spite this, the Examiner found Respondent to be credible and truthful.

7. Moreover, the Hearing Examiner ignored critical evidence:

a. In April 2013, Dr. Hasan *initiated* a phone call to M.B. that lasted 31 minutes and 30 seconds. In May 2013, Dr. Hasan *initiated* two phone calls to M.B. totaling 55 minutes and 45 seconds. In June 2013, Dr. Hasan *initiated* three phone calls to M.B. lasting a total of 49 minutes

and 32 seconds. In August 2013, Dr. Hasan *initiated* seven phone calls to M.B. totaling almost six hours. In October 2013, Dr. Hasan *initiated* a phone call to M.B. lasted 21 minutes and 52 seconds. The Hearing Examiner did not find the phone calls initiated by Dr. Hasan, some lasting over an hour, worthy of mentioning in his conclusions and recommendations.

b. When reviewing Dr. Hasan's AT&T records it was revealed that in five and a half months (which only accounted for one half the time that Dr. Hasan and M.B. texted) a total of 4,161 text messages were exchanged. (Tr. Vol. I at 95, Bd. Ex. 3.) Dr. Hasan sent 1,939 texts to M.B. and M.B. sent 2,222 texts to Dr. Hasan. On some days hundreds of texts were exchanged. (Tr. Vol. at 96-101; Bd. Ex. 3.)

c. Again, between January 1, 2013 and May 1, 2014, thousands of text messages were exchanged between Dr. Hasan and M.B. (Bd. Ex. 3). However, on May 1, 2014, after these applications enabling one to erase texts messages were installed, only 96 messages could be found on Respondent's iPhone. No evidence was presented at the hearing that M.B. downloaded these applications or any other similar applications on her phone. In spite of spoliation of critical evidence by Respondent, the Examiner found Respondent to be credible and truthful.

d. The Examiner cited the testimony of Ben Levitan one of Respondent's witnesses. Mr. Levitan was qualified as an expert in the field of wireless cellular communications. (Tr. Vol. III pp. 557). He reviewed the Board's Exhibit 3 containing all of the AT&T text messages on M.B.'s phone from January 1, 2013 to June 2, 2014. He testified and the Hearing Examiner found that there was a limitation to the size of a message that could be sent or received of 150 characters and some exceeding 150 characters showing manipulation by M.B. (Tr. Vol. III at. 64, 67.) The Hearing Examiner omitted the rest of Mr. Levitan's testimony that he was unable to

point to any incoming text messages from Dr. Hasan's 304-640-8688 number that had an inconsistent character count, as all incoming messages from this number that exceeded 151 characters truncated into a second message. He agreed that the incoming messages from M.B. did not exceed 150 characters until Respondent began communication through text messaging applications. He did not dispute that text message applications are not subject to the same character count, if any, as normal text messages sent through a provider. A text messaging application was downloaded by Respondent. (Tr. Vol III pp. 199-200, 227-228). Yet, the Examiner omitted this testimony obtained in cross examination thereby suggesting that because there were text messages of more than 150 characters, they were manipulated by M.B.

e. The hearing examiner did not find it worthy enough to mention in his conclusions of law and recommendations that there was no manipulation of text messages found on M.B.'s phone. (Tr. Vol. I at 32, 42.)

f. The Hearing Examiner did not find the phone calls initiated by Dr. Hasan, some lasting over an hour, worthy of mentioning in his conclusions and recommendations.

8. The Hearing Examiner found M.B. to be credible except for her testimony about her rendezvous at the Sleep Center and the Microtel Inn.

9. M.B.'s testimony with regard to the Sleep Clinic is credible:

Stephanie Kennedy is an employee of Dr. Hasan and works as the quality control manager at the Sleep Clinic. After being asked repeatedly by Dr. Hasan's counsel for dates of events that happened some three years earlier, M.B. suggested that the meeting at the Sleep Clinic happened in the early hours of August 3, 2013, but admitted it might not be the exact date. (Tr. Vol. I at 294.) It was her recollection after having been there over three years earlier. (Tr. Vol. at 230.) Ms. Kennedy testified that M.B. was not at the Sleep Clinic

on the late hours of August 3, 2013, into the early hours of August 4, 2013. On some nights no one is at the Sleep Clinic. (Tr. Vol. at 323.) Ms. Kennedy testified that there was a patient with her the night of August 2, 2014, into August 3, 2014, for a sleep study. (Tr. Vol. III at 328.) When doing a sleep study two techs are always present with her. (Vol III at 317, 324.) There were no techs at the Clinic on the evening of August 2, 2014, into the morning hours of August 4, 2014. (Tr. Vol. III at 328.) Therefore, a sleep study could not have taken place during this time because no techs were present. The Hearing Examiner ignored this important testimony from Ms. Kennedy.

M.B.'s testimony about being with Dr. Hasan being at the Microtel Inn is credible. Dr. Hasan denied meeting M.B. at Microtel on January 7, 2014 at around 4:30 pm. for three or four hours. A medical note was produced that allegedly indicated Dr. Hasan was at his office at Raleigh Psychiatric Services at approximately 5:00 p.m. on January 7, 2014. (Tr. Vol. III at 185-186; Resp. Ex. 21). However, this directly contradicts Dr. Hasan's own assertion in his *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* filed on April 18, 2017. Therein, Dr. Hasan asserted that he was at the New River Health Clinic ("New River") from 3:00 p.m. to 7:00 p.m. (See *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* at p. 3). Furthermore, Mike Johnson, the office manager of Raleigh Psychiatric Services, testified that the billing records indicate that Dr. Hasan was at New River for four (4) hours on January 7, 2014. The evidence and testimony establishes that Dr. Hasan could not have arrived at New River that day until approximately 3:00 p.m. (Tr. Vol. IV at 81-85; Tr. Vol. III at 182183; Resp. Ex. 18; Bd. Ex. 23.) Dr. Hasan cannot be in two places at once. To make Dr. Hasan's testimony even more contrived his wife testified that he was with her during this time period. (Tr. Vo. IV at 106-110.)

The Hearing Examiner found that while the contents of M.B.'s "dump file" in Board's Exhibit 1 is plausible, he could not say with a firm belief that it was not compromised. In support the Hearing Examiner stated that the AT&T records confirm that M.B. did not send a text message to 304-228-7639 which is the number associated with M.B.'s dump file. M.B. testified that she changed her phone number in January of 2014 to the phone number listed on the cover sheet of Bd. Ex. I (304-228-7639), thereby explaining the difference. (Tr. Vol. I at 236-237; Bd. Ex. 1.)

The Hearing Examiner was critical of the dump file because the better way to verify the content of the text messages is to have both devices on both ends of the conversation compared and Mr. Kidd failed to do this. Dr. Hasan knew that a possible complaint was going to be filed against him in March 2014 when he hired a lawyer. (Tr. Vol. III pp. 199-200.) According to Dr. Hasan's own expert witness he deleted messages on his iPhone on April 25, 2014. (Tr. Vol III, pp. 35, 38, 46, 200.) Respondent acknowledged that he deleted the messages. (Tr. Vol III, p. 200.) As a result, Dr. Hasan engaged in the spoliation of evidence by deleting critical evidence from his iPhone *after* he knew that M.B. threatened legal action.

The Hearing Examiner was critical of the dump file because Mr. Ahearne, M.B.'s expert, stated that there was no manipulation on Dr. Hasan's phone. Mr. Ahearne was provided with Dr. Hasan's phone on May 1, 2014. Thus, Mr. Ahearne's opinion with regard to the authenticity of text messages extracted from Dr. Hasan's phone does *not* pertain to any text messages after May 1, 2014, including the alleged text message that M.B. promised to say she lied about the "sex stuff." This message appeared on Dr. Hasan's phone *after* he purchased different applications that could create false e-mails as if actually sent or received. (Tr. Vol. 1 at 256; Hasan Ex. 11; Bd. Ex. 21; Tr. Vol. III at 26-27.) There is no evidence that M.B.

purchased any similar applications and, if fact, Mr. Legg found no manipulation on her phone. The AT&T records reflected that Dr. Hasan sent and/or received over 4,000 text messages from January 1, 2013 through May 1, 2014 when Mr. Ahearne received Dr. Hasan's phone. (Bd. Ex. 3; Resp. Ex. 14.) Yet, Mr. Ahearne was only able to recover ninety-six (96) text messages from Dr. Hasan's phone, twenty (20) of which were duplicates. (Tr. Vol. III at 32; Resp. Ex. 14.) Mr. Ahearne testified that only 96 text messages were recovered because text messages had been erased due to a factory default reset performed on Dr. Hasan's phone on April 25, 2014, a mere week before the phone was provided to Mr. Ahearne. (Tr. Vol. III at 34-36; Resp. Ex. 14.) Mr. Ahearne could not positively testify that there was no user manipulation with regard to text messages by Dr. Hasan. It is unclear how a nominal amount of text messages between Dr. Hasan and M.B., all of which pre-dated deletion of all messages were still on the phone. (Tr. Vol. III at 42-44.) Again, the review by Mr. Ahearne was done after Dr. Hasan installed applications on his phone that enabled the creation of false messages. Although Mr. Ahearne believed that possible applications existed that could be downloaded on a Samsung Galaxy S3 to edit text messages, none were found on M.B.'s phone nor was there any evidence of manipulation. (Tr. Vol. I at 32, 42.)

The Hearing Examiner was critical of the dump file in ¶ 23, p. 62 of his Recommended Decision because Mr. Levitan, an expert witness of Dr. Hasan, testified that he expected to see 304-573-6918 in the dump file. M.B. testified that she changed her phone number in January of 2014 to the phone number listed on the dump file (304-228-7639). She kept the same phone and when the text messages were downloaded her number was 304-228-7639. (Tr. Vol. I at 236-237; Bd. Ex. 1.) The hearing Examiner in ¶ 4 p. 62 also criticized the dump file because Mr. Levitan testified that there is a limitation on the size of a message that can be sent or received

(150 characters) and observed that the messages on M.B's dump file exceeded the character count thereby concluding manipulation by M.B. (Tr. Vol. III at. 64, 67.) However, the Hearing Examiner omitted Mr. Levitan's testimony that he was unable to point to any incoming text messages from Dr. Hasan's 304-640-8688 number that had an inconsistent character count, as all incoming messages from this number that exceeded 151 characters truncated into a second message. He agreed that the incoming messages from M.B. did not exceed 150 characters until Respondent began communication through text messaging applications. He did not dispute that text message applications are not subject to the same character count, if any, as normal text messages sent through a provider. A text messaging application was downloaded by Respondent. (Tr. Vol III pp. 199-200, 227-228.)

The Hearing Examiner was critical of the dump file in his Decision ¶ 24, p. 62 because M.B.'s dump file only lists 304-228-7639, not 304-573-6816 even though that was her number for a period of time. Again, M.B. testified that she changed her phone number in January of 2014 to the phone number listed on the dump file (304-228-7639). She kept the same phone and when the text messages were downloaded her number was 304-228-7639. (Tr. Vol. I at 236-237; Bd. Ex. 1.) The Hearing Examiner was critical of the file dump because it began on December 16, 2013, and text messages had been exchanged before that. Old messages are automatically deleted to make room for new text messages. (Tr. Vol. I at 23-24.)

In his Decision ¶ 26, p. 63 the Hearing Examiner was again critical of the file dump because the content of M.B's dump file with regard to the Microtel Inn meeting conflicted with evidence present by M.B., medical records signed by Dr. Hasan, and his wife's testimony. *See* ¶ 10 above. Dr. Hasan denied meeting M.B. at Microtel Inn on January 7, 2014 at around 4:30 pm. for three or four hours. A medical note was produced that allegedly indicated Dr. Hasan was at

his office at Raleigh Psychiatric Services at approximately 5:00 p.m. on January 7, 2014. (Tr. Vol. III at 185-186; Resp. Ex. 21). However, this directly contradicts Dr. Hasan's own assertion in his *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* filed on April 18, 2017. Therein, Dr. Hasan asserted that he was at the New River Health Clinic ("New River") from 3:00 p.m. to 7:00 p.m. (See *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* at p. 3). Furthermore, Mike Johnson, the office manager of Raleigh Psychiatric Services, testified that the billing records indicate that Dr. Hasan was at New River for four (4) hours on January 7, 2014. The evidence and testimony establishes that Dr. Hasan could not have arrived at New River that day until approximately 3:00 p.m. (Tr. Vol. IV at 81-85; Tr. Vol. III at 182183; Resp. Ex. 18; Bd. Ex. 23.) Dr. Hasan cannot be in two places at once. To make Dr. Hasan's testimony even more contrived his wife testified that he was with her during this time period. (Tr. Vo. IV at 106-110.)

Specific Dates Provided By M.B.

10. The Hearing Examiner disputes the specific dates given by M.B.

In his Decision Paragraphs Nos. 31-32, p. 64 he found that M.B. could not have been at the Sleep Clinic on the evening hours of August 2, 2013 into the morning hours of August 3, 2014. Stephanie Kennedy was an employee of Dr. Hasan and worked as the quality control manager at the Sleep Clinic. Ms. Kennedy testified that when sleep studies were conducted there was always two techs at the clinic with her. (Vol III at 317, 324.) On the night in question she testified that there were no techs at the Clinic. She acknowledged that sometimes no one is at the Center. (Tr. Vol. III at 317, 323-324, 328.) This is consistent with M.B's. testimony that when she and Dr. Hasan met at the Sleep Center they were alone

and no techs were present. (Vol III at 317, 324, 328.) The Hearing Examiner ignored this important testimony from Ms. Kennedy. That being the case, M.B.'s testimony that she and Dr. Hasan were at the Sleep Clinic alone on August 2, 2013 into the morning hours of August 3, 2014 is credible.

In his Decision in Paragraphs Nos. 33-37 at 64-64 The Hearing Examiner argues that there was substantial evidence that M.B did not meet Dr. Hasan at the Microtel Inn. The Examiner cited a medical note that allegedly indicated Dr. Hasan was at his office at Raleigh Psychiatric Services at approximately 5:00 p.m. on January 7, 2014, and therefore could not have been at the Microtel Inn at 4:30 for several hours. (Tr. Vol. III at 185-186; Resp. Ex. 21). However, this directly contradicted Dr. Hasan's own assertion in his *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* filed on April 18, 2017. Therein, Dr. Hasan asserted that he was at the New River Health Clinic ("New River") from 3:00 p.m. to 7:00 p.m. (See *Reply in Support of Respondent's Motion to Exclude Spreadsheet of Alleged Text Messages,* at p. 3). Since he cannot be two places at once, his testimony on this issue is not credible. Furthermore, Mike Johnson, the office manager of Raleigh Psychiatric Services, testified that the billing records indicated that Dr. Hasan was at New River for four (4) hours on January 7, 2014. Again, Dr. Hasan cannot be in two places at once. To make Dr. Hasan's testimony even more contrived his wife testified that he was with her during this time period. (Tr. Vo. IV at 106-110.) M.B. testified that he was with her at the Microtel Inn.

M.B.'S Communications with the Dr. Hasan After 1/7/14

11. The Hearing Examiner alleged in Paragraph No. 38-40 at p. 66 that M.B. recanted her allegations when she sent a text message to Dr. Hasan which allegedly read: "I

promise to tell the truth I lied about the sex thing if you just talk to me." M.B. denies sending this text. Mr. Ahearne was provided with Dr. Hasan's phone on May 1, 2014. Thus, Mr. Ahearne's opinion with regard to the authenticity of text messages extracted from Dr. Hasan's phone does *not* pertain to any text messages received by Dr. Hasan after May 1, 2014. The May 1, 2014, message appeared on Dr. Hasan's phone *after* he purchased different applications that could create false e-mails as if actually sent or received. (Tr. Vol. 1 at 256; Hasan Ex. 11; Bd. Ex. 21; Tr. Vol. III at 26-27.) The applications purchased before May 1, 2014 the date of the alleged recantation were:

> Talkatone — Free SMS Text Messages, WiFi Texti purchased on July 2, 2013;
>
> TigerText Secure Messaging for Business purc purchased on August 24, 2013;
>
> TigerTextPRO — HIPAAText for Healthcare purchased on August 24, 2013;
>
> Burner — Free U.S. Number for text messages purchased on January 5, 2014;
>
> Text Free: Free Texting App and Free Calling App. purchased on January 5, 2014;
>
> textPlus Free Text + Calls: Free Texting purchased on January 13, 2014;
>
> WhatsApp Messenger purchased on January 13, 2014;
>
> Blink! - Secret Messaging purchased on January 13, 2014;
>
> my SMSfriend - the next generation SMS purchased on January 13, 2014;
>
> Masked purchased on January 13, 2014;
>
> Voxox - Call, Text, SMS, Fax Translate purchased on January 13, 2014;
>
> Wifi Texting purchased on January 24, 2014;
>
> TextMet Free Texting and Messaging + Free Ph purchased on January 24, 2014;

Fake SMS! Purchased on April 6, 2014;

Fake Conversation - Text Messages and Upgrade to Pro Version both purchased on April 6, 2014.

(Bd. Ex. 21.)

There is no evidence that M.B. purchased said applications and in fact none were found. Mr. Legg found no evidence of manipulation on her phone.

Union House

12. The Hearing Examiner in Paragraphs 41-44 at pp. 66-68 disputed that M.B. was in the Union House with Dr. Hasan because she failed to describe the house correctly. He found a discrepancy in her testimony about whether the utilities were on in the house. Dr. Hasan stated in his response to the complaint that there were no utilities on in the house and M.B. testified likewise. M.B. testified that during her first visit to the Union house there was no gate into the property but later there was. No one disagreed. There was only speculation that M.B. knew the location of the house other than being there with Dr. Hasan. M.B. correctly testified that the driveway to the house was located at the end of Union Hall Road at a dead end. M.B. correctly testified that it has a private driveway and that the house is set back in the woods and cannot be seen from Union Hall Road. M.B. correctly testified that the driveway was paved and curved leading up to the house. M.B. correctly testified that upon arriving at the house, the house is on the left side of the driveway and tennis courts are in view. M.B. correctly testified that there was a garage door, and to the right of the garage door was a door that led into the garage. M.B. correctly testified that after entering the garage, one may enter into the house proper by turning right and walking up steps. M.B. correctly testified that upon first entering the house, there is some shelving,

and then the first room entered is the kitchen. M.B. correctly testified that there is an island in the kitchen, and then past the kitchen is a living room with wood floors. From this room, M.B. correctly testified that there was a hallway that leads to a bedroom on the right. (Tr. at Vol. I 221-226 (M.B.'s testimony; Tr. Vol. I at 52-66; Bd. Ex. 2). Furthermore, M.B. testified that it was cold in the house and it seemed that the utilities were not turned on. (Tr. at Vo. I p. 310.) Dr. Hasan acknowledged that the utilities were not turned on at the Union Hall road house. (Hasan's Resp. to Compl. p. 5). She knew the house had no furniture in it. (Tr Vol. II at 166). She knew that there was a chain gate to enter the property that was later replaced by a gate. In sum, M.B. demonstrated personal knowledge of the Union Hall Road premises that could only be obtained by being personally present in the interior of the house.

Gifts

13. The Hearing Examiner disputed that Dr. Hasan gave M.B. a necklace. M.B. testified that Dr. Hasan gave her a necklace and M.B. identified the necklace at the hearing. (Bd Ex. 6.) Dr. Hasan denied giving M.B. the necklace and stated that M.B. had stolen it from his office, but then testified that it was different color and it had remained in his office since 2012. (Tr. Vol. III at 276; Dr. Hasan's Resp. to Compl. at 4.) His testimony about the necklace is not credible.

14. The Board concludes that it has proven by clear and convincing evidence that Dr. Hasan exercised influence within the patient-physician relationship for the purpose of engaging M.B. in sexual activity as alleged in Count I of the Board's Amended Complaint.

15. The Board further finds that it has established by clear and convincing evidence that Dr. Hasan entered into a sexual relationship with M.B. as alleged in Count III of the Board's Amended Complaint.

16. The Board finds that it proved by clear and convincing evidence that Dr. Hasan departed from or failed to conform to the standards of acceptable medical practice with regard to his outside the office communications with M.B. as alleged in Count V of the Board's Amended Complaint.

17. The Board finds that it proved by clear and convincing evidence that Dr. Hasan departed from the standard of acceptable and prevailing medical practice and the ethics of the medical by failing to document most of his interactions with M.B. Dr. Hasan departed from and failed to conform to the standards of the prevailing medical practice of the medical profession as alleged in Count VI.

18. Pursuant to W. Va. Code §30-4-14(j) the Board is authorized to impose one or more of the following disciplinary measures as appropriate to the particular circumstances of a case:

1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

2) Administer a public reprimand;

3) Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years including limiting the practice of that person to, or by the exclusion of. One or more areas of practice, including limitations on practice privileges;

4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for a period not to exceed the years;

5) Require him or her to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

6) Require him or her to participate in a program of education prescribed by the board;

7) Require him or her to practice under the directions of a physician or podiatrist designated by the board for a specified period of time; and

8) Assess a civil fine of not less than $1,000 nor more than $10,000.

As such the Respondent, Omar Hasan, M.D., violated the Board's statutes and rules as shown above, and the Board hereby **ORDERS** the following:

a. That Dr. Hasan's West Virginia Medical license be **SUSPENDED** for a period of **ONE (1) YEAR.** The suspension imposed shall remain in effect until it is lifted or otherwise modified pursuant to a subsequent Order issued by the Board;

b. That Dr. Hasan is **PUBLICLY REPRIMANDED** for his dishonorable, unprofessional and unethical conduct regarding M.B.

c. That Dr. Hasan shall complete, at his own expense, the Multidisciplinary Assessment & Evaluation of Professionals program at the Professional Renewal Center in Lawrence, Kansas. Dr. Hasan shall cause the Professional Renewal center to notify the Board ahead of time of his assessment date(s), and provide proof directly to the Board of Dr. Hasan's participation in the initial assessment process within ten days of completion of the process.

d. Prior to evaluation by the Professional Renewal Center, Dr. Hasan shall execute all necessary authorizations, releases and written consent forms necessary to permit the open communication and sharing of information between the Board and the Professional Renewal Center regarding: (1) the facts and circumstances which form the basis of Complaint No. 14-89-S including all related documentation; (2) the Professional Renewal Center's assessment and evaluation of Dr. Hasan; (3) all reports, treatment, and aftercare recommendations of the Professional Renewal Center; and (4) all documents and information obtained by the Professional Renewal Center in association with its assessment and evaluation of Dr. Hasan. Failure to provide such consent sufficiently in advance of evaluation as to permit meaningful communication between the Board and the Professional Renewal Center, or the subsequent revocation of such consent, shall constitute a material violation of the Board's Final Order.

e. That the Board shall not consider lifting or otherwise modifying the suspension of Dr. Hasan's West Virginia medical license until Dr. Hasan makes a written request that his suspension be modified and/or lifted and that the following conditions is met:

Dr. Hasan has completed the Multidisciplinary Assessment & Evaluation of Professionals program at the Professional Renewal Center in Lawrence, Kansas and provides proof satisfactory to the Board that:

1. The Professional Renewal Center assessment and evaluation concludes that patient safety would not be jeopardized by Dr. Hasan's return to practice;

2. The Professional Renewal Center submits a list of any and all practice recommendations and/or restrictions it may

propose in association with a return to practice by Dr. Hasan; and

3. Dr. Hasan is in full compliance with any and all treatment and aftercare recommendations of the Professional Renewal Center.

f. That Dr. Hasan's participation and completion of the Multidisciplinary Assessment & Evaluation of Professionals program at the Professional Renewal Center may not be utilized to satisfy any of his continuing medical education requirements for the state of West Virginia;

g. That Dr. Hasan shall appear before the Board or a designated Committee thereof on an annual basis, and at any other time requested at the discretion of the Board, to discuss his practice and matters relative to the terms and conditions set forth herein; and

h. That Dr. Hasan is hereby **ORDERED** to pay the costs and expenses of these proceedings, including, but not limited to, costs associated with the services provided by the Hearing Examiner, the court reporter and expert witness Dr. Wettstein, and all other costs of investigation and prosecution of this matter. Payment shall be made by Dr. Hasan to the Board within thirty (30) days of the issuance of an Invoice by the Board.

This Order shall be deemed entered on the date that this order, with all required signatures affixed hereupon, is received in the Board's 101 Dee Drive Charleston, West Virginia office. The Executive Director of the West Virginia Board of Medicine is hereby authorized to denote the date of entry on behalf of the Board in accordance with this paragraph.

In compliance with the provisions of West Virginia Code §30-3-8, which provides that the Secretary of the Board shall "together with the president of the board sign all licenses, reports, orders and other documents that may be required by the board in the performance of its duties," the ministerial signature of the current Board Secretary appears hereupon below. Pursuant to the signature authority executed by the current Board President, his designated signatory has executed this Order on behalf of the Board.

ENTERED this 21st day of June, 2017.

WEST VIRGINIA BOARD OF MEDICINE

Mark A. Spangler
Designated Signatory for Board President

Rahul Gupta, M.D., M.P.H.
Secretary

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v. Complaint No. 14-89-S

OMAR KHALID HASAN, M.D.

Respondent.

Findings of Fact

1. The West Virginia Board of Medicine ("the Board") is the "regulatory and disciplinary body for the practice of medicine and surgery" for physicians, podiatrists, and physician assistants in West Virginia. W. Va. Code §§ 20-3-5 and 30-3-7(a).

2. The Board is responsible for regulating the practice of medicine to protect the public health. W. Va. Code § 30-3-1.

3. Omar Khalid Hasan, M.D. ("the Respondent") holds an active license to practice medicine in West Virginia, License No. 21693. [Bd.'s Am. Compl. at ¶ 3.]

4. The Respondent's license to practice medicine in West Virginia was issued on or about September 13, 2004. [Bd.'s Am. Compl. at ¶ 4.]

5. The Respondent practices medicine in Beckley, West Virginia, primarily at his medical office, Raleigh Psychiatric Services. [HT, Vol. III, p. 133.]

6. The Respondent has not faced any prior professional complaints.

Background Information Regarding Complaint No. 14-89-S

7. On or about September 15, 2014, the Respondent's former patient, M.B.,[1] submitted a complaint questionnaire and alleged a sexual relationship with the Respondent during the course of her treatment. [Bd.'s Ex. 9.]

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[1] To maintain the confidentiality of the patient's identity, the parties used the patient's initials throughout the hearing.

8. M.B. alleged that she and Respondent had sex and further alleged that she met the Respondent on numerous occasions in Beckley, West Virginia: at her psychiatric appointments at the Respondent's office; a house on Union Hall Road; West Virginia Sleep Centers; Microtel Inn; Lowe's parking lot, Tamarack's parking lot and the Raleigh County Convention Center's parking lot. [Bd.'s Ex. 9.]

9. The Respondent denied M.B.'s allegations in a written response to the complaint questionnaire filed on or about October 17, 2014.

10. On or about December 2, 2016, the Board initiated its own complaint against the Respondent. [Bd.'s Compl.] The Board amended its complaint on March 12, 2017. [Bd.'s Am. Compl.] The Board's amended complaint contains six counts. [Bd.'s Am. Compl.]

11. Count I alleges that the Respondent engaged in professional misconduct by exercising influence within the patient-physician relationship for the purpose of engaging M.B. in sexual activity. [Bd.'s Am. Compl. at ¶¶ 34-37.]

12. Count II alleges that the Respondent engaged in professional misconduct by not immediately terminating the physician-patient relationship when the interactions and/or communications became sexual in nature. [Bd.'s Am. Compl. at ¶¶ 38-41.]

13. Count III alleges that the Respondent engaged in professional misconduct by entering into a sexual relationship with M.B. [Bd.'s Am. Compl. at ¶¶ 42-45.]

14. Count IV alleges that the Respondent engaged in malpractice and/or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician by failing to appropriately respond to M.B.'s reports of suicidal ideation. [Bd.'s Am. Compl. at ¶¶ 46-48.]

15. Count V alleges that the Respondent engaged in malpractice and/or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician by failing to consider the clinical significance of his outside the office communications with M.B. [Bd.'s Am. Compl. at ¶¶ 49-51.]

16. Count VI alleges that the Respondent departed from and failed to conform to the standards of acceptable and prevailing medical practice and the ethics of the medical profession by failing to keep written records justifying the course of treatment for M.B. [Bd.'s Am. Compl. at ¶¶ 52-55.]

17. The Respondent filed an Answer on or about April 3, 2017, and denied the allegations in the Board's Amended Complaint.

18. The matter proceeded to a public hearing before Herschel H. Rose, III, Esquire (the "Hearing Examiner") on April 25 – 28, 2017, in the Hearing Room of the West Virginia Board of Medicine, 101 Dee Drive, Charleston, West Virginia. The Board was represented by Greg Foster, Esquire, and the West Virginia Attorney General's Office. The Respondent was represented by Stuart A. McMillan, Esquire, and Joshua A. Johnson, Esquire, with the law firm of Bowles Rice LLP.

19. At the hearing, the parties elicited testimony from the following witnesses.

Leonard Arthur Hand, II

20. Leonard Arthur Hand, II works at Second Creek Technologies. [HT, Vol. I, p. 20.] Second Creek Technologies performs investigations on computer devices or technology devices, including mobile phones. [HT, Vol. I, pp. 20-21.]

21. Mr. Hand identified a dump file of alleged text messages exchanged between M.B. and the Respondent. [HT, Vol. I, p. 26.] Second Creek Technologies prepared the dump file. [HT, Vol. I, p. 26.]

22. Mr. Hand explained that M.B.'s phone, a Samsung Galaxy S3, was provided to Second Creek Technologies by a law firm from Charleston, West Virginia. [HT, Vol. I, p. 27.]

23. Second Creek Technologies created two reports. There was a full extract report that included other information including call logs and installed applications on M.B.'s phone. [HT, Vol. I, p. 28.] There was also a spreadsheet produced with text messages only.

[HT, Vol. I, p. 28.] Second Creek Technologies returned all materials to the law firm. [HT, Vol. I, p. 44.]

24. Second Creek Technologies was requested to extract all available information from M.B.'s phone. [HT, Vol. I, pp. 32-33; 39.] Second Creek Technologies was not asked to perform any forensic analysis on the extracted information. [HT, Vol. I, pp. 32-33; 39.] Second Creek Technologies was not asked to check for evidence of manipulated messages. [HT, Vol. I, p. 38.]

25. Mr. Hand testified that M.B.'s dump file, marked as identification purposes as Board's exhibit 1, is not the complete document provided by his company. [HT, Vol. I, p. 35.] Mr. Hand further testified that a more elaborate or more detailed listing of the information that is on the phone is missing. [HT, Vol. I, p. 35.] Mr. Hand also expected to see a document showing applications extracted from M.B.'s phone and a summary page that provides a summary of what was found on M.B.'s phone, all of which was provided to M.B.'s former counsel. [HT, Vol. I, pp. 36-37.] Additionally, the Board's exhibit 1 did not include case notes which would identity any red flags during the extraction process. [HT, Vol. I, p. 37.]

26. The dump file had been heavily redacted. Mr. Hand did not perform the redactions. [HT, Vol 1, p.27] No redaction log was offered into evidence. The identity of the person or persons performing the redaction was not given by any witness or exhibit. No general description of what had been redacted was offered into evidence. No standard or guideline of what was redacted was offered in the evidence.

27. Mr. Hand testified that the best way to verify the content through forensic analysis is to have both devices on both ends of the conversation. [HT, Vol. I, p. 39.] Mr. Hand did not have both devices. [HT, Vol. I, p. 40.]

28. Mr. Hand was aware that text message content can be modified on an Android device. [HT, Vol. I, p. 40.] Mr. Hand was aware of an application called SMS Edit and believed the application is available on the Android platform only, and not available on an iPhone. [HT, Vol. I, pp. 40-41.]

29. Mr. Hand stated that, based upon what SMS Edit is supposed to do, if someone changed the content of the messages on the Board's exhibit 1 and Second Creek Technologies performed the extraction, you would see the edited message. [HT, Vol. I, p. 42-43.]

Michael Kidd

30. Michael Kidd is a private investigator who was retained by the Board to investigate the complaint against the Respondent. [HT, Vol. I, pp. 48, 51.]

31. Mr. Kidd visited a house located at Union Hall Road in Beckley, West Virginia. [HT, Vol. I, p. 52.] Select photographs taken by Mr. Kidd of the Union Hall house were admitted into evidence as Board's Exhibit 2A-Q. Mr. Kidd took pictures of the outside of the Union Hall house because someone who is not actually in the Union Hall house can see the inside of the house from the outside. [HT, Vol. I, p. 185.]

32. Mr. Kidd subpoenaed phone records from AT&T. [HT, Vol. I, p. 51.] Mr. Kidd received AT&T records for the Respondent's phone, 304-640-8688, from January 2013 to May 2014. [HT, Vol. I, p. 66.] The AT&T records were admitted into evidence as Board's Exhibit 3.

33. Mr. Kidd subpoenaed phone records from U.S. Cellular. [HT, Vol. I, p. 67.] Mr. Kidd was looking for phone number 304-573-6918 which was provided to him by M.B. [HT, Vol. I, p. 67.] Mr. Kidd stated that U.S. Cellular advised him that they only keep records for a certain period which had expired. [HT, Vol. I, p. 67.]

34. Mr. Kidd identified a letter received by the Board from U.S. Cellular. [HT, Vol. I, p. 128.] U.S. Cellular stated in the letter that 304-573-6918 is not a U.S. Cellular number. [HT, Vol. I, p. 128.] U.S. Cellular further stated that they also looked up the phone number by M.B.'s name and social security number and could not find anything in their system. [HT, Vol. I, p. 128; Resp.'s Ex. 1.] Mr. Kidd never obtained the phone records for 304-573-6918. [HT, Vol. I, p. 128.]

35. Mr. Kidd was not able to determine from U.S. Cellular whether 304-573-6918 was M.B.'s phone number. [HT, Vol. I, p. 67.] Mr. Kidd used a proprietary database and determined that 304-573-6918 was a U.S. Cellular phone number registered at some point to M.B. [HT, Vol. I, pp. 68; 75.]

36. Mr. Kidd also subpoenaed records from U.S. Cellular for phone number 304-731-9253. [HT, Vol. I, p. 78.] Mr. Kidd understood from M.B. that this number was also a U.S. Cellular number. [HT, Vol. I, p. 78.] U.S. Cellular told Mr. Kidd it had no records associated with that number. [HT, Vol. I, p. 78.] When Mr. Kidd ran a search, 304-731-9253 came back as a Sprint number. [HT, Vol. I, p. 78.] Mr. Kidd did not subpoena Sprint. [HT, Vol. I, p. 84.]

37. Mr. Kidd chose segments of the AT&T records and counted the number of test messages exchanged between the Respondent and M.B. [HT, Vol. I, p. 88.]

38. Mr. Kidd stated that AT&T records show 4,161 text messages that were exchanged between M.B. and the Respondent during these time periods. [HT, Vol. I, p. 95.]

39. Mr. Kidd reviewed M.B.'s dump file and took a sample for comparison with AT&T records. [HT, Vol. I, pp. 101-102.] Mr. Kidd noticed that there was approximately a one-minute difference consistently through his review. [HT, Vol. I, p. 105.]

40. Mr. Kidd also took a sample from AT&T records of telephone calls between M.B. and the Respondent. [HT, Vol. I, pp. 110-111.] Mr. Kidd stated that AT&T records show phone calls between M.B. and the Respondent on 5/19/13, 5/30/13, 6/3/13, 6/7/13, 8/3/13, 8/4/13, 8/21/13, 8/26/13, 10/1/13, and 11/26/13. [HT, Vol. I, pp. 112-118.]

41. Mr. Kidd confirmed the AT&T records show that the Respondent placed or received 30,018 total phone calls between January 1, 2013 – June 2, 2014. [HT, Vol. I, p. 142-143.; Resp.'s Ex. 2.]

42. Mr. Kidd issued a subpoena to the Respondent to secure applications on his phone. [HT, Vol. I, p. 130.] Mr. Kidd also issued a subpoena to Apple to secure the

Respondent's applications on his phone. [HT, Vol. I, p. 131.] Mr. Kidd did not attempt to issue a subpoena to secure M.B.'s applications on her phone. [HT, Vol. I, p. 131.]

43. Mr. Kidd was told by either Art Hand or a paralegal with M.B.'s former counsel that the voluminous redacted messages in M.B.'s dump file were unrelated to the issue at hand. [HT, Vol. I, p. 134.] Mr. Kidd did not make an additional inquiry regarding the redacted messages. [HT, Vol. I, p. 136.]

44. Mr. Kidd did not attempt to ascertain the number of iMessages sent and received by the Respondent. [HT, Vol. I, p. 148.] Mr. Kidd did not determine the number of text messages M.B. sent to someone other than the Respondent. [HT, Vol. I, p. 148.]

45. Mr. Kidd did not make an effort to secure M.B.'s SD card because it was his understanding that M.B. no longer had the phone. [HT, Vol. I, p. 161.]

46. Mr. Kidd did not attempt to determine from the U.S. Cellular records whether 304-228-7639 and 304-573-6918 were being used at the same time. [HT, Vol. I, p. 149.]

47. Mr. Kidd acknowledged that the dump file referenced the 304-228-7639 number. [HT, Vol. I, p. 150.] Mr. Kidd did not see any texts from the Respondent to the 304-228-7639 number. [HT, Vol. I, p. 150.]

48. M.B. told Mr. Kidd that she and the Respondent met around 2:30 a.m. in the early morning hours of August 3, 2013. [HT, Vol. I, p. 156.] Mr. Kidd confirmed that this date was provided by M.B. [HT, Vol. I, p. 156.]

49. Mr. Kidd quoted M.B. as saying, "I've been with your husband at the Microtel in Beckley since 4:00 p.m." [HT, Vol. I, p. 164.] Mr. Kidd testified that if he put quotes around the statement, it was M.B.'s words. [HT, Vol. I, p. 163.]

50. Mr. Kidd's understanding from his conversation with M.B. was that the Respondent was in the hotel room with M.B. during the call. [HT, Vol. I, p. 164.] M.B. told Mr. Kidd that the Respondent left the room and possibly went to the bathroom. [HT, Vol. I, p. 164.]

Next, M.B. picked up the Respondent's phone and managed to get the Respondent's wife's number. [HT, Vol. I, p. 164.]

51. M.B. told Mr. Kidd that the Respondent's wife got upset and went out of town with the children. [HT, Vol. I, p. 168.] Mr. Kidd discussed this event with Dr. Wasylyk, and she denied that it ever happened. [HT, Vol. I, p. 168.]

52. M.B. told Mr. Kidd about alleged marital strife between the Respondent and his wife. [HT, Vol. I, p. 171.] Dr. Wasylyk denied any marital issues when asked by Mr. Kidd. [HT, Vol. I, p. 172.]

53. Mr. Kidd spoke to an area resident who lived close to the Union Hall house. [HT, Vol. I, p. 175.] The area resident knew the prior owner and knew who owned the property. [HT, Vol. I, p. 175.] The area resident did not remember seeing a Cadillac Escalade or a black Jeep going to the property. [HT, Vol. I, p. 178.] The area resident never saw anyone go through the property since the gate was installed. [HT, Vol. I, p. 178.] The area resident told Mr. Kidd that prior to the gate there were two posts with a chain strung between them. [HT, Vol. I, p. 213.]

54. Based on Mr. Kidd's discussions with M.B., his understanding is that the Respondent and M.B. had sex at the Sleep Lab, the Union Hall house and Microtel. [HT, Vol. I, p. 183.]

55. M.B. told Mr. Kidd that she and the Respondent had sex in the Union Hall house in a bedroom that had its own bathroom attached to it. [HT, Vol. I, p. 203.] M.B. also told Mr. Kidd that the utilities were turned off in the house. [HT, Vol. I, p. 202.]

56. Mr. Kidd did not have any witness to corroborate M.B. and the Respondent at the Microtel. [HT, Vol. I, p. 196.]

57. Mr. Kidd took notes of his interview with M.B., as well as the other witnesses he interviewed as part of his investigation. He did not electronically record any of his

interviews. He destroyed his notes after preparing the summaries of the interviews. [HT, Vol. I, p. 121.]

M.B.

58. M.B. began seeing the Respondent as a patient in November 2011 because she was experiencing a lot of anxiety with her clinicals in nursing school. [HT, Vol. I, p. 217-218.]

59. M.B. stated that she started communicating with the Respondent in January 2013 and that she got the Respondent's number when he texted her. [HT, Vol. I, p. 219.]

60. M.B. stated that she and the Respondent arranged to meet at a house on Union Hall Road that the Respondent said was owned by his father. [HT, Vol. I, p. 219.]

61. M.B. stated that she and the Respondent kissed at her appointment in January 2013. [HT, Vol. I, p. 220.]

62. M.B. stated that in late January or early February 2013, she and the Respondent met at the Union Hall house. [HT, Vol. I, p. 220.] She recalled that she did not have to unlock anything, that there was no gate and that it was just a free entry. [HT, Vol. I, p. 222.] She stated that a gate was present in October or November 2013. [HT, Vol. I, p. 225-226.] Before the gate, she was able to drive her vehicle right through without anything impeding her vehicle from going down the driveway. [HT, Vol. I, p. 307-308.]

63. M.B. entered the house through a door beside the garage door. [HT, Vol. I, p. 223.] She had to walk up a few steps to get into the house from the garage. [HT, Vol. I, p. 223.]

64. M.B. stated that the house was always cold and that the utilities were not on. [HT, Vol. I, p. 310.] M.B. added that there was not a big difference between the temperature inside and outside the house. [HT, Vol. I, p. 310.]

65. M.B. did not remember seeing a stone wall. [HT, Vol. I, p. 311; 312.] M.B. remembered a fireplace against the wall. [HT, Vol. I, p. 224.]

66. M.B. stated that she and the Respondent had sex in the first room on the right going down the hallway. [HT, Vol. I, p. 224; 312.] M.B. stated that there was carpeting in this room. [HT, Vol. I, p. 225; 313.]

67. M.B. stated that she and the Respondent met in the Lowe's parking lot in October 2013, when she had just bought a black Jeep Grand Cherokee. [HT, Vol. I, p. 226.] She recalled meeting at Tamarack Parking Lot around October or November 2013. [HT, Vol. I, p. 228.] She also stated they met at the Raleigh County Convention Center where the Respondent gave her a necklace. [HT, Vol. I, p. 228-229.] She did not know why the Respondent gave her the necklace. [HT, Vol. I, p. 229.]

68. M.B. recalled meeting at the Sleep Center on the night of August 2, 2013-August 3, 2013. [HT, Vol. I, p. 230.] M.B. entered the Sleep Center through the front door. [HT, Vol. I, p. 295.] To M.B.'s knowledge, no one else was at the Sleep Center. [HT, Vol. I, pp. 294-295.] She saw the Respondent's tattoo while they were at the Sleep Center. [HT, Vol. I, p. 232.] M.B. estimated that she was at the Sleep Center with the Respondent for two to three hours, until 5:00 a.m. or 6:00 a.m. [HT, Vol. I, pp. 295-296.] M.B. stated that she has never been to the Sleep Center besides that one encounter. [HT, Vol. I, p. 295.]

69. M.B. stated that the Respondent drove a black Cadillac Escalade which had a gold chain and charm hanging from the rearview mirror, wood-grain, and car seats. [HT, Vol. I, p. 227.] M.B. knew where the Respondent parked his car. [HT, Vol. I, p. 316.]

70. M.B. stated that she met the Respondent at the Microtel Inn to talk from approximately 4:30 p.m. until somewhere around 8:00 p.m. [HT, Vol. I, p. 233.]

71. She looked at the Respondent's phone, looked up his wife's number, remembered it until he left, and called her as soon as he left out of the room. [HT, Vol. I, pp. 234-235.] M.B. told the Respondent's wife that the Respondent had been with her at the Microtel Inn for the last few hours and hung up. [HT, Vol. I, p. 235.]

72. M.B. did not recall telling Mr. Kidd that she called the Respondent's wife while the Respondent was in the bathroom at the Microtel. [HT, Vol. I, p. 302.] M.B. agreed that she told Mr. Kidd, "I've been with him at the Microtel in Beckley since 4:00 p.m." [HT, Vol. I, pp. 302-303.]

73. M.B. denied that she had been to that Microtel other than on January 7, 2014. [HT, Vol. I, p. 300.]

74. M.B. stated that after the Microtel encounter, the Respondent did not respond over the weekend. [HT, Vol. I, p. 243.] The Respondent then responded that week and said he broke his phone and did not get any of her messages and that he had done something stupid and was unconscious. [HT, Vol. I, p. 243.]

75. The next day, she called the Respondent's parents to see if he was okay because she was under the impression that he was not okay. [HT, Vol. I, p. 244.] The Respondent's mother and father both answered. [HT, Vol. I, p. 244.] The Respondent's father said he is fine, he is out of town, and hung up. [HT, Vol. I, p. 244.] The Respondent's mother stayed on the phone, asked who she was about three times, and said he's fine and out of town. [HT, Vol. I, p. 244.] M.B. got their number from the internet. [HT, Vol. I, p. 316.]

76. M.B. stated that the content of the messages in the dump file are accurate. [HT, Vol. I, p. 237.] M.B. denied that she manipulated anything within the messages. [HT, Vol. I, p. 237.]

77. M.B. stated that 304-228-7639 is her number and that she changed her number in January 2014. [HT, Vol. I, p. 237.]

78. M.B. stated that at some point she and the Respondent were using messaging applications. [HT, Vol. I, p. 237.]

79. M.B. stated that the Respondent gave her a necklace, white t-shirt, two journal-looking books that had pictures in them, and a medical textbook. [HT, Vol. I, p. 241-243.]

80. M.B. gave the necklace and t-shirt to Glenna Meadows on the day that she overdosed. [HT, Vol. I, p. 249.]

81. M.B. knew the Respondent's wife, Dr. Wasylyk, worked at a clinic with the Respondent's mother, but denied that she had ever been there. [HT, Vol. I, p. 305.] M.B. also denied that she had an appointment with Dr. Wasylyk. [HT, Vol. I, p. 325.]

82. M.B. stated that she drove her vehicle outside the gate at the Respondent's residence on only one occasion. [HT, Vol. I, pp. 305-306.]

83. M.B. checked into Beckley ARH on January 30, 2014 for suicidal ideations. [HT, Vol. I, pp. 249-250.] She saw the Respondent the next morning. [HT, Vol. I, p. 250.] She stated that she told the Respondent that her husband knows and will probably report him. [HT, Vol. I, pp. 250-251.] M.B. said she deleted some things off her phone and that the Respondent should do the same. [HT, Vol. I, p. 251.] M.B. told the Respondent that she wanted transferred to Dr. Ahmed Faheem. [HT, Vol. I, p. 251.]

84. M.B. stated that the Respondent was in the room with her at Beckley ARH between five and ten minutes. [HT, Vol. I, p. 269.] She denied that the Respondent tried to hug her. [HT, Vol. I, p. 270.] M.B. did not mention any inappropriate contact at this visit. [HT, Vol. I, pp. 270-271.]

85. M.B. stated that after she recovered from her attempted suicide in February 2014 and retained an attorney, she continued to send a lot of text messages to the Respondent. [HT, Vol. I, p. 256.] M.B. knew that pursuant to a confidential agreement, she was not to have contact with the Respondent. [HT, Vol. I, p. 318.]

86. M.B. denied that she sent a text message to the Respondent that read, "I promise to tell the truth I lied about the sex thing if you just talk to me." [HT, Vol. I, pp. 256; 321; Resp.'s Ex. 10.] The first part of the text messaging conversation sounded familiar to M.B. [HT, Vol. I, pp. 321-322.]

87. M.B. filed a complaint questionnaire with the Board. [HT, Vol. I, p. 256-257; Board's Ex. 9.] M.B. asked that Dr. Faheem be recused because he is her psychiatrist and because she does not think that the Faheem family and the Hasan family get along. [HT, Vol. I, pp. 272-273.]

88. M.B. was shown a text attributed to her that read, "My therapy… I guess it's better than the kind I'm in now where I'm being used yet again to try to resolve some kind of vendetta that happened before I was even born. That I refuse to be a part of" (sic). [HT, Vol. I, p. 274; Resp.'s Ex. 7.] M.B. did not specifically recall sending the text, but otherwise did not deny that she sent it. [HT, Vol. I, p. 275.]

89. Another text message attributed to M.B. read, "I wish you could know how much. I was literally threatened at my last appt. that if I can guarantee that I'll report you, then he'll tell my husband not to. I said I don't have to guarantee u shit. I don't know who you think ur talking to and if you discuss my condition with him again, I guarantee you'll regret it." (sic). [HT, Vol. I, pp. 275-276; Resp.'s Ex. 8.] M.B. did not recall writing the message. [HT, Vol. I, p. 276.]

90. M.B. did not recall discussing eliminating text messages hastily and retrieving some of them in a session with therapist Nancy Sotak on February 5, 2014. [HT, Vol. I, p. 282.] M.B. also did not recall discussing with Ms. Sotak the idea that she has to prove her text messages. [HT, Vol. I, p. 282.]

91. M.B. did not recall denying suicidal ideations as represented by a February 18, 2014 encounter report with Dr. Faheem. [HT, Vol. I, p. 282-283.]

92. M.B. did recall meeting with Dr. Faheem, Ms. Sotak and her ex-husband Jeffrey Benfield together. [HT, Vol. I, p. 283.] M.B. also recalled discussing with Dr. Faheem and Ms. Sotak the filing of a West Virginia Board of Medicine Complaint. [HT, Vol. I, p. 285.]

93. M.B. was aware that the Respondent's counsel requested to interview her and stated that she declined the request. [HT, Vol. I, p. 258.]

Ahmed Faheem, M.D.

94. Dr. Faheem is a board certified psychiatrist and is currently treating M.B. [HT, Vol. II, pp. 5, 7.] Dr. Faheem is the President of the West Virginia Board of Medicine. [HT, Vol. II, p. 50.]

95. Dr. Faheem learned of M.B. when he received a phone call from Beckley Appalachian Regional Healthcare (BARH) hospital staff on January 31, 2014, requesting him to accept M.B. as a patient. [HT, Vol. II, p. 7-9.] Dr. Faheem stated that he was fully competent and capable of taking over M.B.'s care. [HT, Vol. II, p. 84.]

96. Dr. Faheem first saw M.B. on February 1, 2014. [HT, Vol. II, p. 10.] M.B. told Dr. Faheem that she was upset because she had an affair and relationship with her psychiatrist. [HT, Vol. II, p. 13.]

97. In Dr. Faheem's February 1, 2014 note, he stated that M.B. was transferred to his service by the Respondent and that M.B. reported some conflicts with the Respondent. [HT, Vol. II, p. 17; Bd.'s Ex. 10.]

98. Dr. Faheem explained that he purposefully did not identify the conflict because the patient charts are seen by quite a few people who come onto the unit, and he felt that he should not identify the Respondent by name. [HT, Vol. II, p. 17-18.] Dr. Faheem added that he was protecting the Respondent by not documenting his identity. [HT, Vol. II, p. 19.]

99. Dr. Faheem decided to discharge M.B. on February 3, 2014, after he decided it was safe for M.B. to go home. [HT, Vol. II, p. 24; Bd.'s Ex. 10.] Dr. Faheem felt that it was appropriate to discharge M.B. under the circumstances. [HT, Vol. II, p. 64-65.]

100. Dr. Faheem prescribed M.B. three medications upon discharge: Celexa, Klonopin, and Concerta. [HT, Vol. II, p. 65; Bd.'s Ex. 10.]

101. Dr. Faheem documented that M.B. was not actively suicidal. [HT, Vol. II, p. 67.]

102. Dr. Faheem was aware of M.B.'s prior diagnoses, including Depression and Anxiety Disorder, Depressive Disorder, Bipolar Disorder, Obsessive-Compulsive Disorder, and Post-Traumatic Stress Disorder. [HT, Vol. II, p. 71.] Dr. Faheem diagnosed M.B. with Post-Traumatic Stress Disorder. [HT, Vol. II, p. 71.]

103. M.B. visited Dr. Faheem on February 18, 2014. [HT, Vol. II, p. 26; Board's Ex. 11.] M.B. denied suicidal ideations in that visit. [HT, Vol. II, pp. 29, 30; Bd.'s Ex. 11.]

104. M.B. attempted suicide on February 20, 2014. Dr. Faheem stated that M.B.'s attempted suicide came as a very big surprise. [HT, Vol. II, p. 30.] M.B. had not given Dr. Faheem any impression that she would overdose. [HT, Vol. II, p. 31.] Dr. Faheem believed he learned of M.B.'s overdose in a phone call he received from M.B.'s husband. [HT, Vol. II, p. 30.]

105. Dr. Faheem transferred M.B. to Highland Hospital for psychiatric admission. [HT, Vol. II, p. 42; Board's Ex. 13.] Dr. Faheem continued to see M.B. after her admission. [HT, Vol. II, p. 45.]

106. Dr. Faheem stated that M.B. has not appeared to be delusional. [HT, Vol. II, p. 50.] Dr. Faheem stated that anxiety disorders are not psychotic conditions and they do not include hallucinations or delusions. [HT, Vol. II, p. 95.]

107. M.B. never indicated to Dr. Faheem exactly where the alleged sex with the Respondent occurred. [HT, Vol. II, p. 58.] Dr. Faheem denied that M.B. showed him any text message. [HT, Vol. II, p. 58.]

108. M.B. saw Nancy Sotak for therapy. [HT, Vol. II, pp. 65; 66.] Ms. Sotak discussed M.B.'s treatment with Dr. Faheem, and Dr. Faheem reviewed M.B.'s records with Ms. Sotak. [HT, Vol. II, pp. 75, 77.]

109. On February 5, 2014, M.B. discussed with Ms. Sotak how she was to prove her messages. [HT, Vol. II, p. 74.] On May 22, 2014, Dr. Faheem told M.B. that her

complaint would only be effective if both she and her husband are working together. [HT, Vol. II, p. 77.]

110. Dr. Faheem stated that he was recused at the outset of this disciplinary matter. [HT, Vol. II, pp. 50-51.] Dr. Faheem stated that he has not seen the complaint or response. [HT, Vol. II, p. 52.] Dr. Faheem denied participating in any deliberations or discussions, and stated that he is not involved with the committee where this matter is discussed. [HT, Vol. II, p. 52.]

111. Everything Dr. Faheem knows about the alleged romance between M.B. and the Respondent was based upon conversations with M.B. or some information from M.B.'s husband. [HT, Vol. II, pp. 92-93.] Dr. Faheem did not see M.B. and the Respondent carrying on an inappropriate relationship in any way. [HT, Vol. II, p. 93.]

112. Dr. Faheem stated that it is appropriate when a psychiatric patient is examined to accept what the patient tells them a true. [HT, Vol. II, pp. 93-94.] There is not an objective test that can prove or disprove a relationship or something that is claimed. [HT, Vol. II, p. 94.]

Robert Wettstein, M.D.

113. Dr. Wettstein is a physician and psychiatrist who is self-employed in Pittsburgh, Pennsylvania. [HT, Vol. II, pp. 97-99.] Dr. Wettstein graduated medical school from the University of California Los Angeles in 1976. [HT, Vol. II, p. 98.] He completed five additional years of training in Chicago, Illinois, including a Forensic Psychiatry Fellowship. [HT, Vol. II, p. 98.] Dr. Wettstein has a clinical appointment as a professor at the University of Pittsburgh and teaches classes related to documentation, medical ethics, and psychiatric ethics. [HT, Vol. II, p. 99.] Dr. Wettstein specializes in psychiatry and forensic psychiatry. [HT, Vol. II, p. 98.]

114. Dr. Wettstein was qualified as an expert witness in documentation. [HT, Vol. II, p. 100.]

115. Dr. Wettstein was retained by the Board to review documents concerning this matter and provide an opinion as to whether the Respondent met the standard of psychiatric care. [HT, Vol. II, p. 97-98.] Dr. Wettstein did not interview the Respondent or M.B. [HT, Vol. II, pp. 129, 130.]

116. Dr. Wettstein stated that the Respondent's treatment was primarily pharmacotherapy rather than individual psychotherapy. [HT, Vol. II, p. 122.] Dr. Wettstein explained that pharmacotherapy is a form of treatment which is primarily medication management oriented. [HT, Vol. II, p. 123.] Sessions of such treatment may be shorter in duration, less frequent and focus around the symptoms that the patient presents with and the medication management. [HT, Vol. II, p. 123.] Individual psychotherapy is usually of longer duration, more frequent and focuses on those issues but also interpersonal issues and psychosocial stressors. [HT, Vol. II, p. 123.]

117. Regarding M.B.'s treatment, the Respondent was practicing pharmacotherapy. [HT, Vol. II, p. 128.] Pharmacotherapy entails brief office visits in which the focus is on the patient's symptoms of illness, medications, the response to the medications and the changes in the medications. [HT, Vol. II, p. 128.]

118. Dr. Wettstein noticed that the Respondent would change the patient's medication and document such changes. [HT, Vol. II, p. 128.]

119. Dr. Wettstein explained that documentation serves numerous purposes, including documenting the patient's condition and course of symptoms over time, the intervention or the treatment that occurs and the response to the treatment. [HT, Vol. II, p. 102.] Documentation also includes legal, regulatory, and financial utilities. [HT, Vol. II, p. 102.]

120. Dr. Wettstein stated that general interactions with a patient, either in the office or outside the office, should be documented. [HT, Vol. II, p. 103.] Conflict with a patient, consent with the patient, discussion around consent or informed consent with the patient and relationship issues should be documented as well. [HT, Vol. II, pp. 103-104.]

121. Any significant contact with a patient outside of the office should be documented, which includes electronic messages or other telecommunications. [HT, Vol. II, p. 104.] Text messages are included if they are a significant part of the patient's presentation or part of the treatment. [HT, Vol. II, p. 104.]

122. Dr. Wettstein quoted an article published by the "Annals of Internal Medicine," a publication for internal medicine physicians, as follows: "a documentation of communications in an established physician/patient relationship, including those done electronically, should be maintained. Medical records should contain accurate and complete information about all communications, including those done in person and by telephone, letter or electronic means." [HT, Vol. II, pp. 138-139.] Dr. Wettstein stated that this guidance also applies to the practice of psychiatry. [HT, Vol. II, p. 139.]

123. Dr. Wettstein stated that the fact of exchanged text messages and the clinical significance to the patient's care should be documented. [HT, Vol. II, p. 114.] If the text messaging is part of the treatment because it is a means to calm anxiety, that should be documented as a treatment technique. [HT, Vol. II, p. 114.] Any treatment attempts and failures should be documented. [HT, Vol. II, p. 114.]

124. Dr. Wettstein stated that over 4,000 text messages exchanged between M.B. and the Respondent is exceptional. [HT, Vol. II, p. 120.]

125. Dr. Wettstein explained that there is no bright line rule or standard saying that a certain amount of text messages is excessive. [HT, Vol. II, p. 139.]

126. Communications regarding scheduling, billing or some administrative issues do not need to be documented. [HT, Vol. II, p. 104.]

127. Dr. Wettstein did not find any indication of documentation of text messages or any communications outside the office. [HT, Vol. II, p. 106.] Dr. Wettstein did not find any documentation of phone calls. [HT, Vol. II, p. 106.]

128. Dr. Wettstein stated that if the relationship changed between the doctor and the patient, that is essential to document in the medical record. [HT, Vol. II, p. 109.] If the patient's feelings about the doctor change or become much more personalized, that is essential to document in the record. [HT, Vol. II, pp. 109-110.] If there are incessant text messages from the patient, that is essential to document in the record. [HT, Vol. II, p. 110.] If the office staff indicates that the patient was becoming obsessed with the doctor in some way, that is essential to document in the record. [HT, Vol. II, p. 110.] Dr. Wettstein did not find any such documentation in the record. [HT, Vol. II, p. 110.]

129. Dr. Wettstein stated that if the Respondent is considering ending a relationship because of some abnormal behavior on the patient's part, that should be documented. [HT, Vol. II, p. 113.]

130. Dr. Wettstein stated that the Respondent should have documented that he advised M.B. to contact him through his office only. [HT, Vol. II, p. 115.] The Respondent should have also documented that he blocked text messages and phone calls from M.B. [HT, Vol. II, p. 115.]

131. Dr. Wettstein stated that if M.B. is stalking the Respondent after treatment, that should be documented. [HT, Vol. II, p. 122.] Dr. Wettstein stated that there is no reason to stop the documentation after the physician stops seeing the patient in the office. [HT, Vol. II, p. 122.]

132. Dr. Wettstein explained that it is a doctor's responsibility to set the boundaries of the relationship and to control the relationship as possible. [HT, Vol. II, p. 116.] Boundaries are the rules by which doctors relate to patients and others in society. [HT, Vol. II, p. 116.] The doctor is responsible for setting the boundaries and maintaining the boundaries throughout treatment. [HT, Vol. II, p. 116.] Dr. Wettstein stated there is no documentation that the Respondent attempted to do so. [HT, Vol. II, p. 116-117.]

133. Dr. Wettstein stated that this is a complex situation. [HT, Vol. II, p. 115.] According to Dr. Wettstein, documentation is one element of omission, but the situation appears

to be a lack of an approach to the patient to consider what she is experiencing in terms of the relationship and her fantasies about the relationship. [HT, Vol. II, pp. 115-116.] Dr. Wettstein added that it is a lack of formulation and understanding of the patient and appropriate means to set the boundaries of the relationship. [HT, Vol. II, p. 116.]

134. Dr. Wettstein noted that M.B. had a history of being sexually and physically abused as a child. [HT, Vol. II, p. 121.] Dr. Wettstein stated that the significance of that history is that such individuals often have major personality problems or boundary problems. [HT, Vol. II, p. 121.]

135. Dr. Wettstein had never seen the August 2, 2012 medical record of M.B.'s visit with Heather Booth where M.B. denied any past physical, emotional or sexual abuse. [HT, Vol. II, pp. 133-134; Resp.'s Ex. 5.] Dr. Wettstein could not recall seeing anything regarding anxiety related to sexual abuse through the course of M.B.'s treatment with the Respondent. [HT, Vol. II, p. 134.] Dr. Wettstein acknowledged there was no discussion about M.B. having problems with respect to sexual abuse specifically during M.B.'s office visits related to her medication management. [HT, Vol. II, p. 135.]

136. Dr. Wettstein stated that it is a significant event when a patient requests to be transferred to another psychiatrist and that some documentation should go along with the transfer. [HT, Vol. II, p. 119.] Dr. Wettstein would expect to see the doctor explain the reasons for the patient's request and the doctor's approach to that request. [HT, Vol. II, p. 119.]

137. Dr. Wettstein considered the failure to document as severe and opined that the Respondent violated the standard of psychiatric care for failure to document. [HT, Vol. II, p. 120.]

Jeffrey Benfield

138. Mr. Benfield was married to M.B. from approximately 2006 to 2014. [HT, Vol. II, p. 142.]

139. M.B. told Mr. Benfield that she had a sexual relationship with the Respondent. [HT, Vol. II, p. 145.] M.B. asked him about going to a drug seminar. [HT, Vol. II,

pp. 147-148.] Mr. Benfield had already been invited by his boss, but declined to go because M.B. had not wanted to go to such events prior to the seminar. [HT, Vol. II, p. 148.] At that point, Mr. Benfield looked at M.B. and told her that if she is cheating on him there would be a problem. [HT, Vol. II, p. 147.] Mr. Benfield stated that he did not immediately get an answer. [HT, Vol. II, p. 149.] Later that day, M.B. walked up to Mr. Benfield and said it was the Respondent. [HT, Vol. II, p. 149.] Mr. Benfield said that, a day or two later, he found M.B. in the bathroom after an apparent suicide attempt. [HT, Vol. II, p. 153.]

140. Prior to M.B. treating with the Respondent, Mr. Benfield's sexual relations with his wife became more infrequent due to trauma related to M.B.'s childhood. [HT, Vol. II, p. 158.] He had not had any sexual relations with M.B. for three years prior to her confession. [HT, Vol. II, pp. 158-159.]

141. The only text messages Mr. Benfield saw related to M.B. and the Respondent were requests for medication changes. [HT, Vol. II, pp. 147; 152.] Mr. Benfield never heard M.B. and the Respondent talk on the phone. [HT, Vol. II, p. 152.]

142. Mr. Benfield recalled M.B. saying that she and the Respondent met at a rental property owned by the Respondent's father. [HT, Vol. II, p. 153.] M.B. told him that a Bentley was there. [HT, Vol. II, p. 153.] M.B. did not describe the house to him, but he very vividly remembered the word Bentley (as in the car). [HT, Vol. II, p. 160.] M.B. told Mr. Benfield that the Respondent bought her a necklace. [HT, Vol. II, p. 153.]

143. Mr. Benfield remembered going to one appointment that M.B. had with the Respondent, but that he may have went to more. [HT, Vol. II, p. 164.]

Kellie Aromin

144. Ms. Aromin is a physician assistant employed by Dr. Ahmed Faheem through Appalachian Psychiatric Services. [HT, Vol. II, p. 167.] Ms. Aromin also does rounds at BARH. [HT, Vol. II, p. 167.]

145. On January 31, 2014, Ms. Aromin was doing rounds at BARH with Dr. Safiullah Syed. [HT, Vol. II, pp. 168-169.] Ms. Aromin went to the nurse's station, asked where

Dr. Syed's patient was, and was pointed to the seclusion room. [HT, Vol. II, p. 168.] The nurses misdirected Ms. Aromin to M.B.'s room. [HT, Vol. II, p. 169.]

146. Dr. Syed opened the door and the Respondent was there with M.B. [HT, Vol. II, p. 169.] M.B. was lying down in a bed that was approximately one foot off the floor for safety purposes. [HT, Vol. II, p. 169.] The Respondent was squatted on his knees beside M.B. [HT, Vol. II, p. 169.] The Respondent was not over top of M.B., but beside of her. [HT, Vol. II, p. 175.] Ms. Aromin stated that the Respondent was "pretty close" to M.B.'s face. [HT, Vol. II, p. 170.] M.B. had her arm over top of her head and eyes. [HT, Vol. II, p. 170.]

147. Ms. Aromin stated that this encounter occurred "so fast." [HT, Vol. II, p. 170.] The Respondent turned his head and looked at Dr. Syed, and Dr. Syed immediately closed the door back and left to find his patient. [HT, Vol. II, p. 171.]

148. Ms. Aromin stated that it was such a brief interaction, that she could not tell whether or not the Respondent was close to perhaps hear M.B. [HT, Vol. II, p. 175.]

149. Ms. Aromin was familiar with the standard of care with psychiatrists regarding maintaining eye contact while communicating with a patient. [HT, Vol. II, p. 176.] Ms. Aromin stated that such a practice gives some level of trust with a patient. [HT, Vol. II, p. 176.]

150. Ms. Aromin believed that it was early for the Respondent to be at BARH. [HT, Vol. II, p. 172.]

151. Ms. Aromin did not know at that time that M.B. was the Respondent's patient. [HT, Vol. II, p. 178.] Ms. Aromin also did not know that the Respondent was the attending physician at the time M.B. was admitted to the hospital. [HT, Vol. II, p. 178.]

152. Ms. Aromin never observed M.B. and the Respondent outside the hospital together. [HT, Vol. II, p. 179.] Ms. Aromin's understanding of the alleged affair is based on what M.B. told her. [HT, Vol. II, p. 179.]

Glenna Meadows

153. Ms. Meadows has known M.B. since M.B. was 18 years old. [HT, Vol. II, p. 181.]

154. M.B. told Ms. Meadows that she and the Respondent met at a beautiful house without furniture. [HT, Vol. II, p. 183.] Ms. Meadows stated that M.B. thought the Respondent owned the house at first, but that M.B. checked on it and learned that the Respondent's father owned the house. [HT, Vol. II, p. 183.]

155. M.B. stayed with Ms. Meadows for about three months. [HT, Vol. II, p. 186.] During this time, M.B. stayed in her bedroom all the time and would very seldom come out of the bedroom. [HT, Vol. II, p. 196.]

156. M.B. showed Ms. Meadows a text message that said "I want to F you and meet me at the Sleep Clinic", but could not say who it was from. [HT, Vol. II, pp. 186-187.] M.B. told Ms. Meadows she and the Respondent met for sex at the Sleep Center. [HT, Vol. II, p. 184.]

157. Ms. Meadows recalled hearing M.B. on the phone just one time, and she was begging him call her, to see her and to not kill himself. [HT, Vol. II, p. 187.] Ms. Meadows never heard who was on the other end of the conversation. [HT, Vol. II, p. 188.] M.B. never said the Respondent's name in the conversation. [HT, Vol. II, p. 188.]

158. M.B. gave Ms. Meadows a brown envelope containing a necklace and t-shirt for safekeeping. [HT, Vol. II, p. 189.] M.B. told Ms. Meadows the necklace was a birthday or Christmas present. [HT, Vol. II, p. 203.]

159. M.B. told Ms. Meadows that she and the Respondent met at a hotel. [HT, Vol. II, p. 198.] When the Respondent left, M.B. called his wife and told her that he had just left the motel. [HT, Vol. II, p. 198.] Ms. Meadows stated that M.B. was staying with her at the time of the hotel encounter. [HT, Vol. II, p. 202-203.]

160. Ms. Meadows stated that M.B. went to motels two or three times per month. [HT, Vol. II, p. 201.]

161. Ms. Meadows never saw M.B. and the Respondent together. [HT, Vol. II, p. 204-205.] Ms. Meadows never heard the Respondent's voice on the other end of a phone call. [HT, Vol. II, p. 205.] Ms. Meadows never heard the Respondent's name mentioned in a phone call. [HT, Vol. II, p. 205.]

162. Ms. Meadows testified as follows: "everything I'm telling you, that's what she told me. I never seen nothing, I never heard nothing or anything. It's just hearsay from her." [HT, Vol. II, p. 205.]

John Ahearne

163. Mr. Ahearne is a digital forensic analyst for DriveSavers Forensics located in California. [HT, Vol. III, pp. 5-6.] A digital forensic analyst forensically analyzes digital evidence such as cell phones and computers. [HT, Vol. III, p. 6.]

164. Mr. Ahearne has worked for DriveSavers for twelve years and has been a forensic analysist for six of those twelve years. [HT, Vol. III, p. 6.] Mr. Ahearne was trained through industry courses including Encase forensic software certification and Cellebrite certification. [HT, Vol. III, p. 6.]

165. Mr. Ahearne was qualified as an expert in the field of digital forensics. [HT, Vol. III, p. 7.]

166. Mr. Ahearne received and analyzed the Respondent's iPhone and the iPhone backup from a thumb drive. [HT, Vol. III, p. 7.] The thumb drive was preserved in a forensically-sound manner and software was used to analyze the cell phone and the backup. [HT, Vol. III, p. 8.]

167. Mr. Ahearne created a forensic report on both the Respondent's cell phone and the backup. [HT, Vol. III, p. 8.] The forensic report was admitted into evidence as Respondent's exhibit number 14.

168. After the report was generated, Mr. Ahearne performed an additional analysis of the Short Message Service (SMS) database by using an application called Sequel Lite Express. [HT, Vol. III, p. 8.] The additional analysis was performed to confirm the authenticity of the software tools used and the data on the cell phone. [HT, Vol. III, p. 8.]

169. A forensic report was generated on May 1, 2014. [HT, Vol. III, p. 9.] Mr. Ahearne recovered 96 text messages. [HT, Vol. III, p. 32.] Mr. Ahearne stated that the other messages could have been inadvertently deleted through a backup when the Respondent's phone was restored, automatically deleted by operation of the phone, or possibly from user deletion before April 25, 2014. [HT, Vol. III, pp. 37; 49; 35.] Restoring the phone can be done by the user and there is a warning sign before that procedure is completed. [HT, Vol. III, pp. 50-51.] Mr. Ahearne found no user deletion. [HT, Vol. III, pp. 33; 34.]

170. Mr. Ahearne found messages that he initially assumed were deleted. [HT, Vol. III, p. 10.] Mr. Ahearne explained that the messages were not deleted text messages, but were just duplicates of themselves within the database. [HT, Vol. III, p. 10.] Upon further analysis, Mr. Ahearne determined that the messages were not deleted but were a result of a database transaction and not actual user deletion. [HT, Vol. III, p. 31.] Therefore, Mr. Ahearne issued a June 8, 2015 report. [HT, Vol. III, p. 28.] Mr. Ahearne testified that he recovered all of the text messages in the first report. [HT, Vol. III, pp. 30-31.]

171. Mr. Ahearne stated that he is able to verify text message content in his analysis by looking for any discrepancies in the database and the content of the text messages. [HT, Vol. III, p. 12.]

172. Mr. Ahearne did not find any manipulation or any evidence that the text messages on the Respondent's device were manipulated in any way. [HT, Vol. III, p. 13.]

173. To ensure that the content of a message in the report is not changed after DriveSavers issues a report, DriveSavers maintains a chain of custody for the report and the report is write protected so that evidence cannot be written to or changed. [HT, Vol. III, p. 13-14.]

174. Mr. Ahearne explained that it is possible to manipulate the content of a text message on certain devices by text editing software or manipulating the report itself. [HT, Vol. III, p. 14.] Mr. Ahearne further explained that a message can be manipulated in maybe seconds. [HT, Vol. III, p. 15.]

175. Mr. Ahearne tested an application called SMS Edit that manipulates the content of a text message on an Android device. [HT, Vol. III, p. 17.] Mr. Ahearne explained that with the application, you can pick and choose which text messages you want to edit. [HT, Vol. III, p. 17.] The entire contents within the message can be changed. [HT, Vol. III, p. 17.] Once you uninstall the application, the text messages remain changed on the Android phone. [HT, Vol. III, p. 17.] Even if the application is removed, the changes remain and actually alters the content inside the SMS database. [HT, Vol. III, p. 17.]

176. M.B. used a Samsung Galaxy S3. [HT, Vol. III, p. 18.] The SMS Editor application is available for download on a Samsung Galaxy S3. [HT, Vol. III, p. 18.]

177. The Respondent used an Apple iPhone 5. [HT, Vol. III, p. 18.] Mr. Ahearne stated that the SMS Editor application is not available for an iPhone. [HT, Vol. III, p. 19.] Mr. Ahearne could not find another similar application available for an iPhone. [HT, Vol. III, p. 19.]

178. Mr. Ahearne reviewed M.B.'s dump file and testified that the content of several messages are different than the content in the DriveSaver's report. [HT, Vol. III, p. 14.] Mr. Ahearne provided examples of differences in text message content. [HT, Vol. III, pp. 20, 21.]

179. Mr. Ahearne identified the following text message on Respondent's exhibit number 14 that was sent by the Respondent on January 6, 2014:

> "Yes I did have a lecture out of town and I had my family with me. I do hope u have a nice birthday but listen I am very busy and very tired. I have only slept 2 hours in 24 and my day has another seven left it in. I need to work now. Ok"

[HT, Vol. III, p. 20; Resp.'s Ex. 14 at 12.]

180. Mr. Ahearne stated that this message coordinated in time with message numbers 6051 and 6052 on the Board's exhibit number 1, which read as follows:

> "I did I do lectures out of town a lot and that could have been time for us I was really trying to make a nice gesture for your bday Let's not have it tur"
>
> "n into a fight I've only slept 2 hours in 24 and my day still has another 7 left in it"

[HT, Vol. III, p. 20; Bd.'s Ex. 1 at 230.]

181. Mr. Ahearne identified the following text message on Respondent's exhibit number 14 that was sent by the Respondent on January 6, 2014:

> "Don't send me any pics"

[HT, Vol. III, p. 20; Resp.'s Ex. 14 at 12.]

182. Mr. Ahearne stated that this message coordinated in time with message number 6053 on the Board's exhibit number 1, which reads:

> "Very cute pic. Recent?"

[HT, Vol. III, p. 20; Bd.'s Ex. 1 at 230.]

183. Mr. Ahearne identified the following text message on Respondent's exhibit number 14 that was sent by M.B. on January 6, 2014:

> "Ok. I still won't have a good birthday though But thanks anyway"

[HT, Vol. III, p. 20; Resp.'s Ex. 14 at 12.]

184. Mr. Ahearne stated that this message coordinated in time with message number 6054 on the Board's exhibit number 1, which reads:

> "Ok. I don't want the birthday present though. But thanks anyway"

[HT, Vol. III, p. 20; Bd.'s Ex. 1 at 230.]

185. Mr. Ahearne noted that some messages were different by only one word. [HT, Vol. III, p. 21.] Mr. Ahearne identified the following text message on Respondent's exhibit number 14 that was sent by M.B.:

"Nope. Cause I still have you."

[HT, Vol. III, p. 21; Resp.'s Ex. 14 at 15.]

186. Mr. Ahearne stated that this message coordinated in time with message number 6222 on the Board's exhibit number 1, which reads:

"Nope. Cause I still loved you"

[HT, Vol. III, p. 21; Bd.'s Ex. 1 at 237.]

187. Mr. Ahearne observed that "have" was replaced with "loved", and that a period at the end of the first message was missing. [HT, Vol. III, p. 21.] Mr. Ahearne further observed that the messages have the same number of characters. [HT, Vol. III, p. 21.]

188. Mr. Ahearne opined that the text messages are different because the content had to have been manipulated on M.B.'s dump file. [HT, Vol. III, p. 21.]

189. Mr. Ahearne testified that he did not find any evidence of manipulation on the Respondent's devices. [HT, Vol. III, p. 22.]

190. Mr. Ahearne stated that, if he had M.B.'s phone, he could look for evidence of manipulation and previously installed applications. [HT, Vol. III, p. 23.]

191. Mr. Ahearne was provided a hypothetical and stated that if M.B. manipulated the content of a message and then sent her device to a forensic examiner to perform a logical dump, then the manipulated content would appear on the logical dump. [HT, Vol. III, p. 23.]

Ben Levitan

192. Mr. Levitan spent 30 years in the design and development of the worldwide cell phone network and has worked for Alcatel, Verizon, Sprint, and Nextel. [HT,

Vol. III, p. 53.] Mr. Levitan has earned about 32 patents. [HT, Vol. III, pp. 55-56; Resp.'s Ex. 15.]

193. Mr. Levitan was qualified as an expert in the field of wireless cellular communications. [HT, Vol. III, pp. 56-57.]

194. Mr. Levitan testified to his knowledge regarding how cell phone carriers keep records. [HT, Vol. III, p. 57.] Mr. Levitan explained that call detail records provide specific, technical use of a phone number over a given period of time. [HT, Vol. III, p. 58.]

195. Mr. Levitan explained that a text message detail record is a record from a cell phone carrier that provides the actual content of a text message. [HT, Vol. III, p. 59.]

196. Mr. Levitan opined that detail records from a carrier are the best evidence for the content of text messages. [HT, Vol. III, p. 59.] These records are reliable and cannot be modified. [HT, Vol. III, pp. 60-61.] Mr. Levitan stated that M.B.'s dump file is not a text detail record. [HT, Vol. III, p. 62.]

197. Mr. Levitan reviewed the Respondent's AT&T records. [HT, Vol. III, p. 69.] Mr. Levitan recognized the AT&T records as a technical record which records every text message sent or received, and includes a record of failed transmissions. [HT, Vol. III, pp. 69-70.] After sampling the AT&T records, Mr. Levitan opined that several messages are attempted messages that did not go through. [HT, Vol. III, pp. 72-73; Resp.'s Ex. 16.]

198. Mr. Levitan stated that there is a limitation to the size of message a phone can send or receive. [HT, Vol. III, p. 64.] Mr. Levitan transcribed M.B.'s dump file and performed a character count on messages. [HT, Vol. III, p. 67.] Based upon his review, Mr. Levitan said that some messages expectedly cut off at about 151 characters. [HT, Vol. III, p. 67.] Mr. Levitan opined that some messages were above the character limit and do not represent what the cell phone carrier transmitted. [HT, Vol. III, pp. 68-69.] For example, Mr. Levitan determined that message 5629 on M.B.'s dump file exceeded 600 characters. [HT, Vol. III, p. 76.]

199. Mr. Levitan performed the character count after submitting M.B.'s dump file through optical character reading (OCR). [HT, Vol. III, pp. 96-97.] On cross-examination, the Board noted that one of Mr. Levitan's transcriptions was inaccurate. [HT, Vol. III, pp. 102-103.] Mr. Levitan did not believe that his math was inaccurate because the character count is a mechanical sequel count performed by a computer which counts spaces that may not be seen. [HT, Vol. III, p. 104.]

200. Mr. Levitan also stated that he could not find a matching text message on M.B.'s dump file for item number 25988 in the AT&T records. [HT, Vol. III, p. 77.] Mr. Levitan opined that any message that was sent should have been received within five or six seconds. [HT, Vol. III, pp. 78-79.] Mr. Levitan used an algorithm that allowed a full minute for the difference in time between a message exchanged between M.B. and the Respondent on M.B.'s dump file and the Respondent's AT&T records, but found oddities in the records. [HT, Vol. III, p. 79.] Mr. Levitan stated that messages are sent within seconds and cannot be off by a minute because it would time out and cause an abandonment. [HT, Vol. III, p. 117.] Mr. Levitan stated that it is impossible for two system clocks, such as AT&T and U.S. Cellular, to be off. [HT, Vol. III, p. 119.]

201. Mr. Levitan expected M.B.'s dump file to list any other number associated with M.B., and observed that it did not show any other number. [HT, Vol. III, pp. 79-80.]

202. Mr. Levitan stated that the AT&T records show 114,000 call detail records from the Respondent's phone which are divided between text message, data usage and voice calls. [HT, Vol. III, p. 70; Resp.'s Ex. 16.] Mr. Levitan observed that a majority of the Respondent's phone activity as represented by the AT&T records was data. [HT, Vol. III, p. 81; 82.]

203. Mr. Levitan noted that the AT&T records do not reflect iMessages as text messages; instead, iMessages are reflected as data. [HT, Vol. III, pp. 81; 82.] Mr. Levitan described iMessages as text messaging from people with iPhones that uses a data network. [HT, Vol. III, pp. 80-81.]

204. The Respondent's AT&T records show 50,894 data records. [HT, Vol. III, p. 83; Resp.'s Ex. 17.] Mr. Levitan stated that the Respondent's data records are consistent with conversational texting. [HT, Vol. III, p. 86.]

205. Mr. Levitan reviewed the voice call records from AT&T and determined that less than one (1) percent of the Respondent's voice call records were with M.B. [HT, Vol. III, pp. 87-88.]

206. Mr. Levitan stated that he could have determined the content of M.B.'s text messages with her carrier's text detail records. [HT, Vol. III, p. 90.] Mr. Levitan further stated that, had the records for 304-573-6918 been provided, he would have matched one-to-one the AT&T records with M.B.'s records. [HT, Vol. III, p. 89.] He could have also determined the volume that M.B. texted other people if her records were obtained. [HT, Vol. III, p. 90.]

207. Mr. Levitan acknowledged that the content of messages is only available from the carrier for a limited time and must be obtained quickly. [HT, Vol. III, p. 92.]

208. As compared the Respondent's phone usage as reflected by the total AT&T records, Mr. Levitan opined that the Respondent's communication with M.B. was not significant in volume. [HT, Vol. III, p. 88.]

209. Mr. Levitan was qualified as an expert witness and gave his opinions regarding the operation of the cellular telephone system. He acknowledged that he had left college without obtaining a degree but characterized himself as an electrical engineer. While the hearing examiner took issue with this characterization, on reflection, Mr. Levitan, a very accomplished person, may be an electrical engineer in the same vein as Edison, Westinghouse or Gates

Michelle Pilkington

210. Ms. Pilkington has been a physician assistant at FMRS Health Systems since 2011. [HT, Vol. III, p. 123.]

211. The Respondent's office at FMRS was directly across from Ms. Pilkington's office until a few weeks before the hearing in this matter. [HT, Vol. III, p. 124.]

212. Ms. Pilkington has observed the Respondent seeing patients at FMRS. [HT, Vol. III, p. 125.] The Respondent's door is usually open. [HT, Vol. III, p. 125.]

213. Ms. Pilkington has never seen the Respondent conduct himself unprofessionally. [HT, Vol. III, p. 126.] Ms. Pilkington has never observed the Respondent with another female outside his office in such a way that led her to believe he was doing something unprofessional. [HT, Vol. III, pp. 126-127.] Ms. Pilkington has never heard the Respondent say anything inappropriate to a patient. [HT, Vol. III, p. 127.]

The Respondent

214. The Respondent resides in Beckley, West Virginia with his wife and two children. [HT, Vol. III, p. 130.] The Respondent has been married to Dr. Irene Wasylyk since 2005. [HT, Vol. III, p. 130.]

215. The Respondent attended West Virginia University and West Virginia University Medical School. [HT, Vol. III, p. 130.] He attended five years of combined residency in internal medicine and psychiatry and a one-year fellowship in sleep medicine at the University of Virginia program in Roanoke, Virginia. [HT, Vol. III, p. 131.] The Respondent is board certified in internal medicine, psychiatry, and sleep medicine. [HT, Vol. III, p. 131.]

216. The Respondent primarily practices at Raleigh Psychiatric Services in Beckley, West Virginia. [HT, Vol. III, p. 133.] The Respondent practices medication management. [HT, Vol. III, p. 133.] He does not undertake psychotherapy or counseling. [HT, Vol. III, p. 134.] If a patient needs counseling, the patient is referred to counselors in the Respondent's office. [HT, Vol. III, p. 134.]

217. A large number of the Respondent's patients are healthcare professionals such as physicians and nurses. [HT, Vol. III, pp. 134-135.] As opposed to his general patient population, the Respondent allowed healthcare professionals to contact him directly on his cell phone. [HT, Vol. III, p. 135.] The Respondent stated that he generally would not provide his

cell phone number and that health care professionals would already have his number. [HT, Vol. III, p. 136.]

218. The Respondent stated that he is available to his patients at all hours of the day and that he responds to text messages and telephone calls. [HT, Vol. III, p. 136.]

219. M.B. became a patient in November 2011 for anxiety. [HT, Vol. III, p. 137.] M.B. visited the Respondent's office at least once a month for two years. [HT, Vol. III, p. 137.] She last visited his office on December 26, 2013. [HT, Vol. III, p. 137.] The Respondent stated that he had no discussion with M.B. regarding her sexual abuse. [HT, Vol. III, p. 148.]

220. The Respondent stated that M.B. texted him initially in late 2012. [HT, Vol. III, p. 138.] The Respondent considered M.B. part of the healthcare professional population who he would communicate on his cell phone. [HT, Vol. III, p. 138.]

221. The Respondent stated that the text message volume picked up in 2013. [HT, Vol. III, p. 139.] Text messages would generally increase with whatever stressors were going on in M.B.'s life. [HT, Vol. III, p. 139.] The Respondent responded to M.B.'s text messages. [HT, Vol. III, p. 139.] The Respondent admittedly did not document the increase in volume of text messages in the medical records. [HT, Vol. III, p. 140.]

222. The Respondent stated that when he would get text messages and the volume would increase, he would tell M.B. that the texting was a bit much and she would apologize and back off for a month. [HT, Vol. III, p. 141.] The Respondent stated that he did not terminate M.B. as a patient for the increased text messaging because he had been treating her for approximately two years at that time, and he did not feel that abandoning his patient because of increased psychosocial stressors was the right thing to do. [HT, Vol. III, pp. 148-149.] The Respondent explained that M.B. had seen him for an extended period of time before the contact became excessive, and that he had never faced such a situation in his practice before. [HT, Vol. III, p. 153.]

223. The Respondent stated that in December 2013, after some escalated conflict at M.B.'s work, it seemed like the nature of M.B.'s messages changed. [HT, Vol. III, p.

149.] M.B. discussed a complaint that she filed at her work which was dismissed. [HT, Vol. III, p. 150.] Afterward, M.B. was upset and the volume of text messages increased significantly. [HT, Vol. III, pp. 150-151.] Prior messages were more supportive, medication-related, questions about anxiety, questions about different medications, and questions about different disorders. [HT, Vol. III, p. 149.]

224. The Respondent stated that if he did not respond immediately, M.B. would send follow-up text messages that would get more irritable and angry. [HT, Vol. III, p. 151.] In December of 2013, the Respondent still tried to respond to those messages to try and help M.B. through that stressor. [HT, Vol. III, p. 151.]

225. The Respondent stated that during M.B.'s visit on December 26, 2013, he discussed the large number of text messages with her. [HT, Vol. III, p. 151.] M.B. said she was processing those emotions. [HT, Vol. III, p. 152.] The Respondent asked M.B. to spread her appointment out for a two-month period of time in an attempt to diffuse the situation and decrease the frequency of contact. [HT, Vol. III, p. 152.] The Respondent admittedly did not document this in his notes. [HT, Vol. III, p. 152.]

226. The Respondent stated that he left the country and returned on January 5, 2014. [HT, Vol. III, p. 154.] On January 6 – 7, 2014, a large amount of text messages were exchanged. [HT, Vol. III, p. 154.] At that time, M.B. said she was not doing well, had more anxiety, wanted to be seen, and wanted to talk with the Respondent. [HT, Vol. III, p. 155.]

227. The Respondent recalled that M.B. wanted to meet on January 7, 2014. [HT, Vol. III, p. 155.] The Respondent told her that he could meet in the office. [HT, Vol. III, p. 155.] The Respondent stated there was not a text message about meeting at the Microtel. [HT, Vol. III, p. 155.]

228. Towards the middle of the day on January 7, 2014, the Respondent informed M.B. that he could not continue to communicate and informed her that it was too intrusive. [HT, Vol. III, p. 157.] The Respondent told M.B. to contact him through his office only and informed her that he was going to block her number. [HT, Vol. III, p. 157.]

229. On January 7, 2014, the Respondent treated patients at BARH. [HT, Vol. III, p. 182.] The Respondent's first note at BARH was dictated at 12:52 p.m. [HT, Vol. III, p. 182; Resp.'s Ex. 18.] BARH records show that the Respondent's last note at BARH was dictated at 2:39 p.m. [HT, Vol. III, p. 182; Resp.'s Ex. 18.]

230. After BARH, the Respondent went to New River Clinic and saw patients. [HT, Vol. III, p. 182-183.] A schedule of patients seen at New River Clinic on January 7, 2014, was admitted into evidence as Respondent's exhibit number 19. Eleven of these patients received written prescriptions by the Respondent for controlled medication as evidence by a Board of Pharmacy report admitted into evidence as the Respondent's exhibit number 20. [HT, Vol. III, pp. 183-185; Resp.'s Ex. 20.] The Respondent testified that he would have to see these patients to write them a prescription. [HT, Vol. III, p. 185.]

231. After the Respondent left New River Clinic, he went to his office at Raleigh Psychiatric Services. [HT, Vol. III, p. 186.] The Respondent signed a note at his office at 5:03 p.m. which was admitted into evidence as Respondent's exhibit number 21. [HT, Vol. III, p. 185; Resp.'s Ex. 21.] The Respondent testified that he would have to be physically in the building at Raleigh Psychiatric Services to enter the note. [HT, Vol. III, p. 186.] The Respondent does not have remote access to the software used for documentation. [HT, Vol. III, p. 240.]

232. Respondent left his office and met his wife for dinner at Cracker Barrel. [HT, Vol. III, p. 186.] After dinner, the Respondent and his wife went to the grocery store and then went home. [HT, Vol. III, pp. 186-187.] The Respondent stated that he was home before 8:00 p.m. [HT, Vol. III, p. 187.]

233. Sometime around 8:30 or 9:00 p.m., the Respondent's wife told him that she received a phone call from someone telling her that Respondent was with them. [HT, Vol. III, p. 187.] The Respondent was on the bottom floor of his house watching television. [HT, Vol. III, p. 188.] The Respondent's wife came downstairs and asked him what was going on. [HT, Vol. III, p. 188.] The Respondent informed his wife that someone was harassing him and that he cut off communication with them that day. [HT, Vol. III, p. 188.]

234. The Respondent stated that he planned to terminate treatment at M.B.'s next visit, but she did not make it to the next visit. [HT, Vol. III, p. 220.]

235. After the Respondent cut off communication, M.B. was driving by the Respondent's house on a regular basis. [HT, Vol. III, p. 170.] The Respondent estimated that he saw M.B.'s black Jeep at or near his house approximately 30 times. [HT, Vol. III, p. 171.]

236. The Respondent received a call from the Emergency Department at BARH and learned that M.B. was admitted to the hospital on January 30, 2014. [HT, Vol. III, p. 162.] The Respondent went to the hospital on Friday, January 31, 2014 to see M.B. and other patients. [HT, Vol. III, pp. 162; 164.] The Respondent recalled seeing M.B. before 7:00 a.m. on that day. [HT, Vol. III, p. 164.] The Respondent explained that on Fridays, he does not have the office and he starts as early as possible to finish his work. [HT, Vol. III, p. 163.]

237. The Respondent saw M.B. in the seclusion room. [HT, Vol. III, p. 164.] The seclusion room is behind the nurse's station. [HT, Vol. III, p. 164.] This room has a low bed which is about a foot off the ground and no furniture. [HT, Vol. III, pp. 164; 165.] Someone documents on a patient in the seclusion room every fifteen minutes. [HT, Vol. III, p. 165.] If the lights are not on, the door must be left slightly open to get light in the room. [HT, Vol. III, p. 165.] Anything that is going on in the seclusion room can be seen on video. [HT, Vol. III, p. 166.]

238. The Respondent recalled crouching next to M.B.'s bed to maintain eye level with the patient. [HT, Vol. III, p. 166.] If the Respondent had difficulty hearing what the patient is saying, he would normally try to lean in with the opposite ear so his face goes away from the patient and not toward them. [HT, Vol. III, p. 167.] The Respondent denied that he attempted to get intimate with M.B. [HT, Vol. III, p. 167.]

239. The Respondent dictated M.B.'s symptoms and that she was having thoughts about wanting to harm herself. [HT, Vol. III, p. 169; Bd.'s Ex. 13.] M.B. told the Respondent that she wanted another physician during this visit. [HT, Vol. III, p. 169.] The

Respondent accommodated the request and wrote an order to transfer her to the services of Dr. Faheem. [HT, Vol. III, p. 169; Resp.'s Ex. 12.]

240. The Respondent stated that he did not make a note of M.B.'s behavior because he was concerned about how the situation would escalate. [HT, Vol. III, p. 171.] Additionally, the Respondent did not know M.B. was going to allege a sexual relationship at that time. [HT, Vol. III, p. 171.] The Respondent stated that M.B. requested another physician, so he took the path of least resistance and accommodated the request. [HT, Vol. III, p. 171.] The Respondent added that he wanted to limit what he put in the record because M.B. is a healthcare professional being treated at a small hospital where everybody knows everybody. [HT, Vol. III, pp. 171-172.]

241. The Respondent stated that he would not document in the chart after termination of treatment, and that he was advised by counsel not to document in the chart after termination of treatment. [HT, Vol. III, p. 240.]

242. After January 7, 2014, the Respondent received contact from multiple random numbers that he did not recognize. [HT, Vol. III, p. 158.] The Respondent denied that he responded to those messages. [HT, Vol. III, p. 159.]

243. The Respondent continued to receive messages until July of 2014. [HT, Vol. III, p. 160.] The Respondent denied that he received any text message regarding M.B. wanting to harm herself. [HT, Vol. III, p. 161.]

244. The Respondent recalled phone calls with M.B. [HT, Vol. III, p. 144.] The Respondent stated that approximately ten or eleven calls lasted more than thirty minutes. [HT, Vol. III, pp. 144-145.] The Respondent received greater than 21,000 phone calls in a year's time. [HT, Vol. III, p. 145.]

245. The Respondent stated that if he made a medication change based on a phone call, he would document it. [HT, Vol. III, p. 145.] The Respondent noted that he documented such an event in M.B.'s September 2013 record. [HT, Vol. III, p. 145.] Generally,

if he did not make a medication change, he would not document a phone call. [HT, Vol. III, p. 145.]

246. The Respondent stated that his primary way of communicating with people is through text messaging. [HT, Vol. III, p. 145.] The Respondent estimated that 85 percent of his primary contacts also used iPhones including family members and colleagues. [HT, Vol. III, p. 142.]

247. The Respondent denied that he has ever hid the identity of his telephone number and stated that he still has the same number. [HT, Vol. III, p. 146.] The Respondent denied that he ever used any application to change a text message. [HT, Vol. III, p. 146.]

248. The Respondent denied ever having sexual relations with M.B. [HT, Vol. III, p. 174.]

249. The Respondent agreed that some text messages in M.B.'s dump file may be real. The Respondent did not dispute that he may have told M.B. that he was performing ECT. [HT, Vol. III, p. 269.] The Respondent did not dispute that he may be able to see M.B. in his office, but stated that he told M.B. the last appointment is 3:30 or 4:00. [HT, Vol. III, p. 271.]

250. The Respondent testified that some text messages in M.B.'s dump file are manipulated. [HT, Vol. III, p. 242.] The Respondent denied that a birthday party was held for his father on December 16, 2013, as represented in a message in the dump file. [HT, Vol. III, p. 243-244.] The Respondent stated that he would not say that M.B. was special or that she is beautiful. [HT, Vol. III, p. 249.] The Respondent stated that M.B. did not send him anything regarding any sexual relations. [HT, Vol. III, p. 249.] The Respondent stated that he would not talk about his children as represented in the dump file with anybody but his family. [HT, Vol. III, p. 251.] The Respondent denied speaking to M.B. about allowing her to hang out with his children. [HT, Vol. III, p. 255.] The Respondent denied any marital problems as represented in the dump file. [HT, Vol. III, pp. 261; 291.] The Respondent denied talking about any sexual activity with his wife in a message to M.B. [HT, Vol. III, p. 265.] The Respondent denied that

he cancelled his clinic as represented in the dump file, and added that he wrote prescriptions from that clinic. [HT, Vol. III, p. 273.]

251. The Respondent stated that the following message sounds like something he would have texted M.B.: "Listen, this is not therapeutic. My fault is for answering your messages and trying to help, a big mistake, I'm sorry for that." [HT, Vol. III, p. 290; Resp.'s Ex. 14.]

252. The Respondent denied ever meeting M.B. at the Union Hall house. [HT, Vol. III, p. 174.] The Respondent denied ever having sex with M.B. at the Sleep Center. [HT, Vol. III, p. 175.] The Respondent denied kissing M.B. while she was in his office for an appointment. [HT, Vol. III, pp. 175-176.] The Respondent denied meeting with M.B. at the Lowe's parking lot, the Raleigh County Convention Center, the Microtel, or anywhere outside the hospital or his office. [HT, Vol. III, p. 175.]

253. The Respondent identified pictures he took of the inside of the Union Hall house in September 2012. [HT, Vol. III, p. 192.] The pictures were admitted into evidence as Respondent's exhibit number 3A-J. The Respondent took the pictures in 2012 to show his sister who was considering moving to the property. [HT, Vol. III, p. 192.]

254. The Respondent testified about a flier that was placed in multiple newspaper boxes in his neighborhood. [HT, Vol. III, p. 189.] The flier was displayed at the hearing. The flier depicted the Union Hall house with the owner's name. [HT, Vol. III, p. 189.] The flier also listed the Respondent's name and depicted the Respondent's property, which adjoins the Union Hall property. [HT, Vol. III, p. 189.]

255. The Respondent stated that he does not have the keys to the house. [HT, Vol. III, p. 197.] The Respondent has not driven his car down Union Road to go through the gate since the gate has been up sometime in 2012. [HT, Vol. III, p. 198.]

256. The Respondent denied giving M.B. the white Reebok t-shirt. [HT, Vol. III, p. 176.] The Respondent testified that he wears Hanes brand. [HT, Vol. III, p. 292.]

257. The Respondent denied giving M.B. a necklace. [HT, Vol. III, p. 176.] The Respondent stated that he gave his daughter a similar necklace. [HT, Vol. III, p. 176.] His daughter came to visit him in his office and the necklace is currently sitting on a shelf on a teddy bear, where it has remained since 2012. [HT, Vol. III, p. 176.]

258. The Respondent stated that at M.B.'s request, he did loan her a textbook. [HT, Vol. III, p. 176.] M.B. requested the textbook when she was in nursing school. [HT, Vol. III, p. 177.] The Respondent denied that he gave M.B. a medical journal with his picture in it, which he believes was printed as part of an article in West Virginia South. [HT, Vol. III, p. 177.]

259. The Respondent stated that he has a tattoo. [HT, Vol. III, p. 178.] The Respondent agreed that M.B. accurately described his tattoo. [HT, Vol. III, p. 214.] The Respondent stated that the tattoo was on his sister's Facebook. [HT, Vol. III, pp. 178; 214.] The Respondent stated that whenever he lifts weights or run in the neighborhood, he wears a sleeveless shirt. [HT, Vol. III, p. 178; 214.]

260. The Respondent parks in a designated spot at his office that reads reserved for Dr. Omar Hasan. [HT, Vol. III, p. 179.] Visitors must walk by the Respondent's vehicle to come into the office. [HT, Vol. III, p. 179.]

261. The Respondent did not discard the iPhone he used in 2013. [HT, Vol. III, p. 198-199.] The Respondent got a new phone in February 2014 and erased everything off his old phone in order to give it to one of his children. [HT, Vol. III, p. 200.] The Respondent stated that at that point, he did not know that a potential civil suit or charges would be leveled against him. [HT, Vol. III, p. 200.] The Respondent's iPhone was offered to the Board as evidence. [HT, Vol. III, p. 199.]

262. The Respondent stated that he downloaded several different applications to try and figure out how text messages could be manipulated and to determine how the Respondent was receiving messages from so many different numbers. [HT, Vol. III, pp. 199; 228.] Either the Respondent or his wife downloaded applications in 2013 that would erase a message to comply with HIPAA. [HT, Vol. III, p. 228.]

263. The Respondent stated that nine devices are on his Apple account. [HT, Vol. III, p. 226.] The Respondent, his wife, his mother, and his father have access. [HT, Vol. III, p. 226.] Downloaded applications do not go just to the Respondent's device; they go to all the devices on the account. [HT, Vol. III, p. 292.] The Respondent stated that either he or his wife would be the most likely people to download applications to his account. [HT, Vol. III, p. 226.]

264. The Respondent started preserving text messages around April 17, 2014. [HT, Vol. III, p. 201.] The Respondent stated that from April 2014 until July 2014, he received approximately 200 text messages and 19 voicemails from M.B. [HT, Vol. III, p. 202; 203.]

265. Respondent received one such text message from M.B. on May 2014. [HT, Vol. III, p. 202; Resp.'s Ex. 10.] The text read, "I promise to tell the truth I lied about the sex thing if you just talk to me." [Resp.'s Ex. 10.] The Respondent presented his phone containing this text message at the hearing. [HT, Vol. III, p. 202.] The Respondent denied that he manipulated the message and represented that his phone his readily available to be analyzed. [HT, Vol. III, p. 203.]

Alan Kennedy

266. Mr. Kennedy is the Program Director for West Virginia Sleep Centers and has held this position since early 2013. [HT, Vol. III, p. 293-294.] The Sleep Center is approximately 200 – 300 feet from the Respondent's office at Raleigh Psychiatric Center. [HT, Vol. III, p. 295.] The Sleep Center is owned by the Respondent. [HT, Vol. III, p. 299.]

267. Mr. Kennedy described a long, narrow hallway at the Sleep Center. [HT, Vol. III, p. 295.] On the right side of the hallway are bedrooms used for patients to sleep in. [HT, Vol. III, p. 295.] At the end of the hallway is a control room where technicians sit and monitor patients as they sleep. [HT, Vol. III, p. 295.] The hall can be seen from the control room. [HT, Vol. III, p. 315.]

268. There are cameras in the bedrooms that come on once a sleep study is started. [HT, Vol. III, p. 296.] Mr. Kennedy testified that the door to the Sleep Center has an

alarm on it that can be heard from one end of the building to the other if someone should come or go. [HT, Vol. III, p. 296.]

269. Mr. Kennedy stated that the Sleep Center is open pretty much 24 hours. [HT, Vol. III, p. 298.] The biggest gap would be maybe 6:00 to 7:00 in the evening where office staff is leaving and where the technical staff is arriving. [HT, Vol. III, pp. 298-299.] Mr. Kennedy added that, a lot of the times, either he or the Clinical Director are there, so there are not any gaps. [HT, Vol. III, p. 299.] Sleep studies are performed seven days a week. [HT, Vol. III, p. 297.]

270. Mr. Kennedy recognized M.B. from her visual appearance and remembered giving her a tour of the Sleep Center. [HT, Vol. III, pp. 301-303.] M.B. visited the Sleep Center with an older gentlemen who sat down on the couch in the reception area. [HT, Vol. III, p. 304.]

271. Mr. Kennedy described the tour as "unusual." [HT, Vol. III, p. 303.] Mr. Kennedy stated that he expected the same questions commonly asked by visitors during a tour. [HT, Vol. III, p. 303.] Mr. Kennedy showed her a patient room, but received no questions. [HT, Vol. III, p. 304.] He continued toward the next bedroom and M.B. started asking him questions like what time the technical staff came in and what time they left. [HT, Vol. III, p. 304.] Mr. Kennedy answered her questions. [HT, Vol. III, p. 304.]

272. Mr. Kennedy stated that they entered the next bedroom and he pointed out a few more things, but still no more questions. [HT, Vol. III, p. 304.] They left that room and headed toward the control room. [HT, Vol. III, p. 305.] M.B. then asked what time the office staff arrived and what time they left, which he answered. [HT, Vol. III, p. 305.] M.B. did not have questions about the study itself. [HT, Vol. III, p. 306.] Mr. Kennedy testified that he felt like M.B. was "casing the place." [HT, Vol. III, p. 306.]

273. Mr. Kennedy testified that he did not discuss this encounter with the Respondent. [HT, Vol. III, p. 308.] This encounter is the only time Mr. Kennedy remembered seeing M.B. at the Sleep Center. [HT, Vol. III, p. 309.]

274. Mr. Kennedy stated that he has never seen the Respondent do anything inappropriate with any patient at the Sleep Center and has never seen the Respondent bring a patient to the Sleep Center for sex. [HT, Vol. III, p. 309.]

Stephanie Kennedy

275. Ms. Kennedy is the Quality Control Manager at West Virginia Sleep Centers. [HT, Vol. III, p. 317.] Ms. Kennedy administers sleep studies and prepares all the reports for the sleep studies. [HT, Vol. III, p. 317.]

276. Ms. Kennedy is at the Sleep Center almost every day, if not every day. [HT, Vol. III, p. 321.] Sleep studies are performed seven nights a week. [HT, Vol. III, p. 324.] There are at least two staff members at the Sleep Center every night. [HT, Vol. III, p. 324.]

277. Ms. Kennedy testified that there is a dinger on the door to the Sleep Center. [HT, Vol. III, p. 322.] Ms. Kennedy added that you cannot open that front door without her hearing it. [HT, Vol. III, p. 322.] Ms. Kennedy testified that she would absolutely know if someone came into the building. [HT, Vol. III, p. 322.]

278. While a patient is sleeping for a study, Ms. Kennedy is in the control room. [HT, Vol. III, p. 320.] Ms. Kennedy stated that you can see down the hallway from the control room with the door left open, and that she typically leaves the door open. [HT, Vol. III, p. 321.]

279. Ms. Kennedy recorded her work hours on a time card. [HT, Vol. III, p. 326.] Ms. Kennedy's weekly time sheet for July 29, 2013 – August 4, 2013, was admitted into evidence as Respondent's exhibit number 23.

280. Ms. Kennedy arrived at the Sleep Center at 7:00 p.m. August 2, 2013. [HT, Vol. III, p. 327; Resp.'s Ex. 23.] Ms. Kennedy worked until 6:45 a.m. on August 3, 2013. [HT, Vol. III, p. 327; Resp.'s Ex. 23.]

281. Ms. Kennedy did not see the Respondent at the Sleep Center on August 2, 2013 or August 3, 2013. [HT, Vol. III, pp. 328-329.] Ms. Kennedy did not hear the door ringer

for anyone but the patient that came in for the sleep study. [HT, Vol. III, p. 330.] Ms. Kennedy added that if anyone would have come down the hall, she could have heard them and seen them. [HT, Vol. III, p. 330.]

282. Ms. Kennedy testified that she knew the Respondent was not in the Sleep Center on the morning of August 3, 2013, because you cannot get in and out of the building without her hearing it. [HT, Vol. III, p. 330.]

Sarah Beth Janney

283. Ms. Janney worked for the Respondent from 2008 to 2013 until she was terminated. [HT, Vol. IV, p. 4.]

284. Ms. Janney went to high school with M.B., and M.B. was a patient when Ms. Janney worked for the Respondent. [HT, Vol. IV, p. 6.]

285. Ms. Janney worked for Winterplace Ski Resort in the winter of 2013. [HT, Vol. IV, p. 7.] Ms. Janney delivered brochures to hotels on Harper Road in Beckley, West Virginia, including the Microtel. [HT, Vol. IV, pp. 7, 10.]

286. Ms. Janney saw M.B. at a hotel on Harper Road. [HT, Vol. IV, p. 7.] Ms. Janney stated that M.B. seemed to see her and took off real fast. [HT, Vol. IV, p. 8.] She recognized M.B. by her bright red hair and based upon knowing M.B. for more than 20 years. [HT, Vol. IV, p. 8.]

287. Ms. Janney stated that M.B. was with an unknown male. [HT, Vol. IV, p. 8.] Ms. Janney stated that she knew M.B.'s husband, and that M.B. was not with him. [HT, Vol. IV, p. 8.]

Thomas Gutheil, M.D.

288. Dr. Gutheil graduated from Harvard College and received his medical degree from Harvard Medical School in 1967. [HT, Vol. IV, p. 12.] Dr. Gutheil received advanced training at the American Academy of Psychiatry and Law and the Boston Psychoanalytical Institute and took brief courses at Harvard Law School. [HT, Vol. IV, p. 13.]

289. Dr. Gutheil has been at the Massachusetts Mental Health Center for almost fifty years. [HT, Vol. IV, p. 12; Resp.'s Ex. 24.] Dr. Gutheil is currently a professor at Harvard and has taught at Harvard for approximately thirty years. [HT, Vol. IV, pp. 12-13.]

290. Dr. Gutheil was qualified as an expert in the field of forensic psychiatry. [HT, Vol. IV, p. 31.]

291. Dr. Gutheil has authored over 300 papers and almost all of them have been peer reviewed. [HT, Vol. IV, p. 13; Resp.'s Ex. 24.] Dr. Gutheil has authored publications on mood disorders and their effect on individuals. [HT, Vol. IV, p. 15.] He has also authored publications regarding allegations of sexual misconduct. [HT, Vol. IV, p. 16.] Additionally, Dr. Gutheil has written papers and has lectured about documentation. [HT, Vol. IV, p. 26.]

292. Dr. Gutheil has authored publications on terminating the psychiatrist-patient relationship, and specifically discussed a peer-reviewed article titled "Breaking Up is Hard to Do" where he has observed in his forensic work that doctors hang onto patients even though it would probably be wiser to terminate and refer because doctors enter the field to help people and have emotional difficulty with firing a patient. [HT, Vol. IV, pp. 15-16.]

293. Dr. Gutheil has been involved in cases involving false claims. [HT, Vol. IV, p. 16.] Dr. Gutheil explained that in a small number of cases, individuals will bring a claim for a number of complicated motives. [HT, Vol. IV, p. 17.] Number one is a retaliation for some imagined slight. [HT, Vol. IV, p. 17.] Another common mechanism is prolonging a relationship. [HT, Vol. IV, p. 17.] In a very small number of cases, a false claim is based on delusion. [HT, Vol. IV, p. 17.]

294. Dr. Gutheil stated that personality disorders are more prevalent in false claims by a significant stretch. [HT, Vol. IV, p. 17.] Dr. Gutheil explained that any of the major disorders which would be recurring, such as depression, bipolar disorder, mania, are prevalent with the filing of false claims. [HT, Vol. IV, p. 18.] Dr. Gutheil added that both true and false claims emerge from those kinds of disorders because of the attachment that the patients feel and often misunderstand comments by the clinician as seductive or inviting. [HT, Vol. IV, p. 18.]

295. Dr. Gutheil explained bipolar disorder as a mood disorder which is characterized mostly by the lows and the highs. [HT, Vol. IV, pp. 18-19.] The low is a depression. [HT, Vol. IV, p. 19.] The high is a state of pathological excitement and optimism and often things like dangerous behavior, over-spending and things of that sort. [HT, Vol. IV, p. 19.]

296. Dr. Gutheil explained that borderline personality disorder is a lasting and somewhat enduring condition from early in life. [HT, Vol. IV, p. 19.] With the disorder, individuals are driven by hungers and rages. [HT, Vol. IV, p. 19.] The hungers are because of certain failures to be gratified early in life lead to dependency as well as various moments of addiction and attachment to individuals in difficulty with separation and abandonment. [HT, Vol. IV, p. 19.] The rages are examples of what happens during frustration and disconnection from the clinician or anybody they are in a relationship with and may express itself as both homicide, suicide, or various forms of vilification including stalking and other behavior that express hostility or anger. [HT, Vol. IV, p. 19.]

297. Dr. Gutheil explained that a stalker in the psychiatry profession is someone who crosses boundaries of ordinary appropriate behavior, such as physical visits to a person's home or car, a lot of calls and texts, or attempts to keep track of where a person is at any given moment. [HT, Vol. IV, p. 20.]

298. Dr. Gutheil stated that empirically the best way to remedy a situation involving a stalker is attrition. [HT, Vol. IV, p. 20.] This includes not responding or not doing anything. [HT, Vol. IV, p. 20.] Any response is a stimulus and so the best way is to not respond. [HT, Vol. IV, p. 20.] Dr. Gutheil stated that this is difficult because it initially causes a spike in the behavior but over the time the person may wear out, find somebody else to get involved with or other things may occur. [HT, Vol. IV, p. 20-21.] Dr. Gutheil further explained that when you stop contact, you frequently initially increase the calls, the texts, the involvement, the intrusions and so forth because the person gets desperate when a barrier is put up. [HT, Vol. IV, p. 24.] Dr. Gutheil added that the only way to deal with that is to simply not respond and do your best to let that wear away and pass of its own accord over time. [HT, Vol. IV, p. 24.]

299. Dr. Gutheil observed that the flooding of calls, texts, visits and observations is characteristic of a personality disorder. [HT, Vol. IV, p. 22.] However, Dr. Gutheil stated that he could not offer an independent diagnosis because he had not examined M.B. to get a better understanding. [HT, Vol. IV, p. 22.] Dr. Gutheil further observed that repeated discussion of M.B.'s depression and anxiety may or may not be part of the bipolar syndrome, and that it is not clear enough from the materials to be able to make that point, but certainly lasting and recurring depression are characteristic of bi-polar disorder. [HT, Vol. IV, pp. 28-29.]

300. Dr. Gutheil could not challenge Dr. Faheem's observation that M.B. was not delusional because he had not talked to Dr. Faheem or interviewed M.B. [HT, Vol. IV, p. 30.] Dr. Gutheil did note that M.B.'s medical records indicate that she has kind of a visual hallucination which is a psychotic symptom, but it is not a delusion. [HT, Vol. IV, p. 30.] Dr. Gutheil would not be able to assess whether she was delusional without examining her. [HT, Vol. IV, p. 30.]

301. With regard to the transfer of care in this case, Dr. Gutheil stated that M.B. was first hospitalized and transferred within the hospital, which is actually the safest way to transfer because any flack that may arise from the transfer gets dealt with in a protected setting. [HT, Vol. IV, p. 25.] A transfer at the hospital provides the patient with a cushion of treatment staff who can deal with whatever emotional consequences arise from the transfer. [HT, Vol. IV, p. 33.]

302. Dr. Gutheil further stated that there must be a person at the other end willing to take on the case. [HT, Vol. IV, p. 25.] Dr. Gutheil observed that the termination, the transfer and the availability of a subsequent treater were present in this case. [HT, Vol. IV, p. 25.]

303. Dr. Gutheil believed the transfer was appropriate, and that the way in which M.B. was transferred to another physician willing to take the case was appropriate. [HT, Vol. IV, p. 26.]

304. With regard to documenting communications after termination of the physician/patient relationship, Dr. Gutheil disagreed with the Board's expert, Dr. Wettstein. [HT, Vol. IV, p. 27.] Dr. Gutheil opined that once you have terminated the case or terminated the treatment and are no longer seeing the patient, the burden of documentation falls on the subsequent treater. [HT, Vol. IV, p. 27.] Dr. Gutheil explained that since there is no chart, if the patient is seeing somebody else, there is no reason to document what is going on, especially if it is extra treatment and is not related to the patient's welfare. [HT, Vol. IV, p. 28.]

305. When asked if the documentation in this case had any impact on M.B.'s hospital visit for suicidal ideations or suicide attempt, Dr. Gutheil stated that the failure to document by itself in no way causes the person to become ill, get sicker or to attempt suicide. [HT, Vol. IV, p. 28.]

306. Dr. Gutheil opined that the standard of care does not require that someone document contact with a patient after the physician/patient relationship has been terminated. [HT, Vol. IV, p. 31.]

307. Dr. Gutheil stated that it probably would have been a good idea to document the harassing intrusions and issues pertaining to M.B. toward the end of treatment, although the argument would be that such documentation is gratuitous and not about the patient's treatment. [HT, Vol. IV, pp. 33-34.] Dr. Gutheil added that there would be people who would argue that it is not part of the record. [HT, Vol. IV, p. 34.]

308. Dr. Gutheil commented on what he called a fundamental tension in all treatment but especially treatment of health care professionals. [HT, Vol. IV, p. 34.] The treater is often torn between appropriate recording of the treatment, which is required, and creating stigma or damaging the person's reputation as a functioning care giver. [HT, Vol. IV, p. 34.] Dr. Gutheil explained that different people solve that in different ways. [HT, Vol. IV, p. 34.] Dr. Gutheil stated that the best approach is including the facts, but he can see individuals not getting into details of out of control behavior. [HT, Vol. IV, pp. 34-35.]

309. When asked a hypothetical on cross-examination whether a psychiatrist should document if a patient expresses an emotional attachment through a text message, Dr. Gutheil stated that if it looks excessive it would be more appropriate to document, especially if it comes up in a session. [HT, Vol. IV, pp. 36-37.]

310. Dr. Gutheil stated that he would be happier if a doctor documented a patient's communications regarding an alleged sexual relationship, although it is fairly common for doctors who only prescribe medications to limit it to the question of symptoms and treatment. [HT, Vol. IV, p. 38.] Dr. Gutheil added that a therapist, as opposed to doctors who only prescribed medications, would want to document that because it is part of what a therapist works with. [HT, Vol. IV, p. 38.] Dr. Gutheil used Ms. Sotak's records as an example of a therapist identifying some of the patient's feelings about the doctor. [HT, Vol. IV, p. 38.]

311. Dr. Gutheil agreed that the amount of texts exchanged is excessive and stated that he would prefer some documentation, but because it's outside of the treatment realm an argument could be made that the excessive messages do not belong in the record. [HT, Vol. IV, p. 40.]

312. On cross-examination, Dr. Gutheil distinguished communications with a doctor and a patient that is outside the treatment realm. [HT, Vol. IV, p. 40.] Dr. Gutheil explained that a patient comes to a psychopharmacologic treatment because of symptoms, and if a doctor notes symptoms, then the doctor needs to record those symptoms because it is what the doctor is going to be treating. [HT, Vol. IV, p. 40.] Beyond that, documentation is more optional. [HT, Vol. IV, p. 40.]

313. Dr. Gutheil was asked on cross-examination whether Respondent should have documented an explanation as opposed to just saying he is transferring care. [HT, Vol. IV, p. 46.] Dr. Gutheil responded that he would have preferred it to be documented, "but as long as a record is made of the transfer, and Dr. Faheem's first two notes are very clear about that, that would be adequate to cover the situation." [HT, Vol. IV, p. 46.]

314. Dr. Gutheil opined that the Respondent's practice of medicine is clearly within the standard of care and that his documentation of reasonable care is appropriate for four reasons. [HT, Vol. IV, pp. 31; 32.] Number one, the Respondent does repeated assessments of the patient's condition or situation. [HT, Vol. IV, pp. 31-32.] Number two, the Respondent repeatedly obtains informed consent and invites questions about the medications which are appropriate medications. [HT, Vol. IV, p. 32.] Next, the Respondent records the symptoms of each visit and also notes at several points the improvement in those symptoms. [HT, Vol. IV, p. 32.] Finally, the Respondent notes that the history is important to understand in relation to the patient's present condition. [HT, Vol. IV, p. 32.]

315. Dr. Gutheil opined that the transfer of care at the patient's request was done according to the standard of care. [HT, Vol. IV, p. 32.]

316. Dr. Gutheil stated that the length of time that has already spanned in this case and the alleged volume of communication does not give any indication regarding the accusation that inappropriate behavior took place. [HT, Vol. IV, pp. 51-53.] Dr. Gutheil stated that, from a psychological standpoint, it is consistent with personality disorders because no other condition will cause that much of a drive. [HT, Vol. IV, pp. 52-53.] Dr. Gutheil added that his record length for a case is 20 years. [HT, Vol. IV, p. 53.]

Surayia Hasan, M.D.

317. Dr. Surayia Hasan is the Respondent's mother. [HT, Vol. IV, p. 57.] Dr. Surayia Hasan practices medicine with the Respondent's wife, Dr. Irene Wasylyk. [HT, Vol. IV, p. 99.]

318. Dr. Surayia Hasan purchased the Union Hall house in 2011. [HT, Vol. IV, p. 59.] The house was rental property before it was purchased. [HT, Vol. IV, p. 59.]

319. Dr. Surayia Hasan stated that nothing has been done to improve the house after it was purchased. [HT, Vol. IV, p. 59.] When she first purchased the home, there was not carpet in all bedrooms. [HT, Vol. IV, p. 68.] Dr. Surayia Hasan denied telling Mr. Kidd that carpet was pulled up at some point in time in the bedrooms. [HT, Vol. IV, p. 68.]

320. When the house was bought, a chain link was in place which prevented a car from going down the driveway. [HT, Vol. IV, p. 59.] The chain link was replaced with a gate in approximately 2012. [HT, Vol. IV, p. 59-60.]

321. Dr. Surayia Hasan identified electricity bills for the house which was admitted into evidence as Respondent's Exhibit 25. The electricity was turned on November 23, 2011, and was turned off on January 20, 2014. [HT, Vol. IV, p. 62; Resp.'s Ex. 25.] The electricity was used to heat the house in the winter. [HT, Vol. IV, pp. 61; 69.]

322. Dr. Surayia Hasan received a phone call from a woman looking for the Respondent. [HT, Vol. IV, p. 63.] The woman told her that the Respondent is not responding to phone calls and that she is worried about him. [HT, Vol. IV, p. 64.] Dr. Surayia Hasan told the woman that the Respondent is fine. [HT, Vol. IV, p. 64.]

323. Dr. Surayia Hasan never observed any marital issues between the Respondent and his wife. [HT, Vol. IV, p. 64.] Dr. Surayia Hasan stated that the Respondent's wife never left with the children. [HT, Vol. IV, p. 64.] Dr. Surayia Hasan stated that she would know if Dr. Wasylyk left because she would have to cover her patients in the hospital if she left town. [HT, Vol. IV, p. 64-65.]

324. Dr. Surayia Hasan never observed the Respondent attempt suicide, and never experienced the Respondent unconscious over a weekend. [HT, Vol. IV, p. 65.]

325. Dr. Surayia Hasan keeps the keys to the Union Hall house in her kitchen in a little drawer that sits against the wall. [HT, Vol. IV, p. 58.] She stated that the Respondent has no clue where the keys are. [HT, Vol. IV, p. 58.] She added that nobody ever asked her where the keys are, so none of the family members knew where the keys were. [HT, Vol. IV, p. 67.] Dr. Surayia Hasan has never seen the Respondent come to her house to get the keys for the Union Hall house. [HT, Vol. IV, p. 58.]

Michael Johnson

326. Mr. Johnson is a clinical social worker and clinic manager at Raleigh Psychiatric Services. [HT, Vol. IV, p. 70.] In this capacity, Mr. Johnson maintains patient records and has knowledge regarding the Respondent's records. [HT, Vol. IV, p. 72.]

327. Mr. Johnson identified Respondent's exhibit number 21, a patient record signed by the Respondent at Raleigh Psychiatric Services on January 7, 2014 at 5:03 p.m., as a record from MediSoft. [HT, Vol. IV, p. 72.]

328. Mr. Johnson testified that the Respondent had to be physically at his office to make the record. [HT, Vol. IV, p. 72.] Mr. Johnson explained that the Respondent did not have remote access to MediSoft. [HT, Vol. IV, p. 72-73.] Further, there is no one that could sign the record based on verbal authority. [HT, Vol. IV, p. 80.] The only person that could have typed in the record is the Respondent. [HT, Vol. IV, p. 80.]

329. In 2013, Mr. Johnson's office was approximately fifteen to twenty feet from the Respondent's office. [HT, Vol. IV, pp. 73-74.] Mr. Johnson described the Respondent's process for seeing patients. [HT, Vol. IV, p. 74.] Patient files are taken to the Respondent's office. [HT, Vol. IV, p. 74.] Next, patients are seen in the Respondent's office. [HT, Vol. IV, p. 74.] A mid-level – nurse practitioner or physician assistant – goes into the office and retrieves the charts. [HT, Vol. IV, p. 74.] Mr. Johnson stated that mid-levels frequently go into the Respondent's office to get a chart, to ask questions about medications, or any other kinds of questions. [HT, Vol. IV, p. 75.]

330. Mr. Johnson stated that a cleaning staff is present after hours at Raleigh Psychiatric Services. [HT, Vol. IV, p. 76.] The cleaning staff usually arrives after 5:00 p.m. and stays about two and a half to three hours. [HT, Vol. IV, p. 76.] Mr. Johnson receives calls from the cleaning staff regarding suspicious activity which he documents. [HT, Vol. IV, p. 77.]

331. Mr. Johnson has never seen any of the physicians with a patient after hours at the office, and has never seen the Respondent do anything inappropriate with a patient. [HT, Vol. IV, p. 79.]

Rabiya Hasan, M.D.

332. Dr. Rabiya Hasan is the Respondent's sister. [HT, Vol. IV, p. 86.] Dr. Rabiya Hasan is a child, adolescent and forensic psychiatrist who practices in Charlotte, North Carolina. [HT, Vol. IV, p. 86.]

333. Dr. Rabiya Hasan lived with the Respondent and the Respondent's wife from November 2014 to October 2015. [HT, Vol. IV, p. 88.] During this time, she had dinner with them almost every night and was included in their social outings. [HT, Vol. IV, p. 88.] She and the Respondent's wife are good friends and she has taken some trips with just the Respondent's wife. [HT, Vol. IV, p. 87.]

334. Dr. Rabiya Hasan testified that she has never observed any marital problems between the Respondent and his wife as a result of M.B.'s allegations. [HT, Vol. IV, p. 88.]

335. Dr. Rabiya Hasan stated that the Union Hall house was purchased by her father with the thought that she would live on the property, and that she had visited the house a few times in the past. [HT, Vol. IV, p. 89.] She testified that no improvements were made to the house. [HT, Vol. IV, p. 90.]

336. Dr. Rabiya Hasan stated that a gate was on the property the first time she visited the property and she remembered that she walked around the gate instead of climbing over it. [HT, Vol. IV, p. 91.] She could not remember the first time she viewed the property, but testified that the last time she viewed the property was in November 2012. [HT, Vol. IV, p. 94.] Dr. Rabiya Hasan denied telling Mr. Kidd that there was no gate up at the time she visited the property. [HT, Vol. IV, p. 94.]

Jennifer Johnson

337. Ms. Johnson is a family practice physician assistant who works in Roanoke, Virginia. [HT, Vol. IV, p. 96.] Ms. Johnson worked for Raleigh Psychiatric Services from November 2011 to September 2013. [HT, Vol. IV, p. 96.] She saw the Respondent four out of five days of the week, if not every day. [HT, Vol. IV, p. 97.]

338. Ms. Johnson stated that the Respondent was very professional in interactions with his patients, the staff and the various drug representatives that would come into the office. [HT, Vol. IV, p. 97.]

339. Ms. Johnson was interviewed by the West Virginia Board of Medicine and was asked questions about the Respondent. [HT, Vol. IV, p. 97.] Ms. Johnson was very surprised to receive the call because she never suspected or witnessed any concerning behavior or improper interactions between the Respondent and any other individuals. [HT, Vol. IV, p. 97.]

Irene Wasylyk, M.D.

340. Dr. Wasylyk is the Respondent's wife and the mother of the Respondent's two children. [HT, Vol. IV, pp. 99-100.] Dr. Wasylyk practices internal medicine in Beckley, West Virginia. [HT, Vol. IV, p. 99.]

341. Dr. Wasylyk testified that the Respondent never confessed to her that he had any extra-marital affair. [HT, Vol. IV, p. 101.] She did not observe any interactions of the Respondent in 2013 that would have led her to believe he was having an affair with another woman. [HT, Vol. IV, p. 101.]

342. Dr. Wasylyk has seen the Respondent text message patients who were health care providers. [HT, Vol. IV, p. 101.] The Respondent made himself available to patients and she would see him texting all the time with respect to patient inquiries. [HT, Vol. IV, pp. 101-102.]

343. Dr. Wasylyk and the Respondent owned iPhones in 2013. [HT, Vol. IV, p. 102.] She stated that it was typical for the Respondent to leave his phone places like at the house, on the table or on the kitchen counter. [HT, Vol. IV, p. 103.]

344. Dr. Wasylyk has on occasion observed text messages received on the Respondent's phone. [HT, Vol. IV, p. 103.] She has not seen any text messages that were sexual or salacious in nature. [HT, Vol. IV, p. 103.]

345. Dr. Wasylyk stated that she and the Respondent downloaded applications regarding text messaging around the time Raleigh General Hospital wanted them to use HIPAA complaint texts. [HT, Vol. IV, pp. 103-104.]

346. Additionally, she and the Respondent started downloading text message applications at different times to figure out how multiple texts were coming from what seemed to be the same person but a bunch of different numbers. [HT, Vol. IV, pp. 104-105.] Dr. Wasylyk did not believe that the Respondent used any of the applications except figuring out with Dr. Wasylyk how the applications work. [HT, Vol. IV, p. 106.] Dr. Wasylyk explained that downloaded applications go to all of the family's devices, including the children's devices. [HT, Vol. IV, pp. 105-106.]

347. Dr. Wasylyk also received texts from a random number asking her if she knew where the Respondent was, if he was okay, and things of that nature. [HT, Vol. IV, p. 129.]

348. Dr. Wasylyk testified that earlier on January 7, 2014, she went to dinner with the Respondent at Cracker Barrel at around 5:30. [HT, Vol. IV, p. 107.] After dinner at Cracker Barrel, she and the Respondent stopped at Kroger to get milk and went home. [HT, Vol. IV, p. 107.] After they got home, Dr. Wasylyk went upstairs and was cleaning a closet. [HT, Vol. IV, p. 108.]

349. Dr. Wasylyk received a phone call at around 8:00 p.m. [HT, Vol. IV, p. 106.] Dr. Wasylyk testified that M.B. introduced herself and said something that made her think the Respondent was with M.B. at that moment. [HT, Vol. IV, p. 108.]

350. Dr. Wasylyk remembered pausing for a little bit and walked downstairs to see where the Respondent was. [HT, Vol. IV, p. 109.] She checked that the Respondent was there, went back upstairs, finished off a couple of things, and came back downstairs. [HT, Vol. IV, p. 109-110.] Dr. Wasylyk asked the Respondent if he had something to tell her, and he said no. [HT, Vol. IV, p. 110.] Dr. Wasylyk told the Respondent that she got a call from M.B. who said she's with the Respondent. [HT, Vol. IV, p. 110.] Dr. Wasylyk asked the Respondent if he

was having an affair. [HT, Vol. IV, p. 110.] The Respondent denied an affair and told her that earlier in the day he advised M.B. to not communicate with him through text and just communicate through the office. [HT, Vol. IV, pp. 110-111.]

351. Dr. Wasylyk stated that there was nothing in the Respondent's behavior that caused her to be suspicious of the Respondent having an extra-marital affair. [HT, Vol. IV, p. 111.]

352. Dr. Wasylyk stated that after this phone call, M.B. continued to text. [HT, Vol. IV, p. 111.] Dr. Wasylyk looked at these messages. [HT, Vol. IV, pp. 111-112.] She recalled that the messages were some pleading, some angry, and back and forth emotions. [HT, Vol. IV, p. 112.] The messages seemed like M.B. wanted to see the Respondent. [HT, Vol. IV, p. 112.] She did not remember any graphic sexual notes or comments in those messages. [HT, Vol. IV, p. 112.]

353. In February or March 2014, an envelope with Dr. Wasylyk's name on it was placed under the windshield wiper of her car. [HT, Vol. IV, pp. 112; 115.] Dr. Wasylyk's car was parked at her office with a wooden stake reserving her parking spot. [HT, Vol. IV, p. 113.]

354. In the envelope was a card, and inside the card were photographs of M.B. [HT, Vol. IV, pp. 112; 113-114.] M.B. was naked in some photographs and in lingerie in some photographs. [HT, Vol. IV, pp. 112-113.] A thank you card and the photographs were admitted into evidence as Respondent's exhibit number 26.

355. After the call on January 7, 2014, Dr. Wasylyk saw a black Jeep Cherokee with a red-haired driver over 20 times. [HT, Vol. IV, p. 117.]

356. Dr. Wasylyk stated that you can see the gate at the end of their driveway in certain places such as the exercise room, the laundry room or the hot tub. [HT, Vol. IV, pp. 116-117.] On one occasion, Dr. Wasylyk was in the hot tub. [HT, Vol. IV, p. 117.] She saw the black Jeep loop around approximately five or six times. [HT, Vol. IV, p. 117.] She further stated that the black Jeep would frequently move around their cul de sac. [HT, Vol. IV, p. 117.]

357. Dr. Wasylyk stated that the frequent sightings worried her. [HT, Vol. IV, p. 118.] She warned her kids to not talk to a lady with red hair. [HT, Vol. IV, p. 118.] Security was hired to walk the perimeter. [HT, Vol. IV, p. 118.] Dr. Wasylyk also posted no trespassing signs. [HT, Vol. IV, p. 118.]

358. Dr. Wasylyk testified that she considered filing a police report. [HT, Vol. IV, p. 126.] Dr. Wasylyk stated that she educated herself on stalking and learned that sometimes filing a police report angers a stalker even more. [HT, Vol. IV, p. 126.] A decision against filing a police report was made to not anger M.B. and because she did not think anything good would come of it. [HT, Vol. IV, pp. 126-127.]

359. Dr. Wasylyk did not recall ever seeing the white Reebok t-shirt. [HT, Vol. IV, p. 123.] She mostly does the Respondent's shopping and buys Hanes. [HT, Vol. IV, p. 123.]

360. Dr. Wasylyk testified that her sister from Wisconsin with her four children, her sister from New Jersey with her two children, and her father visited on August 3, 2013. [HT, Vol. IV, p. 119.] Dr. Wasylyk stated that the Respondent did not leave for the Sleep Center in the middle of the night. [HT, Vol. IV, p. 120.]

361. Dr. Wasylyk testified that she has never threatened to take the children away and leave based on what was going on with M.B. [HT, Vol. IV, p. 120.]

362. Dr. Wasylyk never threatened the Respondent with divorce. [HT, Vol. IV, p. 120.] The Respondent never stayed at his parents for a period of time because she was upset with him. [HT, Vol. IV, p. 120.] She added that the Respondent never attempted to take his own life. [HT, Vol. IV, pp. 120-121.]

363. Dr. Wasylyk was able to view the content of messages in M.B.'s dump file. [HT, Vol. IV, p. 121.] The messages caused her to do her own investigation. [HT, Vol. IV, p. 122.] She explained that she went through every album and looked into every date she found. [HT, Vol. IV, p. 122.] Dr. Wasylyk stated that everything checked out, and that everything M.B. said did not happen. [HT, Vol. IV, p. 122.]

Conclusions of Law

1. West Virginia Code § 30-3-1, *et seq.*, provides the Board with authority to issue licenses to practice medicine and surgery in this state, and with authority to act as the regulatory and disciplinary body for the practice of medicine in West Virginia. W. Va. Code §§ 30-3-5, 30-3-7.

2. The Board has jurisdiction over the subject matter and over the Respondent. W. Va. Code § 30-3-5.

3. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure. W. Va. Code § 30-3-14.

4. The Board is authorized to promulgate legislative rules that "delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice." W. Va. Code § 30-1-8(c).

5. The Board may designate a Hearing Examiner to conduct hearings. The undersigned Hearing Examiner is a licensed attorney, and was designated by the Board to conduct a hearing in this matter. W. Va. Code § 30-3-14(b); W. Va. C.S.R. § 11-3-11.

6. The West Virginia Rules of Evidence as applied in civil cases in the circuit courts of this State were followed at the hearing. W. Va. C.S.R. § 11-3-11.5.c. All exhibits entered into evidence at the hearing are authentic and were admitted with the proper evidentiary foundation.

7. The applicable burden of proof is well established. Disciplinary action taken by the Board against a physician must be predicated upon clear and convincing proof.

Webb v. W. Va. Bd. of Medicine, 212 W. Va. 149, 155, 569 S.E.2d 225, 231 (2002) (citing W. Va. Code § 30-3-14(b)).

8. The West Virginia Supreme Court has emphasized that "clear and convincing proof is the highest possible standard of civil proof defined as 'that measure or degree of proof which will produce in the mind of the trier of facts and firm belief or conviction as to the allegations sought to be established.'" *Id.* at 156, 569 S.E.2d at 232 (quoting *Wheeling Dollar Sav. & Trust Co. v. Singer*, 162 W. Va. 502, 510, 250 S.E.2d 369, 374 (1978)).

9. "Clear and convincing evidence has been defined as proof so clear, direct, weighty, and convincing as to enable the fact finder to come to a clear conviction, without hesitation, of the matter asserted; it is that degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established." *O'Dell v. Stegall*, 226 W. Va. 590, 608 n.11, 703 S.E.2d 561, 579 n.11 (2010) (citation omitted).

10. Credibility of the witnesses is determined by the Hearing Examiner based upon an evaluation of witness testimony. *See Darby v. Kanawha County Bd. of Educ.*, 227 W. Va. 525, 711 S.E.2d 595 (2011). Credibility determinations may be based upon many factors, including: the general demeanor and comportment of the witness at the hearing; the bias or interest of the witness; the consistency or inconsistency of the statements of the witness; the witness' ability and acuteness to observe; the memory of the witness; the reputation for honesty of the witness; and other factors which tend to cause the trier of fact to believe or disbelieve the testimony of the witness. *See* Franklin D. Cleckley, *Handbook on Evidence for West Virginia Lawyers*, § 607.02(1)(b) (5th Ed. 2012).

Counts I and III

11. Count I alleges professional misconduct for exercising influence within the patient-physician relationship for the purpose of engaging M.B. in sexual activity. [Bd.'s Am. Compl. ¶¶ 34-37.]

12. Count III alleges that the Respondent engaged in professional misconduct by entering into a sexual relationship with M.B. [Bd.'s Am. Compl. at ¶¶ 42-45.]

13. The Hearing Examiner finds the testimony of the Respondent to be credible. Even when certain responses were adverse to his interests, the Respondent responded candidly, emphatically, and without evasion. The Respondent denied that he engaged in sexual activity with M.B. The Respondent denied meeting M.B. outside the office or the hospital.

14. The Hearing Examiner also finds the M.B.'s demeanor at the hearing to have been credible. M.B. generally seemed to remember things correctly and she answered questions directly. She described locations and events. She provided general dates and a few specific dates. She stated that the content of her dump file was accurate and denied that she manipulated any message. However, in light of all of the evidence, MB was not credible regarding the alleged rendezvous at the Sleep Center. Two people could not have entered, exited and engaged in extended sexual congress in that active medical clinic without having been noticed. In light of all of the evidence, including her fabrication of the Sleep Center episode, her account of the alleged rendezvous at the Microtel cannot be believed. Her knowledge of the layout of the Union Hall Road house could have been obtained by visiting the house alone and viewing the interior through its windows. Apparently, access to the property was not impeded by the locked chain as suggested by Mr. Kidd's testimony that he and Dr. Surayia Hasan gained access to the property even though Dr. Surayia Hasan could not get the chain unlocked. Further, the Hearing Examiner finds that MB's testimony that she received the gift of a used undershirt from the respondent not to be credible. The Board did not present a witness who corroborated M.B.'s allegations of a sexual relationship.

15. Glenna Meadows testified that everything she knows is what M.B. told her. Ms. Meadows never saw M.B. and the Respondent together. She never heard the Respondent's voice and never heard the Respondent's name mentioned in a phone call. While Ms. Meadows saw a text message, she could not say who it was from.

16. Jeffrey Benfield was told about the alleged sexual relationship by M.B. The only text messages Mr. Benfield saw related to M.B. and the Respondent were requests for medication changes and were non-sexual in nature. He never heard M.B. and the Respondent talk on the phone.

17. Kellie Aromin's understanding of the alleged affair is based on what M.B. told her. Everything Dr. Faheem knows about the alleged romance between M.B. and the Respondent was based upon conversations with M.B. or some information from M.B.'s husband.

18. Simply stated, there is not a third party who testified that they saw M.B. and the Respondent engaging in any inappropriate contact.

Board's Exhibit 1 – M.B.'s Dump File

19. The Board relies on M.B.'s dump file, admitted into evidence as Board's exhibit number 1, as evidence to corroborate the sexual relationship. The content of the text messages in M.B.'s dump file is salacious and suggests a sexual relationship between M.B. and the Respondent. The text message content is detailed and personal.

20. Nonetheless, other evidence in the record cannot be ignored. The Respondent denied that he sent M.B. any text message that was sexual in nature. The Respondent testified that he would not talk about his children in text messages to M.B. as represented by the dump file. The Respondent testified, and the AT&T records confirm, that the Respondent did not send a text message to (304) 228-7639 which is the number associated with M.B.'s dump file. The Respondent denied that he ever hid the identity of his telephone number.

21. Leonard Arthur Hand, II, a representative of the entity that prepared the dump file, testified that the Board's exhibit 1 is not the complete document provided to M.B.'s former counsel. As such, information that may have shed more light on the dump file is missing from the record. Importantly, Mr. Hand could not verify the content in the Board's exhibit number 1. While Mr. Hand testified that the best way to verify the content through forensic analysis is to have both devices on both ends of the conversation, he did not have both devices. Moreover, Mr. Hand stated that if messages were in fact manipulated, the dump file could possibly show the manipulated content.

22. Further, the Respondent presented expert testimony from John Ahearne showing that the content of the same message on M.B.'s dump file and on the DriveSaver's report were obviously different. Mr. Ahearne testified that he can verify text message content and that there was no manipulation on the Respondent's devices. Mr. Ahearne ultimately opined that the text messages are different because the content was manipulated on M.B.'s dump file. Mr. Ahearne demonstrated that some manipulations were subtle, such as the changing of one word that transformed the context of the conversation. He further explained that a text message can be manipulated on an Android device in seconds with an application available on the type of phone used by M.B. Mr. Ahearne testified that he could not find a similar application available or an iPhone, which was the type of device used by the Respondent. Like Mr. Hand, Mr. Ahearne agreed that if messages were manipulated M.B.'s dump file could show the manipulated content.

23. Respondent's telecommunications expert, Ben Levitan, testified that the true content of text messages can be obtained from a cellular phone carrier in a text detail record, which is not present in the record. Further, Mr. Levitan expected M.B.'s dump file to list other numbers associated with M.B., such as the 304-573-6918 number, which was absent. Mr. Levitan also explained that there is a limitation to the size of message a phone can send or receive and observed that messages on M.B.'s dump file exceeded the character count. While Mr. Levitan was cross-examined on a calculation that was wrong by a few characters, some messages were very lengthy and obviously exceeded the typical character count.

24. Evidence was also presented that M.B.'s number was 304-573-6918 in December 2013 and January 2014. M.B.'s dump file only lists 304-228-7639 as her number. The dump file does not identify any prior numbers for M.B. M.B. testified that she changed her number to 304-228-7639 in January 2014, but kept the same phone. The Board's investigator, Michael Kidd, did not see any texts in the cell phone records from the Respondent to 304-228-7639. Mr. Kidd was not able to obtain the phone records from 304-573-6918. Moreover, although AT&T records show that M.B. and the Respondent exchanged text messages before December 16, 2013, M.B.'s dump file is heavily redacted before this date.

25. The Board's exhibit number one was not accompanied by any exhibits or testimony to explain either the redactions or the absence of data that was produced by the analysis conducted by Mr. Ahearn. There was no unredacted copy of the data dump produced at the hearing. There was no redaction log produced at the hearing. The identity of the persons who performed the redactions was not disclosed at the hearing. No key or standard for the redactions was produced at the hearing. No evidence of the chain of custody of the Board's exhibit number one was produced at the hearing. For these reasons alone, exhibit number one has been compromised and is unreliable.

26. Additionally, the content of some messages in M.B.'s dump file conflicted with other evidence presented at the hearing. Many messages in M.B.'s dump file discuss meeting at the Microtel. M.B. testified that this encounter lasted several hours. However, evidence was presented through the Respondent's testimony, medical records signed by the Respondent, and testimony from the Respondent's wife indicating that the Microtel encounter never happened.

27. The evidence also indicated that M.B. had the means and opportunity to manipulate the content of text messages. Although AT&T records showed that the text messaging communication began as early as January 2013, the first date on M.B.'s dump file is December 16, 2013. M.B. owned an Android device during the dates listed in the dump file. Ms. Meadows testified that during the three months M.B. lived with her, M.B. stayed in a bedroom most of the time and seldom came out.

28. On its face, M.B.'s dump file purportedly reveals an alarming and inappropriate relationship between M.B. and the Respondent. If the alleged romance was fabricated, the extent of the manipulation of the data from M.B.'s telephone would be astonishing. However, M.B.'s dump file cannot be viewed in isolation; it must be considered in relation to all the evidence in the record. When considering the record as a whole, and in view of the fact that the board's exhibit number one constitutes the only corroboration of MB's testimony, the Board's exhibit number 1 is entitled to less weight because of the various issues affecting the reliability of this document as detailed in the preceding paragraphs. While the content of M.B.'s dump file is plausible, consideration of all the evidence prevents the Hearing

Examiner from determining, with a firm belief or conviction, without hesitation, that this exhibit has not been compromised.

Specific Dates Provided by M.B.

29. M.B.'s credibility was further affected by evidence refuting specific dates provided by M.B. of alleged sexual encounters.

30. M.B. testified that she and the Respondent had sex in a patient bed at the Sleep Center on August 3, 2013, at 2:30 a.m. M.B. further testified that she entered the Sleep Center through the front door, no one else was present at the Sleep Center to her knowledge, and that she and the Respondent were at the Sleep Center for approximately 2 – 3 hours, until 5:00 a.m. or 6:00 a.m. She also testified that she saw the Respondent's tattoo while they were at the Sleep Center.

31. However, Stephanie Kennedy testified that she was at the Sleep Clinic at the precise time alleged by M.B. Ms. Kennedy's time sheet shows that she arrived at the Sleep Clinic at 7:00 p.m. on August 2, 2013, and that she left after 6:45 a.m. on August 3, 2013. While M.B. testified that she entered the Sleep Center through the front door, both Ms. Kennedy and Mr. Kennedy testified that the front door has an alarm that can be heard throughout the Sleep Center. Ms. Kennedy emphatically testified that she would have known if someone was at the Sleep Center at the time in question.

32. According to M.B., she has never been to the Sleep Clinic besides the August 3, 2013 occasion. However, Mr. Kennedy recognized M.B. and remembered giving her a tour of the Sleep Center. Mr. Kennedy vividly described the tour and the unusual questions asked by M.B. about the Sleep Center's operations.

33. The only other specific date provided by M.B. was a meeting at the Microtel Inn on January 7, 2014. M.B. testified about this encounter, and M.B.'s dump file contains messages corroborating the meeting. However, there is substantial evidence in the record indicating that the Respondent did not meet M.B. at the Microtel Inn. Unfortunately,

neither party tendered any evidence from the Microtel itself as to whether a room was rented on January 7, 2014 by either the respondent or MB.

34. M.B. testified that she met the Respondent at the Microtel Inn to talk from approximately 4:30 p.m. until somewhere around 8:00 p.m. However, the Respondent provided evidence indicating that he did not meet M.B. at the Microtel Inn. The Respondent produced a medical record showing that he dictated a note at BARH at 2:39 p.m. The Respondent's evidence shows that he next went to New River Health to treat patients and provided a record showing that patients at New River Health were given prescriptions signed by the Respondent. The Respondent also produced a progress note related to a patient at Raleigh Psychiatric Services which was dictated by the Respondent at 5:03 p.m.

35. Raleigh Psychiatric Services' office manager, Mike Johnson, testified that the Respondent had to physically be in the building to make the progress note. The Respondent testified that he left his office and met his wife for dinner at Cracker Barrel. Dr. Wasylyk likewise testified that she went to dinner with the Respondent at Cracker Barrel at around 5:30 p.m. Both the Respondent and Dr. Wasylyk testified that they went to the grocery store after dinner and then went home.

36. In addition to conflicting evidence on whether the Respondent was at the Microtel Inn, there is also conflicting evidence regarding the events that allegedly occurred there. M.B. testified that she obtained Dr. Wasylyk's number from the Respondent's phone, remembered the number, waited for the Respondent to leave the hotel, and then called Dr. Wasylyk. However, the Board's investigator, Michael Kidd, testified that M.B. told him that she grabbed the Respondent's cell phone while he was out of the room but still on the premises, placed a phone call to Dr. Wasylyk while the Respondent was still at the Microtel Inn, and told her that she has been with the Respondent since 4:00 p.m. According to Dr. Wasylyk, M.B.'s statements during the call made her think that the Respondent was with M.B. at that moment. However, Dr. Wasylyk testified that the Respondent was home when she received the call.

37. Taken together, this evidence strongly indicates that the Respondent was not at the Microtel and is in direct conflict with M.B.'s testimony and the content of messages in

M.B.'s dump file and the hearing examiner finds that the alleged rendezvous at the Microtel did not take place.

M.B.'s Communications with the Respondent after 1/7/14

38. There is also evidence in the record showing that M.B. recanted her allegation of a sexual relationship with the Respondent.

39. M.B. testified that she attempted to communicate with the Respondent despite knowledge of a no-contact agreement. The Respondent testified that from April 2014 until July 2014, he received approximately 200 text messages and 19 voicemails from M.B. M.B. did not deny these communications.

40. The Respondent testified that he received a text message from M.B. in May 2014 which read "I promise to tell the truth I lied about the sex thing if you just talk to me." [Resp.'s Ex. 10.] M.B. denied that she would have authored the substance of the message. The Respondent brought the cell phone he received the text message on, which showed the same message attributed to M.B.

Union Hall House

41. M.B. testified that she and the Respondent had sex at the Union Hall house. This house is on property that adjoins the Respondent's residence. The house can be seen, and is within walking distance from, the Respondent's house. While M.B. accurately described many features of the Union Hall house, there were many inaccuracies in her testimony. M.B. testified that she and the Respondent first met at the Union Hall house in late January or early February 2013, and that she and the Respondent had sex in the first bedroom on the right. M.B. stated that the bedroom was attached to a bathroom and specifically stated that the room had carpet. However, photographs taken in 2012 and admitted into evidence as the Respondent's exhibit number 3 show that neither bedroom attached to a bathroom had carpet. Additionally, Dr. Surayia Hasan testified that the house was purchased in 2011 and nothing was done to improve the house.

42. M.B. also testified that the utilities were not on and that there was not a big difference between how cold it was inside from outside. However, electricity bills admitted into evidence as the Respondent's exhibit number 25 show that the electricity was turned on November 23, 2011, and was not turned off until January 20, 2014. Therefore, at all times alleged by M.B., the house had electricity. Moreover, Dr. Surayia Hasan, who owns the house, testified that the electricity was used to heat the house in the winter. The electric bills confirm that more electricity was used in the colder months.

43. There was also conflicting evidence regarding a gate at the entrance of the Union Hall house. M.B. testified that during her initial visits to the Union Hall house in early 2013, she did not have to unlock anything, there was no gate and there was nothing that prevented her entry. M.B. further testified that a gate was present in October or November 2013. However, both an area resident and Dr. Surayia Hasan stated that a chain was in place before the gate which prevented a vehicle from going down the house's driveway. Moreover, Dr. Surayia Hasan testified that the chain was replaced with a gate in approximately 2012. The Respondent and Dr. Rabiya Hasan also testified that a gate was installed in 2012. Additionally, Mr. Kidd testified that an area resident had not seen anyone go through the property since the gate was installed. The Respondent testified that he has not driven his car down Union Road since the gate has been up.

44. While M.B. did know where the house was located, evidence in the record indicates that the existence of the house was no secret. According to M.B.'s testimony, the Respondent said his father owned the house. However, M.B. told Ms. Meadows that she thought the Respondent owned the house but checked on it and learned that the Respondent's father owned the house. An area resident interviewed by Mr. Kidd knew the prior owner and current owner of the house. Dr. Surayia Hasan testified that the house was rental property before she purchased it, and Mr. Benfield mentioned rental property. Additionally, a flier was displayed at the hearing that was publicly circulated showing the Union Hall property and the Respondent's adjoining property and specifically identifying the owners of each respective property.

Gifts

45. Conflicting evidence was also presented regarding whether M.B. received certain gifts from the Respondent. M.B. testified that the Respondent gave her a white Reebok t-shirt which was admitted into evidence as the Board's exhibit number 7. The t-shirt appeared dingy and well-worn. The Respondent denied giving M.B. the t-shirt, and testified that he wears Hanes brand. Dr. Wasylyk testified that she does most of the Respondent's shopping and buys Hanes for the Respondent.

46. M.B. also testified that the Respondent gave her a necklace which was admitted into evidence as the Board's exhibit number 6. M.B. testified that she did not know why the Respondent gave her the necklace. However, Ms. Meadows testified that M.B. said the necklace was either a birthday or Christmas present. The Respondent denied giving M.B. a necklace, and stated that he gave his daughter a similar necklace. The Respondent testified that his daughter visited him in the office and placed the necklace on a teddy bear on a shelf, where it has remained since 2012. Dr. Wasylyk also recognized that the necklace looked like the necklace given to their daughter which remains in the Respondent's office.

Conclusion as to Counts I and III

47. Based upon a thorough review of the evidence presented, the Hearing Examiner is not left with a firm belief or conviction as to M.B.'s allegations of a sexual relationship or the allegation that the Respondent exercised influence within the patient-physician relationship for the purpose of engaging M.B. in sexual activity. M.B.'s testimony given at the hearing was uncorroborated except for the data dump. It is directly contradicted by the testimony of the respondent. But in light of the fact that Board's exhibit no. 1 is incomplete, has been, to some unknown extent, manipulated, and has been redacted without any identification of what was redacted or who performed the redaction, it's weight as evidence must be substantially discounted. The evidence has not been so clear, direct, weighty, and convincing as to enable the Hearing Examiner to come to a clear conviction, without hesitation, of a sexual relationship between M.B. and the Respondent.

48. Accordingly, the Hearing Examiner concludes that the Board has not established by clear and convincing evidence that the Respondent exercised influence within the patient-physician relationship for the purpose of engaging M.B. in sexual activity as alleged in Count I of the Board's Amended Complaint.

49. The Hearing Examiner further concludes that the Board has not established by clear and convincing evidence that the Respondent entered into a sexual relationship with M.B. as alleged in Count III of the Board's Amended Complaint.

Count II

50. Count II alleges that the Respondent engaged in professional misconduct by not immediately terminating the physician-patient relationship when the interactions and/or communications became sexual in nature. [Bd.'s Am. Compl. at ¶¶ 38-41.]

51. Much of the testimony offered by the Board's medical expert, Dr. Wettstein, related to documentation. While Dr. Wettstein testified that he expected to see more documentation regarding M.B.'s transfer, he did not otherwise testify that the Respondent departed from, or failed to conform to, the standards of acceptable and prevailing psychiatric practice with regard to the termination of the physician-patient relationship.

52. The Respondent's medical expert, Dr. Gutheil, testified generally that he has observed in his forensic work that doctors continue to treat patients even though termination of the relationship and referral would be wiser because doctors enter the field to help people and have emotional difficulty with firing a patient.

53. With regard to the transfer of care in this case, Dr. Gutheil observed that M.B. was first hospitalized and then transferred within the hospital. Dr. Gutheil testified that this type of transfer is the safest way to transfer because any issues that may arise are dealt with in a protected setting. Dr. Gutheil explained that such a transfer provides the patient with a cushion of treatment staff who can deal with whatever emotional consequences arise from the transfer.

54. Dr. Gutheil also testified that there must be a person at the other end willing to take on the case. M.B. was transferred to Dr. Faheem, who testified that he was fully competent and capable of taking over M.B.'s care.

55. Dr. Gutheil observed that the termination, the transfer and the availability of a subsequent treater was present in this case. Dr. Gutheil opined that the transfer of care was appropriate, and that the way in which M.B. was transferred to Dr. Faheem who was willing to take the case was appropriate. The record in this matter supports Dr. Gutheil's opinions.

56. Additionally, there is conflicting evidence in the record regarding whether any communications were sexual in nature before M.B.'s December 26, 2013 office visit. Evidence in support of communications sexual in nature before M.B.'s last office visit is based largely on M.B.'s testimony and M.B.'s dump file. However, there is no corroborating evidence that messages exchanged before M.B.'s last office visit were sexual in nature.

57. The Respondent testified that early text messages exchanged with M.B. were more supportive, medication related, questions about anxiety, questions about different medications and questions about different disorders. The Respondent testified that the volume of text messages fluctuated with psychosocial stressors faced by M.B., but remained non-sexual in nature. The Respondent recalled that in December 2013, M.B. was upset and the volume of text messages increased significantly after some escalated conflict at M.B.'s work. The Respondent explained that he did not terminate M.B. as a patient for the increased text messaging because he had been treating her for approximately two years at that time, and he did not feel that abandoning his patient because of increased psychosocial stressors was the right thing to do. Additionally, the Respondent testified that he did not know M.B. was going to allege a sexual relationship when M.B. was admitted to the hospital for suicidal ideations.

58. Further, the only text messages Mr. Benfield saw between M.B. and the Respondent were non-sexual in nature and related to medication. Mr. Benfield never heard M.B. and the Respondent talk on the phone. While Ms. Meadows saw a text message with sexual connotations, she could not say who it was from. Moreover, Ms. Meadows repeatedly testified that everything she knows is what M.B. told her.

59. Dr. Wasylyk testified that she has on occasion observed text messages received on the Respondent's phone, and has not seen any text messages that were sexual or salacious in nature. Dr. Wasylyk also testified that it was typical for the Respondent to leave his phone places like at his house, on the table or on the kitchen counter. There was no evidence that the Respondent was guarded or secretive about his phone as might be expected if inappropriate messages were exchanged.

60. For the reasons described above, the board has not proven by clear and convincing evidence that a sexual relationship took place between MB and the respondent. Obviously, had that relationship existed, the obligation to terminate the physician-patient relationship would have arisen immediately. That not being the case, and the credibility of the board's exhibit number one having been compromised, it is impossible for the hearing examiner to find by clear and convincing evidence that there was a specific point prior to January 31, 2014 when the respondent was obligated to sever the relationship.

61. While the significant amount of text messages exchanged between M.B. and the Respondent is concerning, the Board failed to present evidence supported by expert testimony regarding precisely when the physician-patient should have been terminated and otherwise failed to prove by clear and convincing evidence that the standard of care was violated by the Respondent not terminating the physician-patient relationship prior to M.B.'s care was transferred on January 31, 2014.

62. Based on the evidence presented, the Board has not established by clear and convincing evidence that the Respondent conducted himself dishonorably, unethically, or unprofessionally with regard to the termination of the physician-patient relationship as alleged in Count II of the Board's Amended Complaint.

63. Further, the Board has not established by clear and convincing evidence that the Respondent departed from, or failed to conform to, the standards of acceptable and prevailing medical practice, and more specifically the ethics of the psychiatric profession, with regard to the termination of the physician-patient relationship as alleged in Count II of the Board's Amended Complaint.

64. More particularly, the Board has not established by clear and convincing evidence that the Respondent violated or failed to conform to the standards of acceptable and prevailing medical practice within the state, or departed from or failed to conform to the current principles of medical ethics of the American Medical Association with regard to termination of the physician-patient relationship as alleged in Count II of the Board's Amended Complaint.

Count IV

65. Count IV alleges that the Respondent engaged in malpractice and/or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician by failing to appropriately respond to M.B.'s reports of suicidal ideation. [Bd.'s Am. Compl. at ¶¶ 46-48.]

66. M.B.'s last office visit with the Respondent occurred on December 26, 2013. The record from this visit indicates that M.B. was not acutely suicidal.

67. The Respondent testified he informed M.B. on January 7, 2014, that the messages were too intrusive and told her to contact him through his office only. The Respondent further testified that he informed M.B. he was going to block her number. Although Dr. Gutheil was testifying generally, he stated that the best way to remedy a situation involving someone who crosses boundaries of ordinary appropriate behavior in the psychiatry profession is attrition which includes not responding.

68. The evidence in the record shows that M.B. was not admitted to the hospital for reports of suicidal ideations until over three weeks later on January 30, 2014. While M.B. testified that she texted the Respondent that she planned to commit suicide, the Respondent testified that he blocked M.B.'s number and denied that he ever received any text message regarding M.B. wanting to harm herself.

69. M.B. was admitted to the hospital for suicidal ideations on January 30, 2014. She saw the Respondent in the hospital the next morning and requested a transfer to Dr. Faheem. The Respondent accommodated M.B.'s request and transferred M.B. to Dr. Faheem's

services on January 31, 2014. The transfer order written and signed by the Respondent was admitted into evidence as the Respondent's exhibit number 12.

70. As of January 31, 2014, M.B. was under the care of Dr. Faheem. Dr. Faheem determined that it was safe and appropriate for M.B. to go home, and he discharged M.B. on February 3, 2014.

71. M.B. had follow up treatment with Dr. Faheem after her discharge. During her February 18, 2014 visit, M.B. denied suicidal ideations. M.B. attempted suicide on February 20, 2014, which came as a very big surprise to Dr. Faheem. Dr. Faheem testified that M.B. had not given any impression that she would overdose.

72. On this record, the Board failed to establish by clear and convincing evidence that the Respondent departed from, or failed to conform to, the standards of acceptable and prevailing medical practice, and more specifically the ethics of the psychiatric profession, with regard to whether the Respondent failed to appropriately respond to M.B.'s reports of suicidal ideation as alleged in Count IV of the Board's Amended Complaint.

Count V

73. Count V alleges that the Respondent engaged in malpractice and/or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician by failing to consider the clinical significance of his outside the office communications with M.B. [Bd.'s Am. Compl. at ¶¶ 49-51.]

74. In considering this charge, the Respondent's form of treatment must be considered. Both medical experts agreed that the Respondent's treatment of M.B. was pharmacotherapy rather than individual psychotherapy. Dr. Wettstein explained that pharmacotherapy is a form of treatment which is primarily medication management. The focus is on the patient's symptoms of illness, medications, the response to the medications and the changes in the medications.

75. This distinction is important because Dr. Gutheil explained that the text messages were outside the pharmacotherapy treatment realm, and that it is fairly common for

doctors who only prescribe medications to limit their documentation to the question of symptoms and treatment.

76. Dr. Gutheil opined that the Respondent's practice of medicine is clearly within the standard of care and provided four reasons in support of his opinion. Specifically, Dr. Gutheil observed that the Respondent does repeated assessments of the patient's condition or situation, the Respondent repeatedly obtains informed consent and invites questions about the medications which are appropriate medications, the Respondent records the symptoms of each visit and notes at several points the improvement in those symptoms, and the Respondent notes that the history is important to understand in relation to the patient's present condition.

77. Likewise, Dr. Wettstein noticed that the Respondent would change M.B.'s medication and document such changes. Additionally, the Respondent testified that if an outside the office communication caused a change in medication, he would document the change. There was evidence in the record that the Respondent documented such a change in M.B.'s September 2013 note.

78. Dr. Wettstein stated that over 4,000 text messages exchanged between M.B. and the Respondent is exceptional. Dr. Gutheil agreed with Dr. Wettstein's assessment. However, Dr. Wettstein testified that there is no bright line rule or standard saying that a certain amount of text messages is excessive.

79. Based upon the type of treatment provided to M.B., there is not sufficient evidence in the record to conclude that the Respondent engaged in unprofessional or unethical conduct for failing to consider the clinical significance of his outside the office communications with M.B.

80. Based upon the evidence in the record, and specifically on the fact that the medical experts agree the Respondent was practicing pharmacotherapy instead of psychotherapy, the Board has not established by clear and convincing evidence that the Respondent departed from, or failed to conform to, the standards of acceptable and prevailing medical practice with

regard to his outside the office communications with M.B. as alleged in Count V of the Board's Amended Complaint.

Count VI

81. Count VI alleges that the Respondent departed from and failed to conform to the standards of acceptable and prevailing medical practice and the ethics of the medical profession by failing to keep written records justifying the course of treatment for M.B. [Bd.'s Am. Compl. at ¶¶ 52-55.]

82. Dr. Wettstein provided extensive testimony regarding the issue of documentation. Dr. Wettstein testified that general interactions with a patient outside the office should be documented, and that any significant contact with a patient outside the office should be documented which includes electronic messages or other telecommunications. Dr. Wettstein explained that text messages are included if they are a significant part of the patient's presentation or part of the treatment.

83. Dr. Wettstein testified that if the text messaging is part of the treatment because it is a means to calm anxiety, that should be documented as a treatment technique, that any treatment attempts and failures should also be documented, and that if the relationship changed between the doctor and the patient, or if the patient's feelings about the doctor become much more personalized, that is essential to document. Additionally, incessant text messages from the patient and obsessive behavior should be documented. Yet, Dr. Wettstein did not find any documentation of these events in the medical record.

84. Dr. Wettstein added that the Respondent should have documented that he was considering ending the physician-patient relationship because of M.B.'s abnormal behavior, that he advised M.B. to contact him through his office only, and that he blocked text messages and phone calls from M.B. Dr. Wettstein also testified there was no documentation that the Respondent attempted to set and maintain boundaries of the physician-patient relationship.

85. Dr. Wettstein relied on an article published by the "Annals of Internal Medicine," which provides guidance in this case. According to this article, medical records

should contain accurate and complete information about all communications including those done in person and by telephone, letter or electronic means.

86. Dr. Wettstein stated that over 4,000 text messages exchanged between M.B. and the Respondent is exceptional. However, he further explained that there is no bright line rule or standard saying that a certain amount of text messages is excessive.

87. Dr. Wettstein considered the failure to document as severe and opined that the Respondent violated the standard of psychiatric care for failure to document.

88. Dr. Gutheil agreed that the amount of texts exchanged is excessive and stated that he would prefer some documentation, but because it's outside of the treatment realm an argument could be made that the excessive messages do not belong in the record. Dr. Gutheil distinguished communications with a doctor and a patient that is outside the treatment realm.

89. Dr. Gutheil explained that a patient comes to a psychopharmacologic treatment because of symptoms, and if a doctor notes symptoms, then the doctor needs to record those symptoms because it is what the doctor is going to be treating. Beyond that, Dr. Gutheil classified the documentation as optional. Dr. Gutheil added that while he would prefer a doctor to document a patient's communications regarding an alleged sexual relationship, it is fairly common for doctors who only prescribe medications to limit their documentation to the question of symptoms and treatment.

90. Dr. Gutheil testified that it probably would have been a good idea to document the harassing intrusions and issues pertaining to M.B. toward the end of treatment. However, Dr. Gutheil pointed out that arguably such information is not part of the medical record for the type of treatment the Respondent provided M.B. because such document is gratuitous and not about the patient's treatment.

91. Dr. Wettstein also expected to see the doctor explain the reasons for the patient's transfer request and the doctor's approach to that request. Dr. Gutheil was asked on cross-examination whether Respondent should have documented an explanation as opposed to

just saying he is transferring care. Dr. Gutheil directly responded that he would have preferred it to be documented, but the notes in M.B.'s medical record adequately covered the situation.

92. Additionally, Dr. Wettstein stated that if M.B. was stalking the Respondent after treatment, that should be documented. Dr. Wettstein added that there is no reason to stop the documentation after the physician stops seeing the patient in the office. Dr. Gutheil disagreed and firmly stated that once treatment is terminated, the burden of documentation falls on the subsequent treater. Dr. Gutheil explained that since there is no chart, if the patient is seeing somebody else, there is no reason to document what is going on. Dr. Gutheil testified that the standard of care does not require that someone document contact with a patient after the physician/patient relationship has been terminated.

93. Dr. Gutheil also commented on what he called a fundamental tension in all treatment but especially treatment of health care professionals in which the treater is often torn between appropriate recording of the treatment, which is required, and creating stigma or damaging the person's reputation as a functioning care giver. Dr. Gutheil explained that different people solve that in different ways. Dr. Gutheil stated that the best approach is including the facts, but he can see individuals not getting into details of out of control behavior.

94. Indeed, the medical record in this case highlights Dr. Gutheil's testimony. Dr. Faheem explained that he purposefully did not identify the conflict involving M.B. and the Respondent because the patient charts are seen by quite a few people who come onto the unit, and he felt that he should not identify the Respondent by name. Dr. Faheem emphasized that he was protecting the Respondent by not documenting the Respondent's identity in numerous notes.

95. With regard to his documentation in M.B.'s medical record, the Respondent explained that M.B.'s status of a healthcare professional influenced his documentation. The Respondent readily admitted that he did not document that he was trying to help M.B. through life stressors by responding to text messages or the increase in volume of text messages in the medical records. Much like Dr. Faheem's notes leaving out information about the Respondent, the Respondent testified that he wanted to limit what he put in the record because M.B. is a healthcare professional being treated at a small hospital.

96. With regard to the transfer order, the Respondent explained that he did not make a note of M.B.'s behavior because he was concerned about how the situation would escalate, and added that he did not know M.B. was going to allege a sexual relationship at that time. The Respondent further stated that he would not document in the chart after termination of treatment, and that he was advised by counsel not to document in the chart after termination of treatment.

97. As discussed in detail above, Dr. Gutheil opined that the Respondent's practice of medicine is clearly within the standard of care and that his documentation of reasonable care is appropriate and provide four specific reasons in support of his opinion. Dr. Wettstein also noticed that the Respondent would change M.B.'s medication and document such changes. Additionally, the Respondent testified that if an outside the office communication caused a change in medication, he would document the change.

98. Therefore, the Hearing Examiner concludes that the Board has not established by clear and convincing evidence that the Respondent failed to keep written medical records justifying the course of treatment for M.B.

99. Nonetheless, while the Hearing Examiner acknowledges that the Respondent's treatment of M.B. was primarily pharmacotherapy rather than individual psychotherapy, and understands that there is not a bright line rule or standard regarding how many text messages are excessive, the Hearing Examiner concludes that there is far too much evidence of outside the office communications without corresponding documentation.

100. Consequently, the Board has established by clear and convincing evidence that the Respondent departed from, and failed to conform to, the standards of acceptable and prevailing medical practice and the ethics of the medical profession by failing to document his outside the office communications with M.B. and by failing to document any clinical significance the Respondent considered such communications to have as alleged in Count VI of the Board's Amended Complaint.

101. By failing to document his outside the office communications with M.B. and by failing to document any clinical significance the Respondent considered such communications to have as alleged in Count VI of the Board's Amended Complaint, Respondent has departed from and failed to conform to the standards of acceptable and prevailing medical practice and the ethics of the medical profession, all of which is grounds for disciplinary action.

102. The Board may enter an Order imposing disciplinary sanctions when it is found that the physician has violated West Virginia Code § 30-3-14(c) and/or the rules promulgated pursuant to the Medical Practice Act.

103. The Board is authorized to impose one or more of the following disciplinary measures as appropriate to the particular circumstances of a case:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for a period not to exceed ten years;

(5) Require him or her to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and,

(8) Assess a civil fine of not less than $1,000 nor more than $10,000.

W. Va. Code § 30-3-14(j).

104. The protection of the public interest requires that the Board not condone unprofessional conduct by failing to impose appropriate sanctions on a licensee who engages in such conduct.

105. Previous disciplinary case orders as filed with the office of the West Virginia Secretary of State pursuant to West Virginia Code § 29A-2-9 are Board precedent.

106. The Hearing Examiner is not aware, and the parties have not cited, any Board precedent revoking a practitioner's license for charges related to documentation.

107. The West Virginia Supreme Court has recognized that the failure to keep adequate or complete medical records alone is not a violation sufficient to warrant revocation of a practitioner's license. *See Clark v. W. Va. Bd. of Medicine*, 203 W. Va. 394, 508 S.E.2d 111 (1998).

Recommended Decision

The most damning allegations against the Respondent were not proved by clear and convincing evidence and cannot, therefore, be considered in determining an appropriate sanction. Thus, the focus of the issue of just punishment for the Respondent turns on the Respondent's violations of statutory and regulatory law that were proven by clear and convincing evidence. The Respondent's violations are not sufficient to justify the revocation of his medical license.

A difficult issue in this matter is what the appropriate punishment is for the Respondent. The Respondent has not faced any prior professional complaints, and testified that he had never faced such a situation in his practice before. Nonetheless, the Respondent's unprofessional conduct with regard to documentation merits discipline.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner RESPECTFULLY RECOMMENDS that the West Virginia Board of Medicine find that the Respondent violated the West Virginia Code and the Board of Medicine's Legislative Rules as set forth above. Further, the Hearing Examiner RESPECTFULLY RECOMMENDS that the West Virginia Board of Medicine find that it is proper and in the public interest, health, welfare and safety to:

a. That Dr. Hasan be assessed a fine in the amount of $3000.00, which is due and owing within thirty days of the issuance of a Final Order;

b. That Dr. Hasan is hereby **ORDERED** to pay the costs and expenses of these proceedings, including, but not limited to, costs associated with the services provided by the Hearing Examiner, the court reporter and expert witness Dr. Wettstein, and all other costs of investigation and prosecution of this matter. Payment shall be made by Dr. Hasan to the Board within thirty (30) days of the issuance of an Invoice by the Board.

c. That Dr. Hasan is **PUBLICLY REPRIMANDED** for his conduct;

d. That Dr. Hasan's license is placed on **PROBATION** for a period of **THREE (3) YEARS**, during which time Dr. Hasan may practice medicine and surgery in the state of West Virginia pursuant to the limitations imposed by the following terms and conditions of probation:

   i. At his own expense, and within ninety (90) days of the issuance of the Final Order in this matter, Dr. Hasan shall enroll in and successfully complete a course designated and approved by the Board providing the equivalent of no fewer than fifteen (15) AMA Category I continuing medical education (CME) hours

from an accredited CME provider, on the subject of medical records and documentation. Successful completion of the course CME course shall be determined solely by the CME provider. Dr. Hasan shall submit proof satisfactory to the Board that he has completed the fifteen (15) CME hours within five (5) business days of his completion thereof;

ii. During Dr. Hasan's period of probation, and without prior notice to Dr. Hasan, the West Virginia Board of Medicine shall conduct a chart review of Dr. Hasan's medical records. Upon request, Dr. Hasan shall immediately provide the Board's Investigator with on-site access to all medical records/charts for active patients. Upon request, Dr. Hasan shall also produce a complete and legible copy of up to ten (10) medical records/charts selected by the Board's Investigator for off-site review by the Board within five (5) business days of such request. Adverse results from any such chart review shall be reported to the Complaint Committee of the Board for review and potential action. The Board may conduct up to two (2) random chart audits in each of Dr. Hasan's three years of probation; and

iii. Dr. Hasan shall appear before the Board or a designated Committee thereof on an annual basis to discuss his practice and matters relative to the terms and conditions set forth herein at a date and time selected by the Board.

ENTERED: June 13 2017

Herschel H. Rose III, Esquire
Hearing Examiner