Supreme Court of Ohio Clerk of Court - Filed August 03, 2020 - Case No. 2020-0943

IN THE SUPREME COURT OF OHIO

Christopher R. Seman, D.O.,	:	
	:	Case No.
Appellant,	:	
	:	On Appeal from the Franklin County
v.	:	Court of Appeals, Tenth Appellate District
	:	
State Medical Board of Ohio,	:	Court of Appeals
	:	Case No. 19AP-613
Appellee.	:	

NOTICE OF APPEAL OF APPELLANT CHRISTOPHER R. SEMAN, D.O.

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NOTICE OF APPEAL OF APPELLANT CHRISTOPHER R. SEMAN, D.O.

Christopher R. Seman, D.O., hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Christopher R. Seman, D.O. v. State Medical Board of Ohio, Court of Appeals Case No. 19AP-613 on June 19, 2020.

This case is a case of public or great general interest and involves a substantial constitutional question.

Respectfully submitted,

/s/Eric J. Plinke
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served via U.S. mail this 3rd day of August, 2020, upon:

Melinda R. Snyder
Assistant Attorney General
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30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400

s/Eric J. Plinke
Eric J. Plinke

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Franklin County Ohio Court of Appeals Clerk of Courts- 2020 Jun 19 10:48 AM-19AP000613

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Christopher R. Seman, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 19AP-613 (C.P.C. No. 18CV-7876)
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on June 16, 2020, appellant's three assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Any outstanding appellate court costs are assessed to appellant.

SADLER, P.J., BROWN, and KLATT, JJ.

/S/ JUDGE

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Tenth District Court of Appeals

Date: 06-19-2020

Case Title: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Case Number: 19AP000613

Type: JEJ - JUDGMENT ENTRY

So Ordered

/s/ Judge Lisa L. Sadler

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Christopher R. Seman, D.O.,	:	
Appellant-Appellant,	:	
v.	:	No. 19AP-613 (C.P.C. No. 18CV-7876)
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on June 16, 2020

On brief: *Dinsmore & Shohl*, *LLP*, *Eric J. Plinke*, and *Heidi W. Dorn*, for appellant.

On brief: *Dave Yost*, Attorney General, and *Melinda R. Snyder*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

SADLER, P.J.

{¶ 1} Appellant-appellant, Christopher R. Seman, D.O., appeals from the judgment of the Franklin County Court of Common Pleas affirming an order of appellee-appellee, State Medical Board of Ohio ("board"), to suspend appellant's license to practice medicine for an indefinite period, not less than one year. For the following reasons, we affirm the decision of the court of common pleas.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant has been licensed to practice medicine in the state of Ohio since 1999. Between 2002 to 2012, appellant was board certified in general psychiatry, child psychiatry, and family practice. In 2010, appellant began working as an independent contractor at Columbiana County Counseling Center. In and around 2012, Patient 1 began

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working at the counseling center in the children's division as a youth community psychiatric support treatment provider ("case manager"). On or about March 9, 2015, appellant self-reported to the board that he had engaged in a sexual relationship with Patient 1. On June 1, 2017, appellant participated in a board deposition regarding the affair.

{¶ 3} On September 13, 2017, the board issued a notice to appellant stating in relevant part:

> On or about March 9, 2015, you self-reported to the Board and subsequently confirmed to a Board Investigator that you engaged in sexual conduct with Patient 1, who was also a co-worker. On or about June 1, 2017, you stated under oath that you had provided non-controlled prescriptions without maintaining a patient record for and without performing an examination of Patient 1. You further stated that you engaged in a sexual conduct with Patient 1 from approximately October 2013 to January 2015. The prescriptions that you wrote for Patient 1 (including, Orth[o] Tri-Cyclen on December 6, 2013, and January 10, 2014; Augmentin on December 23, 2013; Fluconazole on November 6, 2014, and January 9, 2015; and Bupropion on January 12, 2015) indicate that you provided medical care to her during the time you acknowledged engaging in sexual conduct with her.

(Sept. 13, 2017 Notice.)

{¶ 4} Based on these facts, the board alleged a violation of Ohio Adm.Code 4731-26-02, commonly referred to as the "sexual misconduct rule." The letter advised appellant that he was entitled to a hearing, which appellant requested.

{¶ 5} On April 3, 2018, an administrative hearing was held on the matter. An additional day of the hearing was held on April 24, 2018 at appellant's request. Appellant and Patient 1 were the only witnesses to testify at the proceeding. Patient 1 testified that she met appellant within her first few weeks at the counseling center. Appellant and Patient 1 would regularly work together on cases and became friends. Patient 1 testified that in summer 2013, appellant began to show interest in her personally by inviting her to lunch at his office and would call regarding subjects not related to work. Appellant testified that in October 2013, the relationship with Patient 1 became romantic. Within one month of having sexual intercourse, appellant wrote Patient 1 a prescription for Ortho Tri-Cyclen, a form of birth control. During the 18-month relationship, they carried on their affair at the office, a hotel, and at Patient 1's home.

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{¶ 6} Appellant testified that he did not keep patient records for Patient 1, conduct a physical, take her medical history, keep a chart, and did not know whether she was also receiving prescriptions from her primary care physician while prescribing her medications. Appellant testified that during their relationship, he wrote Patient 1 six prescriptions including birth control, antibiotics, and an antidepressant. Appellant also conceded that he never performed a psychiatric examination on Patient 1 about her diagnosis for anxiety before prescribing the antidepressant. Appellant stated "I lost objectivity before I even wrote these prescriptions for her. The whole relationship was a loss of objectivity. It was a boundary violation, not just from a doctor/patient perspective but from a professional-person-you-work-with perspective having relationships with people at work." (April 3, 2018 Tr. at 48.)

{¶ 7} Patient 1 testified appellant was in a superior position at work because he was a psychiatrist and she was a case manager. Patient 1 stated she felt appellant was trying to cut out her primary care physician by "taking over (her) medical care pretty much. * * * So I grew out of that relationship with my doctor." (Tr. at 95.) Patient 1 testified she began to trust appellant more as she confided in him about personal matters. "I began to feel more dependent on him to normalize or almost for permission to feel a certain way." (Tr. at 97.) In early 2015, Patient 1 informed appellant she was pregnant. After a blood test confirmed the pregnancy, appellant disclosed the affair to his wife and self-reported to the board.

{¶ 8} Throughout the proceeding, the hearing examiner overruled appellant's objections permitting testimony concerning appellant's disclosure to third parties of the affair, his disclosure of Patient 1's health care information, and whether Patient 1 was considering an abortion. Appellant moved to continue the hearing to obtain new information, which was granted in part allowing appellant time to identify text messages to respond to these allegations. When the hearing resumed, appellant stated he was unable to obtain this information based on the age of the messages.

{¶ 9} On August 1, 2018, the hearing examiner issued a report and recommendation. While the original hearing examiner, Danielle Blue, left the board prior to the report being issued, another hearing examiner, Rhonda Shamansky, reviewed the record and ultimately issued the report and recommendation. The hearing examiner concluded that appellant was in violation of Ohio Adm.Code 4731-26-02 and recommended

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appellant be suspended for at least one year "with conditions for reinstatement, followed by a period of probation." (Aug. 1, 2018 Report & Recommendation at 26.) Appellant filed objections to the report and recommendation on August 16, 2018.

{¶ 10} The board considered appellant's objections at the September 12, 2018 meeting. Dr. Michael Schottenstein summarized the case and stated appellant used prescribing medications as "manipulative behavior designed to maintain the relationship" and as a "tool with which to bind Patient 1 to him." (Sept. 12, 2018 Bd. Minutes at 24442, 24443.) The board ultimately voted unanimously to adopt the hearing examiner's findings of fact and conclusions of law. The board imposed an indefinite suspension (of no less than one year) of appellant's medical license with conditions for reinstatement, followed by a probationary period of at least one year. The matter was appealed to the Franklin County Court of Common Pleas.

{¶ 11} On August 16, 2019, the trial court overruled appellant's seven assignments of error and affirmed the board's order finding the ruling was based on reliable, probative, and substantial evidence. Relevant to the instant appeal, the trial court found the testimony concerning appellant's disclosures to third parties of Patient 1's pregnancy, her personal health information, their workplace relationship, and that Patient 1 was considering an abortion were aggravating factors pursuant to the board's rules and did not constitute a due process violation. The trial court also concluded these disclosures were relevant evidence to the issue of whether appellant exploited Patient 1 and any error in admitting evidence that could have constituted another violation was harmless because appellant acknowledged the conduct and was only punished for the single violation. "The notice informed Appellant that all the information surrounding the relationship and the prescribing of the drugs would be an issue." (Aug. 16, 2019 Decision & Entry at 5.) The trial court also found Dr. Schottenstein's comments at the meeting did not constitute new evidence or modify the hearing examiner's findings by allegedly making an inference of exploitation to create a violation of the board's sexual misconduct rule.

{¶ 12} Regarding appellant's claim that there was no evidence of exploitation since the relationship predated any treatment, the trial court found that even if the relationship predated any medical care, "*continuing* the sexual relationship while prescribing medications exploits the physician-patient relationship." (Emphasis sic.) (Decision &

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Entry at 8.) The trial court noted while it was not convinced that evidence of explicit exploitation was required because a sexual relationship between a physician and patient is inherently exploitative, the trial court concluded there was ample evidence of exploitation in Patient 1's testimony. "To adopt the Appellant's interpretation of the rule would ignore the patently obvious fact that a physician can easily use his or her influence over the patient to maintain, or prolong, a pre-existing sexual relationship." (Decision & Entry at 8.) Finally, the trial court concluded Patient 1 did not qualify as a "family member" under Ohio Adm.Code 4731-11-08(C).

{¶ 13} Appellant filed a timely appeal to this court.

II. ASSIGNMENTS OF ERROR

{¶ 14} Appellant assigns the following as trial court error:

> [1.] The Trial Court Erred in Failing to Find a Due Process Violation from the Board's Proceedings Which Exceeded the Scope of the ORC Ch. 119.07 Notice and Violated Due Process.
>
> [2.] The Board Order is Contrary to Law as the Order was Based on a New and Unsupported Allegation Made First at the Board Meeting.
>
> [3.] The Board's Order Is Contrary To Law Because The Board Found A Violation of The Board's Sexual Misconduct Rule Where No Evidence of Exploitation Exists And The Finding Conflicted With Another Board Rule.

III. STANDARD OF REVIEW

{¶ 15} Pursuant to R.C. 119.12, a common pleas court, when reviewing an order of an administrative agency, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and whether the order is in accordance with law. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110-11 (1980). The Supreme Court of Ohio has defined the concepts of reliable, probative, and substantial evidence as follows:

> (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St.3d 570, 571 (1992).

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{¶ 16} The common pleas court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " *Lies v. Veterinary Med. Bd.*, 2 Ohio App.3d 204, 207 (1st Dist.1981), quoting *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 280 (1955). The common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad* at 111. The common pleas court conducts a de novo review of questions of law, exercising its independent judgment in determining whether the administrative order is " 'in accordance with law.' " *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471 (1993), quoting R.C. 119.12.

{¶ 17} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993). The appellate court is to determine only whether the common pleas court abused its discretion. *Id.* Absent an abuse of discretion, a court of appeals may not substitute its judgment for that of an administrative agency or the common pleas court. *Id.* An appellate court, however, has plenary review of purely legal questions. *Big Bob's, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 02AP-708, 2003-Ohio-418, ¶ 15.

IV. LEGAL ANALYSIS

A. First and Second Assignments of Error

{¶ 18} For clarity of analysis, we will address the first and second assignments of error together. Appellant makes a multitude of claims in support of his due process argument. Appellant first asserts his due process rights were violated because the notice failed to include allegations appellant made disclosures to third parties regarding the affair, the personal health information of Patient 1, whether Patient 1 was considering an abortion, "positions of the Catholic Church on adultery and birth control," and appellant's conduct in "violation of his faith." (Appellant's Brief at 10.) Appellant also argues "Dr. Schottenstein's finding that Dr. Seman was binding Patient 1 to him through six prescriptions and separating her from her primary physician" was new evidence and constituted a violation of appellant's due process rights. (Appellant's Brief at 11.) For the reasons that follow, we disagree with appellant.

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{¶ 19} The Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution mandate that administrative proceedings comport with due process. *Richmond v. Ohio Bd. of Nursing*, 10th Dist. No. 12AP-328, 2013-Ohio-110, ¶ 10, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Doyle v. Ohio Bur. of Motor Vehicles*, 51 Ohio St.3d 46 (1990). "Pursuant to due process, governmental agencies must provide constitutionally adequate procedures before depriving individuals of their protected liberty or property interests." *Natoli v. Ohio State Dental Bd.*, 10th Dist. No. 08AP-81, 2008-Ohio-4068, ¶ 18, citing *Mathews* at 332. The tenant of fundamental fairness is at the core of due process. *Natoli* at ¶ 18, citing *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 24 (1981).

{¶ 20} Appellant has a protected property interest in his certificate to practice medicine. *Flynn v. State Med. Bd.*, 10th Dist. No. 16AP-29, 2016-Ohio-5903, ¶ 45, citing *Natoli* at ¶ 19, citing *Haj-Hamed v. State Med. Bd.*, 10th Dist. No. 06AP-351, 2007-Ohio-2521, ¶ 53. "A 'fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." ' " *Natoli* at ¶ 18, quoting *Mathews* at 333, quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The question of whether due process requirements have been satisfied presents a legal question we review de novo. *Flynn* at ¶ 46, quoting *Judd v. Meszaros*, 10th Dist. No. 10AP-1189, 2011-Ohio-4983, ¶ 19 (" 'Purely legal questions are subject to de novo review.' ").

{¶ 21} R.C. 119.07 states, in relevant part, "[notice] shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice." A notice consistent with R.C. 119.07 "satisfies these procedural due process requirements because it sets forth a process reasonably calculated to apprise the party of the charges against him and the opportunity to request a hearing." *Richmond* at ¶ 11, quoting *Kellough v. Ohio State Bd. of Edn.*, 10th Dist. No. 10AP-419, 2011-Ohio-431, ¶ 36. Appellant must also show that any violation of due process resulted in prejudice. *Griffin v. State Med. Bd. of Ohio*, 10th Dist. No. 11AP-174, 2011-Ohio-6089, ¶ 26.

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1. Third-Party Disclosures

{¶ 22} Appellant asserts that his due process rights were violated when the notice failed to include allegations that appellant made disclosures to third parties regarding the affair, the personal health information of Patient 1, and whether Patient 1 was considering an abortion. As an initial matter, appellant mistakes the relevant language of the statute. Appellant asserts that R.C. 119.07 reads "[notice] shall include the charges *and* other reasons for the proposed action." (Emphasis added.) (Appellant's Brief at 8; Reply Brief at 4.) The statute, in fact, states "[notice] shall include the charges *or* other reasons for the proposed action." (Emphasis added.) R.C. 119.07. By enacting a disjunctive versus a conjunctive notice requirement, the General Assembly created a far more relaxed standard than appellant has alleged.

{¶ 23} After a review of the record and relevant facts, we find appellant's notice was consistent with R.C. 119.07 and satisfied all due process requirements. The notice included the charge against appellant, identified the purported violation of Ohio Adm.Code 4731-26-02, provided broad and specific allegations regarding appellant writing non-controlled prescriptions while engaging in sexual conduct with Patient 1 from approximately October 2013 to January 2015, and informed appellant of his right to a hearing. Appellant was also on notice that Patient 1 would be called to testify concerning her medical treatment during the sexual relationship. As such, the evidence presented at the hearing concerning disclosures to third parties were relevant to the alleged sexual misconduct violation as aggravating factors under Ohio Adm.Code 4731-26-02.

{¶ 24} Appellant next argues that these disclosures are of such significance that they could constitute violations of the Medical Practice Act under R.C. 4731.22(B)(4) and (18) and, as such, appellant was deprived of sufficient notice and due process. This court has consistently found the board may consider aggravating circumstances, including uncharged misconduct, during the hearing. *Macheret v. State Med. Bd.*, 188 Ohio App.3d 469, 2010-Ohio-3483, ¶ 28 (10th Dist.) ("In setting the appropriate sanction for the violations alleged and proven, the Board may, as it did, take into account aggravating circumstances, including uncharged misconduct."); *Froehlich v. Ohio State Med. Bd. of Ohio*, 10th Dist. No. 15AP-666, 2016-Ohio-1035, ¶ 31 (finding a medical review board may consider aggravating circumstances, including uncharged misconduct, when considering

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the appropriate sanction against the physician); *see also Columbus Bar Assn. v. Farmer*, 111 Ohio St.3d 137, 2006-Ohio-5342, ¶ 49 (finding a disciplinary board may consider misrepresentations during the investigation as an aggravating circumstance when considering what sanction to impose). While it is conceivable that these offenses could have been included as additional charges, the board is under no obligation to bring every potential violation.

{¶ 25} Finally, appellant fails to demonstrate how evidence of these aggravating factors resulted in identifiable prejudice. To support reversal of the trial court, the record must affirmatively show "that such error was to the prejudice of the party seeking such a reversal." *Korn v. State Med. Bd.*, 61 Ohio App.3d 677, 686 (10th Dist.1988); *Griffin*, 2011-Ohio-6089, at ¶ 26. Per the State Medical Board of Ohio Disciplinary Guidelines, the minimum penalty for a sexual misconduct within practice violation is an "[i]ndefinite suspension, min. 1 year, with conditions for reinstatement; discretionary probation, as appropriate, to include a boundaries course." State Med. Bd. Disciplinary Guidelines Section II.B, at 6 (Revised June 2018). Given appellant acknowledged the conduct and only received the minimum recommended penalty, appellant has failed to establish how discussion of these third-party disclosures prejudiced the outcome of the proceeding. Accordingly, we find appellant had a full and fair opportunity to prepare a defense before the hearing examiner and find no due process violation occurred.

2. Dr. Schottenstein's Comments

{¶ 26} Appellant next asserts his due process rights were violated when Dr. Schottenstein stated appellant used prescribing medications as "manipulative behavior designed to maintain the relationship" and as a "tool with which to bind Patient 1 to him." (Bd. Minutes at 24442, 24443.) After a review of the record and minutes from the board meeting, we find these statements constitute commentary in response of appellant's objections and not new evidence.

{¶ 27} Even if Dr. Schottenstein's comments exceeded the scope of the hearing examiner's findings, appellant can point to no evidence in the record that the board members relied on Dr. Schottenstein's remarks in forming their own conclusions. The board voted unanimously to adopt the hearing examiner's report and recommendation only sanctioning appellant for the minimum recommended penalty for a violation of Ohio

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Adm.Code 4731-26-02. Based on the forgoing, we find appellant's due process argument unpersuasive.

{¶ 28} Accordingly, appellant's first and second assignments of error are overruled.

B. Third Assignment of Error

{¶ 29} Appellant argues the board's order was contrary to law because there was no evidence of exploitation since the sexual relationship predated the physician/patient relationship. We disagree.

{¶ 30} This court is more limited in its review than that of the trial court. While the trial court must look at the evidence presented, the court of appeals must examine only if the trial court abused its discretion in finding the board's order was supported by reliable, probative, and substantial evidence. *Pons*, 66 Ohio St.3d at 621.

{¶ 31} As in effect at the time of the alleged violation, Ohio Adm.Code 4731-26-02 provides:

> (A) A licensee shall not engage in sexual misconduct with a patient or key third party, as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.
>
> (B) Conduct included within the definition of sexual misconduct occurring between a licensee and a former patient constitutes sexual misconduct and is prohibited if it meets any of the following criteria:
>
> (1) The conduct occurred within ninety days after the licensee-patient relationship was terminated;
>
> (2) The conduct occurred between a psychiatrist and a person to whom the psychiatrist formerly provided psychiatric or mental health services, and the conduct is in violation of the code of ethics of the "American Psychiatric Association"; or
>
> (3) The board determines that the conduct constitutes sexual misconduct upon consideration of the following factors:
>
> (a) The duration of the licensee-patient relationship;
>
> (b) The nature of the health care services provided;
>
> (c) The lapse of time since the licensee-patient relationship ended;
>
> (d) The extent to which the former patient confided personal or private information to the licensee;
>
> (e) The degree of emotional dependence that the former patient has or had on the licensee; and

> (f) The extent to which the licensee used or exploited the trust, knowledge, emotions, or influence derived from the previous licensee-patient relationship.

Sexual misconduct is defined as "conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, gestures that are sexual or that reasonably may be construed by a patient as sexual." Ohio Adm.Code 4731-26-01(H).

{¶ 32} While appellant claims that the affair predated any medical treatment, we would note that Patient 1 testified appellant examined her for a physical when she had a cold prior to the start of their sexual relationship. While appellant contends that the board "moved the goalposts" by presenting evidence that the dates of treatment predated the sexual relationship, the notice is based on appellant's disclosure of the sexual relationship to the board. (Reply Brief at 7.) Appellant's contention that this interrupted his preparation for the case is unpersuasive as he would have known about the treatment.

{¶ 33} Even if the sexual relationship with Patient 1 predated the physician/patient relationship, the trial court correctly reasoned that appellant "ignores the fact that *continuing* the sexual relationship while prescribing medications exploits the physician-patient relationship." (Decision & Entry at 8.) We agree with the trial court that to accept appellant's interpretation of the rule would ignore the possibility of a physician using his or her influence to preserve or continue a prior sexual relationship. As such, we find appellant's argument unpersuasive.

{¶ 34} Appellant next asserts Ohio Adm.Code 4731-26-02 requires evidence of exploitation, which he argues was not found in this case. The trial court found that while it did not think that evidence of explicit exploitation was required for a sexual misconduct violation, the record demonstrated ample evidence of both direct exploitation and exploitation by inference. We find the trial court did not abuse its discretion concluding there was reliable, probative, and substantial evidence of exploitation as evidenced by the admitted power imbalance between the parties, appellant's intervention in Patient 1's medical care, and Patient 1's described dependency on appellant to rationalize the relationship. Appellant only ended the affair after it was discovered Patient 1 had become pregnant. Once a blood test confirmed the pregnancy, appellant finally disclosed the affair to his wife and self-reported to the board. Because we find there was sufficient evidence of

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exploitation in this case, we decline to resolve whether the trial court was ultimately correct in concluding proof of explicit exploitation was not required to constitute a violation of the sexual misconduct rule.

{¶ 35} Finally, appellant argues that Patient 1 qualifies as a "family member" under Ohio Adm.Code 4731-11-08(C) based on appellant's testimony that he lost objectivity during her treatment. We disagree. Ohio Adm.Code 4731-11-08(B) and (C) states:

> (B) Accepted and prevailing standards of care require that a physician maintain detached professional judgment when utilizing controlled substances in the treatment of family members. A physician shall utilize controlled substances when treating a family member only in an emergency situation which shall be documented in the patient's record.
>
> (C) For purposes of this rule, "family member" means a spouse, parent, child, sibling or other individual in relation to whom a physician's personal or emotional involvement may render that physician unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

{¶ 36} We find the trial court did not abuse its discretion concluding that Patient 1 does not fall under any of the explicit definitions of a "family member" identified in Ohio Adm.Code 4731-11-08(C). We would also note that a plain reading of Ohio Adm.Code 4731-11-08(C) makes it inconceivable that the "family member" exception was intended to provide additional protections for a physician conducting an extramarital affair.

{¶ 37} Accordingly, appellant's third assignment of error is overruled.

V. CONCLUSION

{¶ 38} Having overruled appellant's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and KLATT, JJ., concur.

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COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Christopher R. Seman, D.O.,	:	
Appellant,	:	CASE NO. 18CV-7876
-vs-	:	**JUDGE SERROTT**
Ohio State Medical Board	:	
Appellee.	:	

JUDGMENT ENTRY

Rendered this 25th day of September, 2019.

SERROTT, JUDGE.

This matter is before the Court upon the Appellant's Motion for a Stay. The matter is opposed. The Court finds that the Appellant is entitled to have the previous STAY order continued. The Court therefore GRANTS Appellant's Motion for a Continued Stay of the Suspension. This Stay Order is only effective until the Court of Appeals rules. This stay will not be effective after the Court of Appeals rules even if the case is appealed to the Supreme Court.

IT IS SO ORDERED.

COPIES TO:

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Counsel for Defendant

Franklin County Court of Common Pleas

Date: 09-25-2019

Case Title: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Case Number: 18CV007876

Type: ENTRY

It Is So Ordered.



/s/ Judge Mark A. Serrott

Court Disposition

Case Number: 18CV007876

Case Style: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0078762019-09-1399960000
   Document Title: 09-13-2019-MOTION TO STAY - PLAINTIFF: CHRISTOPHER R. SEMAN DO
   Disposition: MOTION GRANTED

2. Motion CMS Document Id: 18CV0078762019-09-1399970000
   Document Title: 09-13-2019-MOTION TO STAY - PLAINTIFF: CHRISTOPHER R. SEMAN DO
   Disposition: MOTION GRANTED

Franklin County Ohio Clerk of Courts of the Common Pleas- 2019 Sep 13 3:47 PM-18CV007876

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

CHRISTOPHER R. SEMAN, D.O. 7306 Bye Road East Palestine, OH 44413 Appellant, vs. **OHIO STATE MEDICAL BOARD** 30 East Broad Street, 3rd Floor Columbus, Ohio 43215 Appellee	CASE NO. 18 CV 007876 APPELLATE CASE NO. _____ JUDGE MARK A. SERROTT **NOTICE OF APPEAL**

Notice is hereby given that the Appellant, CHRISTOPHER R. SEMAN, D.O., hereby appeals to the Court of Appeals for Franklin County, Ohio, Tenth Appellate District, from the Administrative Appeal Judgment Entry entered by the Court, in above captioned case on August 16, 2019, affirming the State of Ohio Medical Board's Order, filed September 12, 2018, as they may appear on record. The Medical Board's Orders are not supported by reliable, probative and substantial evidence and is not in accordance with the law.

Respectfully submitted,

/s/ Marian D. Davidson
Marian D. Davidson #0067159
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Attorney for Appellant, Christopher R. Seman, D.O.

PROOF OF SERVICE

The undersigned hereby certifies that copies of the foregoing and all concurrent filings and Proposed Entries were sent via regular U.S. mail to Attorney Melinda R. Snyder, Assistant Attorney General, Ohio Attorney General's Office, Health and Human Services, located at 30 East Broad Street, 26th Floor, Columbus, Ohio 43215, and via electronic mail at: Melinda.RyansSnyder@ohioattorneygeneral.gov on this 13th day of September, 2019.

/s/ Marian D. Davidson
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COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Christopher R. Seman, D.O.,	:	
Appellant,	:	CASE NO. 18CV-7876
-vs-	:	JUDGE SERROTT
Ohio State Medical Board,	:	
Appellee.	:	

DECISION AND ENTRY AFFIRMING THE ORDER OF THE OHIO STATE MEDICAL BOARD

Rendered this 16th day of August, 2019.

SERROTT, JUDGE.

A. PROCEDURAL HISTORY AND FACTS

This matter is before the Court on the administrative appeal of the Appellant from an order of the Ohio State Medical Board (the "Board") imposing an indefinite (not less than one (1) year) suspension of Appellant's medical license. The Court requested supplemental briefs which have been submitted and the matter is ready for decision.

The facts in the case are largely undisputed. The Appellant had a sexual relationship (October, 2013 to January, 2015) with a co-worker which pre-dated his prescribing non-controlled substance medications to her. Appellant's co-worker (referred to herein as Patient 1) was not a patient of Appellant's when the sexual relationship began. During the almost two (2) year relationship, the Appellant prescribed medications to her which were for the following medications: birth control pills, antibiotics, and Wellbutrin. The Appellant failed to keep a chart, or records, for her and did not conduct any physical examination or take her history. However, Appellant was not charged for these violations but was charged with violating the patient "sexual misconduct rule."

One hearing officer conducted Appellant's full adjudicatory hearing, but another hearing officer, after reviewing the transcript, issued the report and recommendation. The second hearing officer obviously did not have the opportunity to evaluate the demeanor and credibility of the witnesses. But, she did determine that the credibility issue was not important in resolving the case.

Appellant self-reported the conduct in 2015 after Patient 1 became pregnant and after he terminated the sexual relationship. Appellant does not contest those facts. Instead, Appellant sets forth seven assignments of error:

1. First Assignment of Error: The Board's Order Is Contrary To Law Because Dr. Seman Was Disciplined Based Upon Charges Or Reasons Not Included In The Notice In Violation Of R.C. § 119.07, And/Or The Due Process Clauses Of The U.S. And Ohio Constitutions.

2. Second Assignment of Error: The Board's Order Is Contrary To Law Because The Board Created Unreasonable Delay Which Prejudiced Dr. Seman's Ability To Defend Against The Allegations In The Notice Of Opportunity For Hearing.

3. Third Assignment of Error: The Board's Order Is Contrary To Law and Violates Due Process Because The Board Improperly Assigned Dr. Seman's Case To A Different Attorney to Serve as Hearing Examiner After The Hearing Concluded.

4. Fourth Assignment of Error: The Board's Order Is Contrary To Law Because The Board Improperly Found A Violation Of The Board's Sexual Misconduct Rule.

5. Fifth Assignment of Error: The Board's Order Is Contrary To Law Because The Board Relied On Evidence Not In The Record To Discipline Dr. Seman For A Violation Of The Sexual Misconduct Rule That Does Not Exist In The Record.

6. Sixth Assignment of Error: The Board's Order Is Contrary To Law Because The Board Improperly Based Discipline On A Violation Of Religious Principles And The Occurrence Of An Abortion.

7. Seventh Assignment of Error: The Board's Order Is Contrary To Law Because The Basis Of The Board's Modification Of The Report And Recommendation Is Not Included In The Order.

A review of the applicable law and the record will establish that all seven of Appellant's assignments of error are without merit.

B. STANDARD OF REVIEW

In a R.C. 119.12 appeal, the Court must affirm the order of an administrative agency or board if it is supported by substantial, reliable and probative evidence. *Our Place, Inc. v. Ohio Liquor Control Comm'n*, 63 Ohio St.3d 570 (1992). "The Ohio Supreme Court has defined reliable, probative, and substantial evidence as follows: (1) 'Reliable' evidence is dependable; that is, it can be confidently trust. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value." *Keydon Mgmt. Co. v. Liquor Control Comm'n*, 10th Dist. No. 08AP-965, 2009-Ohio-1809, at ¶5 (quoting *Our Place*, *supra* at 571). However, the Court must reverse the decision of an agency, or board, if the decision is not in accordance with law, or put another way, is contrary to law. *Pons v. State Medical Board,* 66 Ohio St.3d 619, 621 (1993).

C. LAW

The rule critical to resolution of this appeal is O.A.C. § 4731-26-02, which is referred to herein as the "sexual misconduct rule." The rule states the following:

> Sexual misconduct, as that term is defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, between a licensee and a patient is never diagnostic or therapeutic.
>
> (A) A licensee shall not engage in sexual misconduct with a patient or key third party, as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.
>
> (B) Conduct included within the definition of sexual misconduct occurring between a licensee and a former patient constitutes sexual misconduct and is prohibited if it meets any of the following criteria:
>
> (1) The conduct occurred within ninety days after the licensee-patient relationship was terminated;
>
> (2) The conduct occurred between a psychiatrist and a person to whom the psychiatrist formerly provided psychiatric or mental health services, and the conduct is in violation of the code of ethics of the "American Psychiatric Association"; or

(3) The board determines that the conduct constitutes sexual misconduct upon consideration of the following factors:

(a) The duration of the licensee-patient relationship;

(b) The nature of the health care services provided;

(c) The lapse of time since the licensee-patient relationship ended;

(d) The extent to which the former patient confided personal or private information to the licensee;

(e) The degree of emotional dependence that the former patient has or had on the licensee; and

(f) The extent to which the licensee used or exploited the trust, knowledge, emotions, or influence derived from the previous licensee-patient relationship.

O.A.C. § 4731-26-02.

One of the key issues is whether Appellant's conduct constituted "sexual misconduct" as defined. O.A.C. § 4731-26-01. (H) defines sexual misconduct in pertinent part as follows: "sexual misconduct" means conduct that exploits the license-patient relationship in a sexual way..."

D. ANALYSIS

1. First Assignment of Error

THE BOARD DID NOT DISCIPLINE APPELLANT FOR REASONS NOT INCLUDED IN THE CHARGING NOTICE.

Appellant complains that the board disciplined him for conduct not charged in the original notice and opportunity for a hearing. The notice explicitly contained the allegations of sexual misconduct with a patient while prescribing medications to her. Appellant complains that the hearing officer and the Board improperly considered evidence of a pregnancy, an abortion, workplace relationships, and disclosure of personal health information. While it is true that evidence of the above was admitted and discussed by the Board, the evidence was admissible as

potential aggravating factors pursuant to the Board's rules and guidelines. The evidence was also relevant to the issue of whether Appellant exploited the physician/patient relationship to facilitate or maintain the sexual relationship. The notice informed Appellant that all the information surrounding the relationship and the prescribing of the drugs would be an issue. Moreover, the evidence even if improperly admitted or considered was harmless error. Appellant admitted to the sexual relationship and the evidence of the relationship was overwhelming. The Appellant also did not deny that he prescribed drugs to her while the sexual relationship was ongoing. He does however, dispute that the sexual misconduct rule applies to him because he claims the relationship started before she became a "patient," the conduct was not "exploitative," or and that she qualified as a "family" member, exempting him from discipline.[1]

Thus, the error if any, was harmless because Appellant admitted the conduct and the misconduct rule is applicable. Further, the Board imposed the minimum penalty called for under the disciplinary guidelines. Therefore, Appellant suffered no prejudice as a result of the admission of the evidence. The charging notice was sufficient to put Appellant on notice and allow him to defend against the allegations. See *Griffin v. State Medicine Board*, 2011-Ohio-6089 (where the court held no violation of due process where licensee suffered no prejudice as result of alleged deficient notice).

Therefore, the first assignment of error is **OVERRULED**.

2. Second Assignment of Error

THE DELAY IN CHARGING THE APPELLANT WAS NOT PREJUDICIAL TO THE APPELLANT.

The Appellant complains that the delay from 2015 to 2018 prejudiced his ability to defend against the allegations. The Appellant maintains that he could have produced texts and phone records that would have refuted patient's timeline with regard to her first medical examination by Appellant which she claims pre-dated the sexual relationship. Appellant also claims the texts, etc. would have established the time frame of the termination of the relationship and other aspects of the relationship (Appellant's Brief pp. 10-11, 20-22).

[1] These contentions are without merit and will be addressed at Part 4 of this opinion.

The Appellant's claims are without merit. As noted *supra* the timeline and texts that would have established a timeline were tangential to the central issue. Appellant admitted he was in a sexual relationship with a person who became his patient. Appellant does not dispute that he prescribed medications to Patient 1 while he was involved sexually with her. All the marginally relevant other evidence, i.e. timeframes, abortion issues, alleged disclosure of confidential information, if relevant at all, were aggravating factors. See *Macheret v. Medical Board* (2010), 188 Ohio App. 3d 469 (where the 10th District Court held "a disciplinary body may consider aggravating circumstances, including uncharged misconduct, in determining the appropriate sanction for a member who violates the rules of practice"). Like the *Macheret* case, Appellant herein was *disciplined* for violating the sexual misconduct rule and the other conduct complained of herein was considered in determining the appropriate sanction. Therefore, Appellant was not prejudiced by the admission of evidence not specifically set forth in the charging notice. The fact remains that Appellant violated the sexual misconduct rule and only received the minimum sanction recommended by the guidelines. The delay in charging Appellant did not result in any prejudice. The delay in charging Appellant at most resulted in the unavailability of some evidence that had no real bearing on whether he violated the sexual misconduct rule. The delay did not violate his due process rights and resulted in no prejudice.

Therefore, Appellant's second assignment of error is **OVERRULED**.

3. Third Assignment of Error

THE OHIO SUPREME COURT HAS HELD THAT A HEARING OFFICER THAT DID NOT CONDUCT THE HEARING IS PERMITTED TO REVIEW THE TRANSCRIPT AND ISSUE A REPORT.

Appellant next argues that the board violated his due process rights by having a hearing officer issue a report and recommendation when that hearing officer did not conduct the hearing. Appellant claims that the second hearing officer was unable to judge the credibility of the witnesses and therefore violated Appellant's due process rights to a fair hearing. While this Court is sympathetic to this claim, the Ohio Supreme Court has explicitly ruled that "it is not essential that a person who prepares findings and recommendations in an administrative proceeding hears the evidence, if he reviews and examines the record of the proceeding." *Laughlin v. Public*

Utilities Commission (1996), 6 Ohio St. 2d 110. The *Laughlin* case seems dispositive of this issue.

However, Appellant attempts to distinguish *Laughlin* arguing that in *Laughlin* the credibility of the witnesses was not an issue unlike Appellant's case where he claims credibility was a material consideration. Thus, Appellant contends the second hearing officer could not properly make essential credibility determinations because she did not observe the witnesses. This Court would likely agree and sustain this assignment of error had credibility been central to the issue of whether the Appellant engaged in sexual relations when his co-worker was his patient. Had Appellant's defense been that he never prescribed her drugs while she was a patient or that he did not have sexual relationship with her then credibility would be essential to determine whether he engaged in the prohibited conduct or not. However, in this case Appellant conceded that he had sex with his co-worker and that while he was in a sexual relationship he prescribed medications to her. Thus, credibility of the witnesses was not critical as to whether Appellant violated the sexual misconduct rule. The areas where credibility were at issue between Appellant and his co-worker involved tangential issues marginally related to aggravating or mitigating circumstances. Therefore, it was not essential for the hearing officer who heard the evidence to write the report.

As noted, this Court might rule otherwise in a case where credibility is at the heart of whether a rule was violated or not. However, the credibility issues herein were tangential and therefore the Court **OVERRULES** the third assignment of error.

4. Fourth Assignment of Error

APPELLANT VIOLATED THE SEXUAL MISCONDUCT RULE SET FORTH IN O.A.C. §4731-26-02 WHEN APPELLANT CONTINUED HIS SEXUAL RELATIONSHIP AS HE PRESCRIBED MEDICATIONS TO HIS CO-WORKER.

Appellant argues that because the sexual relationship pre-dated his prescribing of medications that he could not have violated the sexual misconduct rule. Appellant argues that the rule prohibits "conduct that exploits the license – patient relationship in a sexual way." See O.A.C. §4731-26-01. Thus, Appellant claims that if the sex pre-dated the patient relationship

there could be no exploitation. (Appellant's Brief pp. 25-26). Appellant's argument is flawed and without merit. Appellant ignores the fact that *continuing* the sexual relationship while prescribing medications exploits the physician-patient relationship. His co-worker became dependent on Appellant's advice and upon Appellant's prescribing medications. The evidence, even if only by inference, supports the conclusion that Appellant's relationship as the patient's physician facilitated the sex and allowed the relationship to continue because the co-worker was dependent on Appellant for both emotional and medical support. To adopt the Appellant's interpretation of the rule would ignore the patently obvious fact that a physician can easily use his or her influence over the patient to maintain, or prolong, a pre-existing sexual relationship.

Additionally, Appellant's claims also ignore the fact the rules do allow physicians who have a pre-existing relationship to prescribe "non-controlled" substances to a "family member." See O.A.C. §4731-11-08(A)(C). Therefore, a fortiori, a physician is prohibited by inference from prescribing non-controlled substances to "non-family" members with whom the physician is in a sexual relationship with.[2]

Appellant's co-worker Patient 1 did not qualify as a "family member" despite Appellant's claims that she should be considered like a family member for purposes of the rule. Patient 1 does not meet any of the explicit definitions of a "family member" as defined in O.A.C. §4731-11-08(A)(C). The Court rejects this contention.

For these reasons, the Court **OVERRULES** the fourth assignment of error.

5. Fifth Assignment of Error

THE RECORD CONTAINS EVIDENCE THAT APPELLANT ENGAGED IN SEXUAL MISCONDUCT BY EXPLOITING THE PHYSICIAN-PATIENT RELATIONSHIP.

Appellant next contends no evidence exists that his conduct exploited the physician-patient relationship. First, as noted in footnote 2, this Court is not convinced that explicit proof of exploitation is required. The rule prohibits sex between a physician and a patient (unless

[2] Appellant also claims there was no evidence Appellant "exploited" the relationship. The Court is not totally convinced proof of explicit exploration is required. As for lawyers, sex with a patient or client is prohibited because it is inherently exploitative. O.A.C. §4731-23-02(A). Moreover, Patient 1 testified that she believed she was exploited by Appellant while he acted as her physician. (TR 96-99, 100-101).

excepted under the family member exception) because the relationship is inherently exploitative. Further, there was ample evidence in the record establishing either direct exploitation or exploitation by inference. Appellant has sexual contact with Patient 1 in his office during work hours. (TR 165, 30, and 215). Patient 1 testified that Appellant exploited the physician-patient relationship which caused her to continue in the sexual relationship. (TR 95-96, 101). Thus, even if the rule requires proof of exploitation the record and testimony provides substantial, reliable, and probative evidence of either direct exploitation or by inference.

Therefore, the Court **OVERRULES** Appellant's fifth assignment of error.

6. Sixth Assignment of Error

THE BOARD DID NOT IMPROPERLY CONSIDER EVIDENCE OF APPELLANT'S RELIGION.

The Appellant, through its counsel, did inquire of Appellant regarding his religion as noted by the Board's counsel. (TR 216). The Board did also inquire about Appellant's religious beliefs, but in part to prove he admitted to the affair to his priest. (TR 8). However, the majority of the Board's counsel's questions came only after Appellant brought up the issue.[3]

While this Court would have probably excluded the evidence especially regarding questions put to Appellant by Board's counsel regarding the church's stance on adultery and birth control, the admission of the evidence was non-prejudicial. Further, Appellant failed to object to the testimony and any error was either waived or harmless. The Board did not discipline Appellant for his religious beliefs. Part of the evidence was admitted because Appellant's religious views were discussed by Appellant and Patient 1 in connection with their affair and the abortion. Appellant was disciplined for violating the sexual misconduct rule, not for his religious beliefs. He did receive the minimum penalty recommended by the guidelines. No evidence exists in the record that the Board either considered Appellant's religious beliefs or that he was disciplined for those beliefs.

Appellant's sixth assignment of error is **OVERRULED**.

[3] Appellant brought up his religion on p. 216 on direct examination. The Board's counsel later asked questions regarding his religion. (TR 228-229, 244-245).

7. Seventh Assignment of Error

THE BOARD DID NOT MODIFY THE REPORT AND RECOMMENDATION AND THE REPORT AND RECORD CONTAINS EVIDENCE OF SEXUAL EXPLOITATION.

Appellant's final claim of error is that the Board found evidence of sexual exploitation when such evidence was not contained in the hearing officer's report. Therefore, Appellant claims that the Board violated the dictates of R.C. § 119.09 which requires the Board to state its reasons for "modifying or disapproving" of the report. Appellant's contention is misplaced. The Board did not modify or disapprove the report, it adopted the report. Moreover, as noted *supra* in this opinion (pp. 7-9) the report and the record contained ample evidence of sexual exploitation.

Therefore, the Court **OVERRULES** the seventh assignment of error.

E. CONCLUSION

The Court has carefully reviewed the record, the briefs, and the applicable law. The Board's conclusions and the discipline imposed are supported by substantial, reliable, and probative evidence. The Court believes mitigating circumstance did exist in this case and Appellant's "self-report" should have also been considered as mitigating evidence. The Court would have imposed a lesser discipline then that imposed by the Board. However, the Court does not have the authority to modify the penalty simply because the Court disagrees with the Board.

Therefore, the Court **AFFIRMS** the Board's order and decision in its entirety.

Franklin County Court of Common Pleas

Date: 08-16-2019

Case Title: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Case Number: 18CV007876

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Mark A. Serrott

Court Disposition

Case Number: 18CV007876

Case Style: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Christopher R. Seman, DO,	:	
Appellant,	:	**Case No. 18CV-7876**
-v-	:	**JUDGE SERROTT**
Ohio State Medical Board,	:	
Appellee.	:	

ENTRY GRANTING APPELLANT'S MOTION FOR STAY OF ADJUDICATION ORDER

This matter is before the Court on Appellant's Motion to Stay Appellee's Adjudication Order dated September 12, 2018. The Motion is unopposed. For the reasons set forth therein, the Motion is GRANTED, and the Court hereby STAYS the underlying Adjudication Order during the pendency of this administrative appeal or until further order of the Court. Appellant shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery.

IT IS SO ORDERED.

Electronically Signed By:
JUDGE MARK A. SERROTT

Franklin County Court of Common Pleas

Date: 10-03-2018

Case Title: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Case Number: 18CV007876

Type: ORDER

It Is So Ordered.

/s/ Judge Mark A. Serrott

Court Disposition

Case Number: 18CV007876

Case Style: CHRISTOPHER R SEMAN DO -VS- OHIO STATE MEDICAL BOARD

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0078762018-09-1899910000
   Document Title: 09-18-2018-MOTION TO STAY - PLAINTIFF: CHRISTOPHER R. SEMAN DO
   Disposition: MOTION GRANTED

BEFORE THE STATE MEDICAL BOARD OF OHIO

CHRISTOPHER R. SEMAN, D.O. 7306 Bye Road East Palestine, OH 44413 **Appellant,** **vs.** **STATE MEDICAL BOARD OF OHIO** 30 East Broad Street, 3rd Floor Columbus, OH 43215 **Appellee.**	**Case No.** _____ **Judge** _____ **Board Case No. 17-CRF-0123** **APPEAL FROM THE ENTRY OF ORDER OF SEPTEMBER 12, 2018 MAILED SEPTEMBER 13, 2015**

NOTICE OF APPEAL

Appellant, Christopher R. Seman, D.O., by and through counsel, and pursuant to R.C. 119.12, timely submits this notice of appeal from the Entry of Order of Appellee, the State Medical Board of Ohio ("Board"), which indefinitely suspended Dr. Seman's Ohio certificate to practice medicine and surgery for at least one year, to be followed by at least one (1) year of probation. The Board's Entry of Order is dated September 12, 2018, and was mailed September 13, 2018. The grounds for this appeal are that the Board's Entry of Order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law.

A copy of the Board's Entry of Order is attached as "Exhibit A."

Respectfully submitted,

DINSMORE & SHOHL, LLP

By: _____

Eric J. Plinke (0059463)
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Counsel for Respondent Christopher R. Seman, D.O.

STATE MEDICAL BOARD OF OHIO
2018 SEP 18 PM 4:03

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of September, 2018, the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, a copy filed with the Franklin County Court of Common Pleas, and with an additional copy served by regular U.S. mail upon:

Melinda Snyder, Esq.
Assistant Attorney General
Ohio Attorney General's Office
Health and Human Services
30 East Broad Street, 26th Floor
Columbus, OH 43215

~~Eric J. Plinke~~
HEIDI W. DOKEN

State Medical Board of
Ohio

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
www.med.ohio.gov

September 12, 2018

Christopher R. Seman, D.O.
7306 Bye Road
East Palestine, OH 44413

RE: Case No. 17-CRF-0123

Dear Dr. Seman:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Ronda Shamansky, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 12, 2018, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Any such appeal must be filed in accordance with all requirements specified in Section 119.12, Ohio Revised Code, and must be filed with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within (15) days after the date of mailing of this notice.

THE STATE MEDICAL BOARD OF OHIO

Kim G. Rothermel MD

Kim G. Rothermel, M.D.
Secretary

KGR:jam
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7038 7174 9015
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 91 7199 9991 7038 7174 9022
RETURN RECEIPT REQUESTED

Mailed 9-13-18

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Ronda Shamansky, Esq., State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 12, 2018, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Christopher R. Seman, D.O., Case No. 17-CRF-0123, as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

Kim G. Rothermel MD

Kim G. Rothermel, M.D.
Secretary

(SEAL)

September 12, 2018
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 17-CRF-0123
CHRISTOPHER R. SEMAN, D.O.	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 12, 2018.

Upon the Report and Recommendation of Ronda Shamansky, Esq., State Medical Board Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

A. **SUSPENSION OF LICENSE**: The certificate of Christopher R. Seman, D.O., to practice osteopathic medicine and surgery in Ohio is **SUSPENDED** for an indefinite period of time, but not less than one year.

B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Seman's license to practice osteopathic medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Seman shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any. Dr. Seman shall not submit such application for at least one year from the effective date of this Order.

2. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Seman has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

3. **Professional Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Seman shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Seman submits the documentation of successful completion of the course(s) dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of osteopathic medicine in the future.

4. **Personal Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Seman shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Seman submits the documentation of successful completion of the course(s) dealing with personal ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of osteopathic medicine in the future.

5. **Course(s) Concerning Physician/Patient Boundaries**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Seman shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Seman submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

C. **PROBATION**: Upon reinstatement or restoration, Dr. Seman's license shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

1. **Modification of Terms**: Dr. Seman shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

2. **Obey the Law**: Dr. Seman shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.

3. **Declarations of Compliance**: Dr. Seman shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Seman's license is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal Appearances**: Dr. Seman shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Seman's license is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

5. **Required Reporting of Change of Address**: Dr. Seman shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

6. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Seman is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Seman's certificate will be fully restored.

E. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Seman violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION**:

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Seman shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training. Further, Dr. Seman shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training.

   Further, within 30 days of the date of each such notification, Dr. Seman shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

   This requirement shall continue until Dr. Seman receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Seman shall provide a copy of this Order by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. Seman shall provide a copy of this Order by certified mail at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

   Further, within 30 days of the date of each such notification, Dr. Seman shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

   This requirement shall continue until Dr. Seman receives from the Board written notification of the successful completion of his probation.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

Kim G. Rothermel MD

Kim G. Rothermel, M.D.
Secretary

(SEAL)

September 12, 2018
Date

AUG - 1 2018

STATE MEDICAL BOARD
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
		Case No. 17-CRF-0123
Christopher R. Seman, D.O.,	*	
		Hearing Examiner Shamansky
Respondent.	*	

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated September 13, 2017 ("Notice"), the State Medical Board of Ohio ("Board") notified Christopher R. Seman, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in the State of Ohio.

The Board's proposed action was based on an allegation that, in the routine course of his practice, Dr. Seman undertook the medical care of Patient 1, identified in a confidential patient key, who was also his co-worker. It alleged that Dr. Seman self-reported to the Board and later told a Board investigator that he engaged in sexual conduct with Patient 1 between approximately October 2013 to January 2015. The Board further alleged that Dr. Seman had written prescriptions for non-controlled substances including Ortho Tri-Cyclen, augmentin, fluconazole, and bupropion for Patient 1, without maintaining a patient record and without performing an examination of her during the same span of time when he reported having had a sexual relationship with her.

The Board alleged that this conduct, individually and/or collectively, constituted "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Ohio Revised Code Section ("R.C.") 4731.22(B)(20). The Board alleged that Dr. Seman's conduct violated Rule 4731-26-02 of the Ohio Administrative Code ("OAC"), which prohibits a licensee from engaging in sexual misconduct with a patient. The Board further alleged that, pursuant to OAC Rule 4731-26-03(A), as it was in effect between November 30, 2010 through June 29, 2016, a violation of Rule 4731-26-02 also constituted a violation of R.C. 4731.22(B)(6), in that his conduct constituted "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

The Board advised Dr. Seman of his right to request a hearing, and he requested one through his counsel's filing dated October 10, 2017. (State's Exhibits ("St. Exs.") 1, 4).

Appearances

Mike DeWine, Attorney General, and Melinda Ryans Snyder, Assistant Attorney General, on behalf of the State of Ohio.

Eric Plinke, Esq., on behalf of Dr. Seman.

Hearing Dates: April 3 and 24, 2018

PROCEDURAL MATTER

Hearing Examiner Danielle Blue presided over the hearing on April 3, and April 24, 2018; however, she had not written her report at the time she left her employment with the Board. The case was re-assigned to Hearing Examiner Shamansky to complete the writing of the Report and Recommendation.

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Medical Education and Practice

1. Christopher R. Seman, D.O., earned a medical degree in 1994 from the Ohio University College of Osteopathic Medicine, and then completed an internship at the Youngstown Osteopathic Hospital in 1995. Between 1995 and 1998, he worked in a residency program in psychiatry at Rochester Medical Center's Strong Memorial Hospital, followed by a year of practice in child and adolescent psychiatry at that hospital. (Hearing Transcript ("Tr.") at 11-13)

2. In 1999, Dr. Seman returned to Ohio and began a two-year residency in family practice at the Ohio University College of Osteopathic Medicine and Cuyahoga Falls General Hospital. He then did a one-year fellowship in child psychiatry at University Hospitals through Case Western Reserve University, which he completed in early 2002. (Tr. at 12-13)

3. After finishing his postgraduate training, Dr. Seman began working at the Community Action Clinic, a family practice in Lisbon, Ohio, where he stated that he also did "a fair amount of psychiatry." (Tr. at 14) At the same time, he began practicing general and child psychiatry at the Columbiana County Mental Health Center, which had offices in Lisbon, East Liverpool, and Salem, Ohio. He referred to that agency during the hearing as "the Counseling Center." In addition, Dr. Seman worked one half day each week as a psychiatrist in the office of Pam Drake, another psychiatrist, in Salem, Ohio. (Tr. at 14-16, 90-91)

4. Dr. Seman eventually left his family practice work at the Community Action Clinic because there was a greater need for psychiatrists at the Counseling Center, and because he felt that he could not keep his skills up in family practice, working only part-time there.

From 2005 to 2008, he practiced fulltime at the Counseling Center, except for some occasional consulting at the Salem Community Hospital. Dr. Seman worked as an independent contractor at the Counseling Center, doing medication management primarily of child and adolescent patients, but not providing therapy. (Tr. at 14-17)

5. In January 2009, Dr. Seman left the Counseling Center to take a position as a staff psychiatrist with Prima Healthcare that offered better pay, as well as benefits such as health insurance, that he was not receiving in his work as an independent contractor. At that practice, Dr. Seman treated adult, child, and adolescent psychiatry patients. He left that position after only one year, however, because the practice was not getting the reimbursements that it expected, and as a result, the CEO of the company wanted to reduce his salary. (Tr. at 17-18)

6. Dr. Seman then returned to the Counseling Center and also began working part-time at Churchill Counseling, a privately-owned agency that employed therapists and psychiatrists for general mental health care. In his work at the Counseling Center, he continued doing medication management for child and adolescent psychiatry patients. Dr. Seman stated that he was not billing for any therapy services at that time, but he occasionally used some cognitive behavioral therapy interventions with patients as part of their psycho-pharmacology treatment. (Tr. at 18-21)

7. Dr. Seman testified that, although there were two or three other physicians at the Counseling Center, he was the only one trained in child and adolescent psychiatry. The practice employed 12-15 therapists, as well as nurse practitioners, case managers, and administrative assistants. He related that he interacted with the therapists and case managers, in order to collaborate on patient care issues. Dr. Seman explained that the case managers supported patients and their families by facilitating services in the community, and by problem-solving on issues that arose in the school and home settings. He said that a patient's case manager might sit in on a patient's appointment, for example, in order to provide information about what was happening in a child's school that the parent might not be aware of. The case managers also helped coordinate follow-through with the patient's use of medications, and with appointments for continued treatment. (Tr. at 21-24)

8. Dr. Seman testified that he is not currently board-certified in any field. He explained that he was board-certified from 2002 to 2012 in family practice, general psychiatry and child psychiatry, but that he allowed those certifications to lapse in 2012 because he "didn't see a need for it at that time professionally." (Tr. at 13) However, he stated that he was seeking recertification in psychiatry because he had found that some insurance companies want physicians to be board-certified in order to sit on their panels. (Tr. at 13-14)

Dr. Seman's Relationship with Patient 1

9. Patient 1 worked at the Counseling Center as a Youth Community Psychiatric Support Treatment Provider, more frequently called a "case manager." Patient 1 testified that she held a bachelor's degree in youth ministry and Christian education from Malone University, as well as a degree in secondary education and social studies from Wheeling

Jesuit University, and that she formerly worked as a middle school teacher. Patient 1 began working at the Counseling Center in about 2012. Her office was across the hall from Dr. Seman's office, and they frequently collaborated on cases. Dr. Seman testified that he did not know Patient 1 before she worked at the Counseling Center, and he had no role in hiring her. (Tr. at 24-25, 74-76; St. Ex. 5)

10. Patient 1 has a somewhat unusual family structure, which later becomes relevant to this case. When Patient 1 was 21 years old, her older sister died of leukemia, leaving three children, ages 2, 4, and 8. Patient 1 stepped into the role of raising her sister's children, and later married her deceased sister's husband. At the time of the hearing, her sister's children were young adults in their early twenties. One of those children, referred to both as her nephew and as her son in the testimony, was finishing his undergraduate degree and was also working as an intern at the Counseling Center. Patient 1 testified that she thought of her sister's children as her sons and daughters, even though they were biologically her nieces and nephews. (Tr. at 28-30, 55-57, 76-77)

11. During the years from 2013 to 2015, Patient 1 also had a biological daughter, who was about 8 years old. Dr. Seman was also married and had six children. At the time of the hearing in 2018, his children ranged in age from 4 to 12. (Tr. at 28-30) Dr. Seman said that he and Patient 1 did not talk very much about their spouses, but he admitted that he believed Patient 1 "wasn't real happy with her marriage at that time." (Tr at 29)

12. Although the testimony of Dr. Seman and Patient 1 differed in a few respects, their testimony about how their relationship began was very similar. Both agreed that after working together to collaborate on cases, they eventually became friends. Dr. Seman testified that they would talk in between patients or on the phone, sometimes outside of the office, and their friendship grew closer as a result of those interactions. Patient 1 testified that, as she became friends with Dr. Seman, he would ask her to sit in on patients' sessions more often, and it became more comfortable for her to do so. She added that he would sometimes ask her opinions about situations with children and their families. Patient 1 was not employed by Dr. Seman; she worked for the same agency where Dr. Seman was an independent contractor. Clients were assigned to Patient 1's caseload by her supervisor, Marcy Patton, and not by Dr. Seman. Nonetheless, Patient 1 testified that because she was a case manager and Dr. Seman was a psychiatrist, there was a hierarchy in which he was viewed as the more knowledgeable person in a superior position to hers. (Tr. at 26-28, 78-83)

13. As their friendship grew, Dr. Seman and Patient 1 began meeting outside of their work relationship and talking about things that were not related to clients' cases. Patient 1 testified that Dr. Seman sometimes invited her to come to the East Liverpool office to have lunch with him, and that he would call her and text her frequently, sometimes about subjects that were not work-related. Through long lunches together, drinks after work, and many phone calls and text messages, their friendship grew closer. (Tr. at 83-85) She recalled that on the day his youngest child was born in August 2013, Dr. Seman called her and talked to her for about an hour. (Tr. at 83-84) She added, "[I]t was clear that he was trying to get to know me a little better." (Tr. at 83) Dr. Seman agreed that his relationship

with Patient 1 grew closer during the summer of 2013, by going to lunch with her and having long talks on the phone inside and outside of work. He described some "nonsexual touching" during this time, such as holding hands or kissing on the cheek. (Tr. at 30-31)

14. Patient 1 testified that she began sharing more details of her personal life with Dr. Seman within the context of their friendship. She explained that, during this time, she learned that her father was not her biological father and that her mother had been dishonest with her in that respect. She characterized this as "the most devastating experience of [her] life." (Tr. at 86) Patient 1 related that she felt betrayed by her mother, and she wondered if her deceased sister had known the true identity of her father. She also learned, after believing that she had buried her only sibling, that her biological father had other children. Patient 1 recounted that Dr. Seman counseled her through this time and was supportive of her complex feelings surrounding those discoveries. (Tr. at 85-88)

15. As their relationship continued, Dr. Seman's friendship with Patient 1 turned into a sexual relationship. Patient 1 testified that Dr. Seman began to act flirtatiously with her, such as telling her that she was beautiful and acting "playful and silly" with her in the office. (Tr. at 88-89) She related that he once told her, "I wish I had met you before I met my wife." (Tr. at 88) Patient 1 also recalled a particular conversation over lunch with Dr. Seman before their relationship became a sexual one:

> So he asked me, "Do you intend on leaving your marriage?" And I said no. He said, "Well neither do I." So I was like, "What are you suggesting? What are you getting at? And he was saying, "Well, what if we could meet each other's needs and still maintain our marriages?" It was very much like a proposal.

(Tr. at 88-89)

16. Patient 1 also testified that Dr. Seman once examined her medically when she had a bad cold, at a time before their relationship had become sexual and before she realized that he was a physician. (Tr. at 91) She related the following interaction:

> [W]e were talking about me having a cold. He said, "What are you going to do about your cold?" I said I need to go to the doctor because I can't really be out and about in homes and schools getting people sick. He said, "I'll just examine you." That caught me off guard. I said, "What? That's a thing?" You know, "You can do that?" I don't even think I knew that he was a D.O.

(Tr. at 91)

Patient 1 stated that Dr. Seman then came to her office after he finished seeing his patients that day, and examined her for symptoms related to a head cold. (Tr. at 92)

17. Dr. Seman and Patient 1 both testified that they had sex in Patient 1's office after work one day in the fall of 2013. Dr. Seman testified that it was in October 2013, while Patient 1 said that it was in September or October 2013, a couple months after his youngest child had been born that August. (Tr. at 30-31, 89-90, 252-253) They continued their relationship for about 18 months, until the spring of 2015. Dr. Seman said that, because they were both married, they had sex "[a]fter hours at the office, a local hotel, [or] her house." (Tr. at 31) Patient 1 recited a longer list of places where they carried on their affair, including her office, his office, her home, the Canfield fairgrounds, the Boardman Holiday Inn, Julie's Bed and Breakfast in Hubbard, the Buhl Mansion, and an office at the agency's Calcutta location. (Tr. at 90)

Prescriptions Written for Patient 1

18. Patient 1 testified that before she began her relationship with Dr. Seman, Theodore Chrobak was her primary care physician and prescriber. She described Dr. Chrobak as a general medicine physician and said that he had never told her to see a psychiatrist. She offered her prescription records from Rite Aid and Walgreens to show the prescriptions that were filled for her. As Patient 1's relationship with Dr. Seman progressed, he began writing prescriptions for her. The first prescription was for Ortho Tri-Cyclen Lo, a birth control pill, written on or about December 6, 2013. (St. Ex. 2; Tr. at 95, 125-126)

19. Patient 1 testified that she had taken birth control pills "off and on" for 20 years, but she could not recall if she had a current prescription for them when Dr. Seman wrote the December 2013 prescription for her. She testified that at one point, they had a mutual conversation about how they could have more freedom in their relationship, and Dr. Seman wrote her a prescription for Ortho Tri-Cyclen, a pill she had been on before. She said that he did not examine her before writing that prescription, and he did not suggest that she go to a different doctor for a birth control prescription. (Tr. at 92-94)

20. Dr. Seman admitted that he prescribed birth control pills for Patient 1 beginning in December 2013. He explained, "She and I talked about the risk of pregnancy and she did not want to become pregnant," but he admitted that he also did not want her to become pregnant. (Tr. at 34-35) He agreed that he did not tell her to go to another doctor to get a birth control prescription, but he maintained that he advised her to get a pelvic exam and a pap screening. However, he acknowledged that he never asked Patient 1 if she had had that exam. He admitted that he did not create a patient chart for her, and he did not record anywhere that he had written this prescription for her. In reviewing the pharmacy records, Dr. Seman testified that it looked as though he called that prescription in to an East Liverpool Rite Aid, but that he later called it in to a Rite Aid pharmacy in Warren, where it was filled. He said that he remembered calling the prescription in to the East Liverpool store, but not to the Warren store. He also did not recall any pharmacist telling him that he or she would not fill the script. That prescription was refilled with Dr. Seman's authorization on January 10, 2014, February 7, 2014, and February 27, 2014. He recalled that he wrote the original prescription with five refills. (Tr. at 35-39; St. Ex. 2 at 4, 10-11) When he was asked why he authorized six months' worth of that drug if he wanted her to have a pelvic exam with her physician, he offered, "[I]f I had done a pelvic exam, typically

we write 11 refills which is a 12-month script for the birth control pills for patients. So I didn't write 11 refills because I wanted her to have a pelvic exam sometime within the next six months." (Tr. at 45)

21. During this same time period, Dr. Seman wrote a prescription for amoxicillin for Patient 1, which was filled on or about December 23, 2013. (St. Ex. 2 at 4-6) At the hearing, there was no patient record offered to show the diagnosis for that prescription, and Dr. Seman could not recall why he had written it:

> Q: What was that prescription for?
> A: I cannot remember exactly why that was written, but I imagine it was for an upper respiratory infection such as a sinus infection.
> Q: Okay. And why did you write that prescription for Patient 1 rather than directing her to her primary care physician?
> A: Because Patient 1 was most likely at the time exhibiting symptoms of some type of infection in her respiratory tract.
> Q: Did you volunteer to write that?
> A: I probably did.

(Tr. at 43-44)

22. Later in 2014, Dr. Seman also prescribed fluconazole, an anti-fungal medication to treat vaginal yeast infections. The prescription dated November 6, 2014 shows that he called that prescription into a Rite-Aid store in Belmont with no refills. (St. Ex. 2; Tr. at 45) There was no patient record to show why fluconazole was prescribed, and Dr. Seman could not remember very much about that prescription:

> Q: Why did you prescribe that medication to Patient 1?
> A: I believe at the time she had symptoms of a vaginal yeast infection.
> Q: And did she ask you for this prescription or did you volunteer it?
> A: I do not remember.
> Q: And do you remember, is there a reason you did not tell her to go to her primary care physician?
> A: I don't think I consciously thought I'm not going to tell her to go to her family physician. I felt she was telling me what her symptoms were over the phone, and I felt comfortable that I knew what was going on and that a two or three-day course of Diflucan would take care of the problem.

(Tr. at 45-46)

Dr. Seman recalled that Patient 1 had described her symptoms to him over the phone, and he felt comfortable prescribing a two or three-day course of Diflucan to treat the infection. (Tr. at 46)

23. Dr. Seman admitted that Ortho Tri-Cyclen and fluconazole are not medications that he would typically prescribe in his practice as a psychiatrist, but he said that he has a few

adult patients, such as those with schizophrenia, who do not trust other providers. For those patients, he sometimes prescribes medications to treat conditions such as high blood pressure or hypothyroidism until he can persuade them to see an internist. (Tr. at 48-49)

24. In early 2015, Dr. Seman also prescribed Wellbutrin for Patient 1, writing a prescription dated January 12, 2015 with five refills, which she filled in February 2015 and again in March 2015. (St. Ex. 2 at 3, 5) Patient 1 explained that she had first taken Wellbutrin about eight years earlier, when she had postpartum depression after the birth of her daughter, and that she took it "on and off" after that. (Tr. at 95) She said that between 2013 and 2015, she did not have a prescribing psychiatrist, and she did not recall the circumstances under which Dr. Seman prescribed Wellbutrin for her. Patient 1's prescription record shows that Dr. Chrobak, her family physician, had previously prescribed the Wellbutrin in October 2013, but she did not fill a prescription written by Dr. Chrobak in the intervening time at the Rite Aid pharmacy shown in this record. (Tr. at 95-96; 125-126; St. Ex. 2)

25. Dr. Seman testified that although Patient 1 told him she took Wellbutrin for anxiety, that drug is generally used to treat depression rather than anxiety. He admitted that he did not know how often Patient 1 saw Dr. Chrobak, and that he did not ask her how often she saw him. Dr. Seman explained that Patient 1 had missed an appointment with Dr. Chrobak and had run out of refills of Wellbutrin. He said that he helped her by writing the prescription for her because he assumed that Dr. Chrobak would not prescribe additional refills without seeing her first. (Tr. at 40-43, 46-47) He said that, even though he is a psychiatrist, he did not talk to Patient 1 about her symptoms, to make sure that her diagnosis from her family doctor was accurate, but that he "took her word for it" instead. (Tr. at 41) However, he also acknowledged that Patient 1 did not exhibit signs of depression or anxiety while he was in a relationship with her, except for "typical anxiety for people who were having an affair." (Tr. at 47)

26. Dr. Seman agreed in his testimony that good medical practice would require examining the patient, and explained that he wrote the prescription to help Patient 1 because she had missed an appointment with her family doctor:

> Q: Would you do an examination of the patient before you prescribe that medication?
> A: Yes.
> Q: What would that examination entail?
> A: A full psychiatric examination; chief complaints; history of present illness; past psychiatric history past medical history; social history; family history; developmental history; if they were old enough, a vocational history; legal history; substance abuse history; an exam based on the patient's affect, mood, thought processes.
> Q: Why would you do that?
> A: Because that's good medical practice.
> Q: Did you do that for Patient 1 before you wrote her a prescription for Wellbutrin?

A: No.
Q: Why not?
A: Patient 1 asked me for the prescription based on missing an appointment with her primary care physician. It was an attempt to help Patient 1 out. It was clearly a boundary violation, however, and not good medical practice. It was a desire to help Patient 1 and to allow her to be on a medicine that she said helped her.

(Tr. at 41-42)

27. In his testimony at the hearing, Dr. Seman agreed that Patient 1 became his patient when he began writing prescriptions for her, although he implied that he did not realize this until the facility's Clinical Director, Todd Frampton, later pointed this out to him. (Tr. at 49, 183-184)

28. Dr. Seman acknowledged that he did not know if Dr. Chrobak knew that he was writing prescriptions for Patient 1. (Tr. at 49) He admitted that he felt some hesitation when he began writing prescriptions for psychiatric medications for Patient 1:

> * * * I wasn't her treating physician, and I felt uncomfortable at some level actually writing the prescription, but at the same time, I didn't want to displease her. And I'm not saying she gave me indications that she would have been majorly displeased by it, but in my mind, you know, I wanted to do what I can to help her.

(Tr. at 47-48)

29. Dr. Seman also acknowledged that he lost his objectivity when he wrote prescriptions for Patient 1 while he was having an intimate relationship with her:

> I lost objectivity when I wrote for the first time for her. I lost objectivity before I even wrote these prescriptions for her. The whole relationship was a loss of objectivity. It was a boundary violation, not just from a doctor/patient perspective but from a professional-person-you-work-with perspective having relationships with people at work.

(Tr. at 48)

Progression of Relationship

30. Patient 1 testified that, as her relationship with Dr. Seman developed, she began seeing less of her primary care physician, Dr. Chrobak:

> I had [a primary care doctor] until Chris started taking over my medical care pretty much. I didn't – if I needed to, he said, "No, I can take care of that"

> or "I can write that for you." So I kind of grew out of that relationship with my doctor.

(Tr. at 95)

31. Patient 1 testified that her trust in Dr. Seman increased as she confided in him about "things that were deep in [her] heart," and he gave feedback and helped her work through some of those issues. (Tr. at 96-97) She described their mutual passion for the children they both worked with, and their discussions of both of their marriages and families. Patient 1 described becoming more open with Dr. Seman and more loyal to him than she was to her husband. (Tr. at 99) She testified that, even though she knew the relationship was not good for her, she nonetheless became more dependent on Dr. Seman:

> I didn't always feel whole in the relationship. * * * I always felt a sense of what we were doing was morally wrong, and so there was some lack of fulfillment because of that emotionally. I began to really question myself. I began to ask him is it okay if I feel this way. I began to feel more dependent on him to normalize or almost for permission to feel a certain way.
>
> I began to behave in ways that I knew would make him happy even though it was often hurtful to me. I can't honestly say he always knew that. I didn't always communicate that that's how I felt, but there were certainly times that I would say this relationship is hurting me.

(Tr. at 96-97)

32. Patient 1 testified that she tried to end the relationship with Dr. Seman around July or August of 2014, and that Dr. Seman initially respected her wishes, but then told her that he missed her, and asked if they could reconcile. (Tr. at 97-98) She related, "I wanted to meet his needs, so I would give in, I'd compromise my needs." (Tr. at 98) Patient 1 spoke of another time when Dr. Seman wanted to end the relationship, but then, after a hug or a kiss in the office, their relationship developed again. (Tr. at 98-99)

33. Dr. Seman and Patient 1 disagreed about whether she had ever given him an ultimatum about leaving his wife. Dr. Seman admitted that there was a time when he told Patient 1 that he was considering leaving his wife, and he testified that he was being honest with her when he said that. (Tr. at 52) He testified that in late January or early February 2015, Patient 1 told him it was a "deal breaker" if he would not leave his wife and family, which he characterized as an ultimatum. (Tr. at 49, 220) He recalled, "[A]t that point, I started to back away from the relationship but we didn't end it. I basically told her I really can't leave my wife and children, I just won't be able to do that." (Tr. at 49)

34. Although Patient 1 insisted that she never gave Dr. Seman an ultimatum about leaving his wife and family, she said that, after she tried to end the relationship with him, Dr. Seman began to talk "more in terms of commitment." (Tr. at 100-101, 165) She testified that he

suggested that they rent an apartment that was close to the office, but also close to her daughter's school, so that she and her daughter could live there if she separated from her husband. Patient 1 said that she felt uncomfortable with that suggestion, because of the idea of Dr. Seman paying for the apartment, and also because she resented his presumption that she would need his help to support herself and her daughter if she left her husband. (Tr. at 100-101)

Discovery of Pregnancy in Early 2015

35. Dr. Seman testified that, in January 2015, Patient 1 showed him a birth control pack and explained to him that she had gotten confused and had missed a couple of days of pills. He recalled that a short time after that, on Ash Wednesday of that year, Patient 1 told him that her period was late. (Tr. at 49-51)

36. Dr. Seman testified that he suggested to Patient 1 that she have a pregnancy test, and offered her one of the tests that he keeps in a drawer in his office:

> Wednesday, I said, you know what, there's a pregnancy test in my drawer. And occasionally I would put pregnancy tests in my drawer because I had teenage girls who sometimes would need a pregnancy test and not have money for one. * * * [W]e give [the test] to the mother and father of the teenager if they wanted one to say, hey, you could use this one, and then if it's positive, we'll send you for a blood test.

(Tr. at 222)

37. Dr. Seman related that Patient 1 did the pregnancy test in the restroom of the Counseling Center, and it was positive. (Tr. at 49-51, 53, 102) He related, "At that point I had no intention of ending the relationship. We actually had sex that day. I wanted to spin a positive spin on it rather than the dread we both felt." (Tr. at 50) Dr. Seman testified that he went into atrial fibrillation shortly after learning that the pregnancy test was positive. (Tr. at 50)

38. Patient 1 testified that Dr. Seman was initially angry and upset, hunching over and uttering a swear word when the pregnancy test was positive, but that he then "snapped out of it" and apologized, telling her, "It's going to be a beautiful baby." (Tr. at 103-104) She related that he went home from work that day because he was in atrial fibrillation. Then, he called her later and asked if she wanted to have a late lunch or early dinner. She recounted that when she met him for the meal, he suggested they go to a hotel that was behind the restaurant. They had sex for the last time at the hotel that day. She recalled that Dr. Seman then wrote her a prescription for a pregnancy blood test, and they went to St. Elizabeth's Hospital so that she could have the test. Patient 1 testified that Dr. Seman went with her to the hospital but kept some distance. When she was asked questions about which doctor had ordered the blood test, Dr. Seman did not identify himself to the staff as the one who had written the script. She recalled that Dr. Seman left that appointment before she finished having her test because his son had called, asking him to get a toy for

him at ToysRUs. (Tr. at 101-106) The parties introduced Joint Exhibit ("Jt. Ex.") 1, the results of the blood test that confirmed Patient 1's pregnancy on February 25, 2015. (Jt. Ex. 1; Tr. at 185-186)

39. Patient 1 stated that Dr. Seman looked exhausted and unkempt the next day at work. She said that, when she got the results back from the blood test and read them to Dr. Seman, he told her that it sounded like a viable pregnancy but was short with her. Nonetheless, over the next two days, he still acted as though he was in a loving relationship with her, and texted her that he loved her. Then, however, Dr. Seman told her that he had planned to tell his wife in the presence of their family's priest and to tell the director of the Counseling Center about the pregnancy. (Tr. at 106-108) Patient 1 related that he did not ask her thoughts about this plan, and she asked for some time to let her emotions catch up and to let the fact of the pregnancy "sink in;" however, she related that Dr. Seman seemed to be in "clean up mode" in which he was trying to gain control over the situation. (Tr. at 107)

40. Patient 1 testified that when she told Dr. Seman that the blood test had confirmed her pregnancy, he commented that he could understand why people choose the option of abortion, but she told him that it was not an option for her. (Tr. at 113-114) She explained, "I had never in my life considered that as an option," adding that she did not know anyone close to her who had ever had an abortion. (Tr. at 110) She related that Dr. Seman asked her to keep the remains if she did decide to have an abortion, a request that Dr. Seman also admitted in his testimony at the hearing. Patient 1 stated that, at that time, she believed that she and Dr. Seman were both mature people who would do their best to be kind and sensitive to each other's spouses, and that even though her husband would be hurt, she knew he would still support her. (Tr. at 109-110, 114; 131-132, 164)

41. Dr. Seman testified that after Patient 1's pregnancy was confirmed, he initially thought about how he could maintain his relationship with Patient 1 and possibly a baby, as well as with his wife and children. He concluded that this would be living "even more of a double life than [he] had already been living the previous three years.[1]" (Tr. at 51) He decided that he had no choice but to "come clean" to his wife. (Tr. at 51). Dr. Seman testified that he sent a text message to Patient 1, letting her know that he was going to tell his wife, adding that he did not consult with her first. He stated that Patient 1 was upset with him, and that he believes she understood his decision to tell his wife as a final rejection of her and of the pregnancy. He said that, over the following weekend, he got some angry texts from her, intimating that she was thinking about having an abortion. (Tr. at 51-52, 190-191)

42. Dr. Seman testified that he told his wife about Patient 1's pregnancy on a Tuesday, about a week after learning of it. He related that he spoke with her about it at church after a daily mass, and that she was initially upset, throwing her wedding ring across the room. However, after further conversation, he told her that he wanted to stay with her, and they began a process of healing that he said was continuing as of the date of the hearing. Dr.

[1] Although Dr. Seman testified at the hearing that he had been living a "double life" for *three years*, both he and Patient 1 agreed that their relationship lasted only about 18 months, from September or October 2013 to early 2015. (Tr. at 51, 96-97, 225-226)

Seman said that he never threatened to tell Patient 1's husband because he knew that Patient 1 had a young daughter who was in a stable home, and he did not want to disrupt that. Dr. Seman said that he texted Patient 1 that he was going to tell the Counseling Center's Clinical Director about their relationship and that he got no response from her. Dr. Seman testified that after he told his wife, his wife insisted on sending Patient 1 a text message, telling her that she forgave him and hoped Patient 1's husband would forgive her, and that she and Dr. Seman would help her with the pregnancy any way they could. (Tr. at 53-55, 191-192, 239-240, 252)

43. Dr. Seman stated that he told Clinical Director Todd Frampton about his relationship with Patient 1 and the fact that she was pregnant on or about February 26, 2015, two days after he told his wife. (Tr. at 54-55, 184, 186) He recounted that, about a week after Patient 1's pregnancy was confirmed, she texted him with the fetal heart tones and an estimated due date in October 2015. That night, there was an angry telephone conversation between Dr. Seman, Patient 1, and Patient 1's friend, Jeremy, who worked with the juvenile court, in which Dr. Seman contends that he was pleading with Patient 1 not to have an abortion, while Jeremy threatened to tell everyone at the Counseling Center what had gone on. (Tr. at 142-143, 182-183, 192-193) Dr. Seman testified that this "pushed [his] anxiety through the roof," and he texted back that he would tell Mr. Frampton himself the next day. (Tr. at 182) He explained that he did not want patient care to be affected, or for there to be "a big blow-up at work." (Tr. at 183) He maintained that he was trying to preserve patient care, and that he did not want a conflicted relationship at work with rumors flying. Patient 1 agreed that there was a heated conversation on speaker phone between the three of them shortly before Dr. Seman told their employer, but she contends that Jeremy never threatened to tell anyone at Patient 1's workplace about her pregnancy. She stated that he did not threaten to tell anyone because he was her friend and a support person whom she relied on. (Tr. at 133-136, 142, 204)

44. Dr. Seman agreed with the Assistant Attorney General that he was trying to control the damage by telling his Clinical Director. "I agree, I think the Attorney General stated it, I was doing a clean-up, I'm not sure of the words you used, but damage control, and that was damage control right there. That was like, wow, I don't want the workplace to be any more affected than it's going to be affected." (Tr. at 204) He also acknowledged that he was concerned that Patient 1's friend, Jeremy, might inform the Clinical Director, and that Jeremy's perspective "was not a kind perspective when it came to [him]." (Tr. at 233) He decided it would be best if Mr. Frampton heard the story "from the horse's mouth," instead of from Jeremy. (Tr. at 229-230) Dr. Seman denied that he was "overly worried" about his job, because he said that there are not very many child psychiatrists, so it is not difficult to find work. (Tr. at 230-231)

45. Dr. Seman testified that when he disclosed the matter to his Clinical Director, Mr. Frampton pointed out to him that, since he had written prescriptions for Patient 1, "[T]echnically, she's a patient." (Tr. at 183) Dr. Seman recounted that, after speaking with Mr. Frampton, he called the Board and asked a hypothetical question about whether a person in Patient 1's position was his patient. Upon confirming that this woman was, in fact, his patient, Dr. Seman said that he made the decision that he had to self-report this

information to the Board. He met with an attorney friend in Youngstown, who helped him report the information to the Board in March 2015. (Tr. at 183-184)

Patient 1's Decision to Terminate Pregnancy

46. Patient 1 testified that she did not know Dr. Seman's wife and had never threatened to tell his wife about their affair. She added that she was not angry that he was going to tell his wife, and that she thought if anyone should tell her, it should be Dr. Seman. However, she said that she began to get angry when she got a text message from Dr. Seman's wife, letting her know that Dr. Seman and his wife had decided that the only communication Patient 1 should have with Dr. Seman from that point forward would be through his wife. (Tr. at 107-109) She explained her feelings about that decision:

> That made me angry because I didn't know her. And the things I had heard from him about her were bad things that I wouldn't really want to interact with someone who was the way he had described her. So I felt like I'm the parent of this embryo and he is the parent, and this person that I don't know, I didn't think it was fair that I had to communicate through that person, especially because of the nature of the situation being that we had an affair and he betrayed her in that way. So that was a hard pill to swallow * * *

(Tr. at 108-109)

47. Dr. Seman testified that, sometime after he told the Clinical Director about his relationship with Patient 1 and the fact that she was pregnant, Patient 1 contacted his wife and started to tell her "the intimate details" of their affair. (Tr. at 196) He said that his wife then contacted their attorney, who sent a "cease and desist" letter to Patient 1 the following week. Dr. Seman testified that after the letter was sent, he had no further contact with Patient 1 until sometime in mid to late March 2015. (Tr. at 195-196)

48. Dr. Seman also limited his contact with Patient 1 at work. He testified that when he disclosed his relationship with Patient 1 to the agency's Clinical Director, he also suggested that they communicate through a third person, for professional reasons, without dealing with each other. Although he offered his resignation in early March 2015, Dr. Seman said that his director asked him to stay. Dr. Seman related that he suggested moving his office and Patient 1's office to different parts of the building, and that was done two days later. A memo was sent to Dr. Seman and to Patient 1 from their employer suggesting that they not spend time in other parts of the building together. Dr. Seman testified that he felt as though he had put himself "under a magnifying glass" because he wanted to work separately from Patient 1, yet he sometimes had to go to her part of the building, in order to talk with therapists and case managers about his patients' cases. (Tr. at 69-71, 205-206)

49. Patient 1, meanwhile, testified that she had become uncomfortable communicating with Dr. Seman about the pregnancy only through his wife, and that it caused her to feel powerless:

> Chris and his wife started to behave in some bizarre ways by, for example, like kind of telling me how things were going to be instead of asking me how I might prefer them to be, at one point she called me and when I answered, she asked questions and I answered honestly, and then she said, "Well, that's not what he's telling me."
>
> So it was like I didn't know how I was supposed to – I didn't know what were the lies and which were the truths and it got confusing and ugly. He had had an attorney send a letter saying that I was no longer to contact [his wife.] I was honest with her, and then I get a letter from an attorney. It became clear to me that he didn't want her to know certain things which made it very confusing because at the same time, I'm told to communicate with her. So after some of that, I started to feel like they were kind of unstable and I started to question if this was somebody that I could really parent – co-parent a child with. * * * [H]e was telling me he wanted to buy a home for my daughter and I and the baby, the three of us, and he and [his wife] and I would raise this child together. There was no consideration of my husband or my marriage, but I was told that's how we were going to do it, so I started to feel powerless. I felt like this person is trying to take away my power.

(Tr. at 111)

50. Patient 1 testified that, as a result of the deterioration of her relationship with Dr. Seman and his wife, she began to consider terminating the pregnancy. She related that she researched abortion options and came to the difficult decision to have an abortion. (Tr. at 112, 132-133) At the hearing, she described her thought process that led her to this decision:

> [B]ased on considering quality of life for my daughter, would she have to see her mommy in court all the time, would she have to see her mommy struggling with this family all the time. If that child had grown into a child, would the quality of life have been good in a situation that seemed to feel like it was becoming like a circus. So I think overall, those were the factors that led me to make that decision. * * * I felt like these are two bad situations; I have to choose the best bad. It wasn't like one of these is going to be great. It was we're in a really tough decision, I have to make the best choice for my family, for myself.

(Tr. at 112)

Patient 1 agreed that she had previously told Dr. Seman that abortion was not an option for her, but she added, "After some of the behaviors, it did become an option." (Tr. at 114)

51. Patient 1 testified that she told Dr. Seman she had had an abortion in March 2015. She explained that she did not consult him before she terminated her pregnancy because she

had received a cease and desist letter, telling her that she was not to contact him. She related that Dr. Seman had come to her part of the building to get coffee while she was in the break room eating her lunch. (Tr. at 149-151) Patient 1 stated, "So because he had come over and we were face-to-face, I felt an opportunity to at least tell him we no longer have this issue between us, we can be – we can be done with this." (Tr. at 152)

Dr. Seman's Disclosure of Patient 1's Personal Health Information

52. Dr. Seman acknowledged that he told several people at the Counseling Center about Patient 1's pregnancy, about the fact that she was threatening to have an abortion, and that she had had an abortion, although he stated that he still was not sure that she had ever had one or if she might have had a miscarriage. He admitted that this was part of her Personal Health Information ("PHI") and that he did not have her permission to disclose it. (Tr. at 58, 201)

53. In addition to his telling the Clinical Director about it, Dr. Seman admitted that he told Patient 1's nephew, whom Patient 1 had raised as her son. He explained that Patient 1's nephew was finishing an undergraduate degree in psychology, and had been working as an intern at the Counseling Center since January 2015. Dr. Seman said that he had been asked to write a letter of recommendation for Patient 1's nephew to pursue a master's program, which the nephew would need by May of that year. He stated that he was concerned that, when the nephew found out about the relationship and the pregnancy, he might worry that he would not be able to get the letter of recommendation. However, he agreed that the nephew had never questioned whether he would still write the letter for him. (Tr. at 55-61) Dr. Seman testified that he still intended to write the letter of recommendation, adding, "I didn't want him being caught off guard at the last minute trying to find a new person to write a letter for him for his master's program." (Tr. at 58-59)

54. Dr. Seman said that he told Patient 1's nephew that she said she had had an abortion, although at that time, he still was unsure if she had actually had one. (Tr. at 58) He related that Patient 1's nephew was "[d]isappointed but not surprised." (Tr. at 58) Dr. Seman admitted that this information hurt Patient 1's nephew, and that he considered the fact that it might negatively impact Patient 1's relationship with her nephew. However, he said that he did not believe the nephew saw Patient 1 as a mother figure because the nephew called Patient 1 by her first name. (Tr. at 59-62) Dr. Seman admitted that he "stupidly" disclosed this information to Patient 1's nephew. (Tr. at 206) He stated, "It wasn't the best thinking in the world on my part," and added that, in hindsight, he should have just let things fall where they may. (Tr. at 203) When he was asked by the hearing examiner why he did not simply assure the nephew that he would write the letter of recommendation, without disclosing the details of Patient 1's pregnancy or the fact that she may have had an abortion, Dr. Seman responded, "I don't have a good answer for that. * * * I'm sure if I wanted to be honest with myself, that I had some animosity towards Patient No. 1 at that point." (Tr. at 252)

55. Dr. Seman related that, after he told Patient 1's nephew about their affair and Patient 1's pregnancy, Patient 1 threatened to file a workplace harassment suit against him. (Tr. at 67-68) Around this same time, he said that Patient 1's friend had called his wife, to tell her that he was still in love with Patient 1, and that the situation became "just too out of control at that point." (Tr. at 68) He therefore gave his notice and officially resigned from his position with the Counseling Center as of May 2015. (Tr. at 67-68)

56. In addition to telling the agency's Clinical Director and Patient 1's nephew, Dr. Seman admits that he told several other people at work about the fact that Patient 1 was pregnant, and that she was "threatening to have an abortion." (Tr. at 62) At the hearing, he acknowledged that he told his nurse, Sandy Summers, as well as two therapists, Cathy Enderlein and Pat Taylor. He also told Patient 1's supervisor, Marcy Patton, although he claimed that the supervisor already knew about it by the time he told her. (Tr. at 65-67, 114-115, 202-203, 248-249) He stated that he also "mentioned it in passing" to another therapist, Avis Santiago, and to case manager Pam Daily. (Tr. at 194-195)

57. Dr. Seman maintained that he never encouraged the people he told to have any negative feelings toward Patient 1 and that he told his co-workers because he was worried about his wife, his family, and the fact that Patient 1 was considering having an abortion. (Tr. at 194-195, 249-250) At the hearing, he explained that he used his co-workers as a sounding board for his grief about the fact that Patient 1 might terminate her pregnancy, admitting, however, that he was wrong to do so:

> I was very worried about it, heartbroken that that is a possible outcome, and I viewed my co-workers as my friends, and I used them as a sounding board. And I know it was inappropriate. It was another boundary violation right there, but that's what I did. I was a mess that spring, as so was Patient 1, I'm sure. We were both in the same boat essentially.

(Tr. at 66-67)

58. Dr. Seman admitted that he knew all of the people he told, except for his nurse, had conservative views on abortion, but he maintained that he was not trying to shame Patient 1 or isolate her from the other employees at the Counseling Center. Dr. Seman testified that he asked these people to be kind to Patient 1, and he admitted that he was also hoping they would encourage her not to have an abortion. (Tr. at 202-203, 250) Throughout his testimony, Dr. Seman insisted that he asked those co-workers "to be supportive of [Patient 1] so that she would maybe not choose an abortion." (Tr. at 249)

59. Patient 1 testified that she felt isolated in the workplace after Dr. Seman disclosed her personal information to her co-workers who had strong personal opinions against abortion. (Tr. at 114-115, 117-118) She described her feelings after learning that he had told several co-workers:

> [I]t took every bit of strength for me to go to work every day knowing that he had talked about it and shared the personal details of that situation that

> made me -- I felt very vulnerable * * * So to feel vulnerable and this person that I trusted so much with my emotions, with my heart, with my sexuality, this person that I trusted had really not only betrayed me but really kind of threw me under the bus and put me out there to expose me the way he did after I had trusted him with so much of myself and made myself vulnerable. For that person to have exposed me and really tried to harm me, it was hurtful. And it affected the way I had to kind of carry myself at work and how I really had to kind of work hard to hold my head up high and to maintain my dignity * * *

(Tr. at 117-118)

60. Patient 1 testified that Dr. Seman's disclosure of this information to her nephew, whom she referred to as her "son," damaged that relationship, because the young man held very conservative opinions about abortion. (Tr. at 114-115) She also stated that she believed Dr. Seman intended to hurt her by revealing that information:

> It devastated me because I believe children should be off limits. If you want to retaliate, if you want to ruin someone's reputation, all the things I believe he tried to do, that Chris tried to do, tried to get me fired, all of those things, you know, are one thing. But to go after someone's child, and he knew the value of my children, he knew that was something that I place at the very highest priority in my life and I had lived my whole life for these kids, I had shared that out of my heart with him over and over again, and I had shared with him some concerns about how * * * my son had has some strict guidelines in his beliefs and I would like to see him a little more open minded and a little not so rigid. So to go after someone's child, I feel like that was just crossing a line. And I could see the only reason to do that was to hurt – to hurt my son would be to hurt me.

(Tr. at 116-117)

61. Patient 1 maintained that she did not discuss her relationship with Dr. Seman with her co-workers, except her supervisor, Marcy Patton, and she added that when she told her supervisor, Ms. Patton said that she already knew because the Clinical Director had told her, after Dr. Seman disclosed it to him. Patient 1 contended that Dr. Seman had also talked with another caseworker, Melissa Gutterle, about her pregnancy, but Dr.Seman testified that he did not recall speaking with Ms. Gutterle. Patient 1 emphasized that, besides her supervisor, she told only her mother, her friend Jeremy, and one other close friend about her relationship with Dr. Seman. (Tr. at 114-115, 141-144, 194-195) She offered, "I didn't talk about it because it was something sacred to me. It wasn't something to gossip about at the hallways at work. It was something meaningful." (Tr. at 119)

62. Patient 1 added that she believes Dr. Seman attempted to get her fired. (Tr. at 145-147) She related that, after Dr. Seman officially resigned from the agency, she learned from her

supervisor that Dr. Seman had previously offered to rescind his resignation and stay on with the agency if the agency "got rid" of Patient 1. (Tr. at 145-146)

63. Dr. Seman testified that after the abortion allegedly occurred, he saw Patient 1 at a school meeting involving a child who was a client of the Counseling Center. He related that something came up about symptoms that the Counseling Center staff did not know the child was having, and he believed it cast Patient 1 in a bad light, as the case manager. The day after the meeting, he spoke to Patient 1 at work, telling her that he did not mean to put her on the spot at the school meeting. He recounted that she then told him that she had had the abortion, and that she was proud of her decision. (Tr. at 197-198) Dr. Seman related that he was angry with her about the abortion, but he controlled his reaction:

> I said to Patient No. 1, "You didn't have to do that. All we wanted was to be part of the relationship with the child, part of the child's life. She said, "But we would be in and out of court." * * * The conversation got a little heated but not too much, and then it ended by us basically—I said, "I'm sorry you made the decision, you didn't have to make that decision. I wish you and [Patient 1's husband] well." That was the end of the conversation.

(Tr. at 198-199)

Board Investigation After Dr. Seman's Self-Reporting

64. Dr. Seman testified that he self-reported the information about his relationship with Patient 1 in early March 2015, about a week after he learned of her pregnancy, and after calling the Board to ask, in the form of a hypothetical question, whether Patient 1 was, in fact, a "patient." Dr. Seman testified that he believed he spoke with Marcie Pastrick, a Board enforcement attorney, and provided to her the facts that are alleged in Paragraph 1 of the Notice. A month or two later, a Board investigator, Mr. Kissos, came to the Counseling Center, and interviewed Dr. Seman in his office. (Tr. at 182-183, 186-187, 226; St. Ex. 1)

65. Dr. Seman testified that he had a Board deposition in June 2017 with Ms. Pastrick. He agreed that, in his deposition, he said that he terminated his relationship with Patient 1 before he learned that she was pregnant. At the hearing, he clarified that he did not end the relationship when the home pregnancy test was positive, but that he waited until the results of the blood test were returned to end his relationship with her. (Tr. at 188, 226-228) He explained that, before that time, they were in a "cooling off" period in which he had told her that he was not going to leave his wife and children:

> Q: Now that is not what you are testifying to today, am I right?
> A: Right, it was the day after I terminated the relationship. It was the day of getting the blood test back that I terminated the relationship. The day we found out about it, at that point, the relationship was not terminated at that point.
> Q: Right, because you don't have sex with people with whom you've terminated a relationship?

> A: Right.
> Q: Do you know why you told Marcie that you terminated the relationship prior to finding out she was pregnant?
> A: I thought we talked prior about cooling down the relationship, not terminating it completely but cooling it down because I had told her I wasn't willing to leave my wife and children. So there were talks about kind of just it being cooled down, but we hadn't officially said I'll never see or talk with you again. It was basically a cool down period.

(Tr. at 228)[2]

66. At the hearing, Dr. Seman was asked to consider whether his relationship with Patient 1 was in any way damaging to her, or whether it affected his care of his other patients. He stated that he believed he gave good care to his patients while the affair was going on. (Tr. at 68-69, 71-72) However, he added, "After the relationship ended, I do believe patient care started to get affected in that I asked for there to be no contact between Patient 1 and myself and that we would only exchange information via the medical record or our – my nurse or her supervisor." (Tr. at 68-69)

67. Dr. Seman acknowledged that the relationship was damaging to Patient 1, and that her reputation in the workplace suffered as a result:

> I think she was damaged on multiple levels. Just having a relationship outside of marriage at that level on a personal level, infidelity with her partner, my infidelity with my partner. I think that's damaging. I think it's damaging and a boundary problem when I prescribed medications to her because as I've learned since all of this, her view of me would have changed based on just one prescription, whether it be for a lab test or Wellbutrin. It didn't matter. Just writing a script I'm sure affected her view of me and brought this whole dynamic of physician/patient relationship in.
>
> And I imagine the trust issues are a big deal for her and damaged her ability to trust. I think her reputation suffered afterwards in the aftermath. I did not want people to demonize her or not like her. As a matter of fact, I encouraged Cathy Enderlein to befriend her, and this was in the aftermath. I was angry. I was upset about the possibility of an abortion, but I was also getting back to the principles I try to live by and not being vindictive. I didn't feel like I was being vindictive. I actually encouraged people to befriend her and cut her some slack. She had already had problems with her reputation prior to the affair coming out.

(Tr. at 71-72)

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[2] Although Dr. Seman acknowledged that his testimony at the deposition differed from his testimony at the hearing regarding whether he ended his relationship with Patient 1 before or after he learned of her pregnancy, the deposition was not admitted into evidence. (Tr. at 169; 226-228)

68. Dr. Seman agreed that he was in a superior position to Patient 1 at work because he was a psychiatrist and she was a case manager, but he said that he did not view it that way at the time he was having his relationship with Patient 1. He simply viewed everyone else at the Counseling Center as a colleague. (Tr. at 72) At the hearing, he conceded, "[B]ut I see that now." (Tr. at 72)

69. When Dr. Seman was asked, "Who is responsible for all of this?" he readily admitted that he was the one responsible. (Tr. at 207) At the end of his testimony, Dr. Seman reflected on mistakes he had made through his relationship with Patient 1:

> [S]he has her responsibility for having a relationship with me, too, I get that, but I didn't recognize at the time the hierarchy issue, the psychiatrist working with case management and therapists. I know that know. I didn't recognize that at the time.
>
> I didn't recognize at the time that writing a prescription of anything for anybody or actually giving sound medical advice is the same as having a patient at that point. I at the time of the relationship was arrogant.
>
> There was a therapist that came up to me halfway through the relationship some time in 2014, and I think it was Cathy Enderlein said, "Chris, what are you doing? What are you doing?" Because the staff knew what was going on. They knew we had a relationship already and everybody was talking about it.
>
> And I arrogantly told Cathy to mind your own business, I'm fine, I'm fine. She was there trying to save me from further damaging my marriage and my work environment, and I didn't listen. I didn't listen to her as a friend, as a colleague.
>
> So I jumped the gun in telling Todd Frampton and Sandy Summers with this damage control issue. I never should have done that because she's a patient. That's her private business. If I said this idea of to sort of preempt what Jeremy [last name] was going to do to talk to the staff, I shouldn't have done that. That was a HIPAA violation actually because I knew not just from the interactions between her and I that she had a pregnancy but from an actual blood test that I ordered.
>
> I never should have talked to anybody there, even when they approached me. I should have just kept my mouth shut about it and said mind your own business, and I get that.
>
> To this day, I felt responsible for the abortion being that – if we assume now that it actually occurred, I feel responsible for that. I felt responsible for that over the years because I think if I would have just kept my mouth

> shut at the Counseling Center, Patient No. 1 wouldn't have felt pressured into making that kind of decision.
>
> Of course, the cease and desist letter that we sent, my wife sent, didn't help anything. I don't regret telling my wife about the relationship. I think that was the right thing to do. I should have done that a long time before. I should have never gotten in the relationship in the first place.
>
> So yes, do I share blame? I have most of the blame. It was a failure. It was a failure both professionally, personally regarding my faith, hurt my family, hurt my children, hurt my wife, hurt her family, hurt the Counseling Center staff, the morale of the place that went down the tubes after all this came out and ultimately then her patients would be affected, the morale of the staff. So yes, yes, a lot of pain and blame.

(Tr. at 207-210)

Mitigation Evidence: Completion of Professional Boundaries and Ethics Course

70. Dr. Seman introduced evidence of a PBI Professional Boundaries and Ethics course that he took from March 9 -11, 2018 in Chicago, earning 24 Category I CME hours. (Resp. Ex. B) He presented both his certificate of completion and the course syllabus, and he testified that the course gave him a different understanding of boundary issues with patients and was one of the most meaningful CME courses he had ever taken. Dr. Seman said that he did not realize, for example, that giving a patient his personal cell phone number in case the patient had a problem created a boundary problem. He stated that the course taught him about his own risk factors, such as becoming too isolated, or being under personal or financial stress. (Tr. at 201-213)

71. When he was asked if there was anything else he wanted the Board to consider, Dr. Seman offered his assurance that he realized his mistakes, and that he would never repeat them:

> I would say that I completely screwed up; that I messed up my personal and professional boundaries; that I put her medical care essentially in peril by prescribing to her. I never should have prescribed to her or ordered a blood test on her. I created a victim in her, and that's what I believe. * * * I would have them know that I take responsibility for what I did. I see that I created a problem in prescribing to her. I created a problem by having a relationship with her. And then I created a problem by prescribing to her and then talking about it in the workplace and causing damage to her reputation. I see all that.
>
> Even though I did all that, I made changes. I've had three years to really think about this, to look into the whole how did I get myself into this mess, how did I get her into this mess, how did I get my wife and children into this mess and made some positive changes in my life.

> And that is multilayered. It's professional positive changes with looking at boundaries and how our office runs, HIPAA issues, who I prescribe to, not being the rescuer, the best doctor ever to anybody and everybody. Those are all the traps that you have to recognize.
>
> That's one of the reasons why I think I prescribed to her, is, you know, I wanted to be that rescuer and that helper, and that's not a good enough reason because it ultimately, you know, messes up her own patient care. And even though she saw Dr. Chrobak, there's still an issue there, there's still an issue that I adversely affected her medical care, and, of course, then her future care as far as trusting a doctor and so forth.
>
> So a lot of those issues are involved. That's what I want the Board to know. I take that seriously because I'll never make this mistake again, and I want to put up safeguards to not make this mistake again. They were huge [errors] in judgment.

(Tr. at 217-219)

72. The record was left open following the hearing, so that Dr. Seman's counsel could attempt to obtain text messages through a subpoena to his wireless carrier. The subpoena was issued to Verizon, requesting all SMS or text messages placed or received by Dr. Seman's cell phone number between January 1, 2013 and May 1, 2015. The subpoena was issued after the hearing, but Verizon responded on April 19, 2018 with a letter stating that the records did not exist because the dates were beyond the company's period of retention. (Tr. at 259-262, 268-270; Resp. Exs. D, E.)

FINDING OF FACT

In the routine course of his practice, Christopher R. Seman, D.O., undertook the medical care of Patient 1.

On or about March 9, 2015, Dr. Seman self-reported to the Board and subsequently confirmed to a Board investigator that he engaged in sexual conduct with Patient 1, who was also a co-worker. On or about June 1, 2017, Dr. Seman stated under oath that he had provided non-controlled prescriptions without maintaining a patient record for and without preforming any examination of Patient 1. He further stated that he engaged in sexual conduct with Patient 1 from approximately October 2013 to January 2015. The prescriptions that Dr. Seman wrote for Patient 1 (including Ortho Tri-Cyclen on December 6, 2013, and January 10, 2014; Augmentin on December 23, 2013; Fluconazole on November 6, 2014 and January 9, 2015; and Bupropion on January 12, 2015) indicate that he provided medical care to her during the time he acknowledged engaging in sexual conduct with her.

CONCLUSIONS OF LAW

1. Dr. Seman's acts, conduct, and/or omissions as alleged in the Finding of Fact, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of Chapter 4731 or any rule promulgated by the board," as that clause is used in R.C. 4731.22(B)(20); to wit: OAC Rule 4731-26-02 as in effect between November 30, 2010 through June 29, 2016. Further, pursuant to OAC Rule 4731-26-03(A), as in effect between November 30, 2010 through June 29, 2016, a violation of Rule 4731-26-02 also violates R.C. 4731.22(B)(6), which is "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

2. Because the conduct alleged in the Notice in this case occurred prior to September 29, 2015, the Board is not authorized to impose a fine for these violations pursuant to R.C. 4731.225.

DISCUSSION OF PROPOSED ORDER

The essential facts of this case are not in dispute, and for that reason, it did not become necessary to assess the relative credibility of the Dr. Seman and Patient 1. Dr. Seman had an 18-month affair with Patient 1, who was his co-worker, a case manager in an inferior position at the agency where he worked as an independent contractor. During that time, he wrote prescriptions for Patient 1 for non-controlled substances including Ortho Tri-Cyclen for birth control; amoxicillin (Augmentin) to treat respiratory infections; fluconazole (Diflucan) to treat a yeast infection; and bupropion (Wellbutrin) for anxiety. When Patient 1 became pregnant, Dr. Seman disclosed to several of their mutual co-workers and to her nephew the fact that she was pregnant and that she was considering having, or might have had an abortion, facts that he agrees constitute her personal health information. Those facts are not disputed.

The Board's guidelines call for a minimum of a one-year indefinite suspension for a physician who commits sexual misconduct in the course of practice, with conditions for reinstatement and discretionary probation once readmitted, as well as a boundaries course, which in this case, Dr. Seman has already taken. Dr. Seman presented in his exhibits the Board Orders from two cases, *In the Matter of Melissa Marker, D.O.*; and *In the Matter of Philip Hutchison, D.O.*, in which physicians prescribed medications for someone with whom they were in a relationship and received only a reprimand and probation as Board sanctions. Dr. Marker was a physician specializing in emergency medicine, and Dr. Hutchison practiced in critical care and general surgery. Both prescribed short-term controlled substances to treat their partners' emergent conditions such as pain after a root canal procedure, a gallbladder attack, and tissue laceration, and both prescribed Ambien to their physician partners who had trouble sleeping because they worked nights. Dr. Seman also presented a Consent Agreement signed by another physician, James Silverblatt, M.D., in which the physician received a reprimand with probationary terms for at least

one year. For the reasons explained below, this case presents facts that are quite different from the cases cited, and it presents aggravating factors that were not present in those cases.

In the cases involving Dr. Marker and Dr. Hutchison, each physician wrote prescriptions for his or her live-in significant other, who was also a physician, during gaps when the partner had no personal physician after the couple moved to Ohio from another state. Dr. Hutchison also prescribed Ambien and Lunesta for his significant other's close relative, after she lost her husband. In each case, the Board found that the doctor's significant other, and in Dr. Hutchison's case, the significant other's close relative, met the definition of "family members" under OAC Rule 4731-11-08(C). Although Dr. Marker and Dr. Hutchison also failed to keep patient records for their relationship partners, they did perform at least cursory exams of their partners before prescribing for them. Significantly, the patients involved in those cases were both physicians themselves who had the ability to understand their own medical conditions, while Dr. Seman's Patient 1 was a layperson who did not even realize that a psychiatrist was a medical doctor who could prescribe.

The facts presented in the Consent Agreement signed by Dr. Silverblatt also show a different fact pattern with fewer aggravating circumstances. In that case, Dr. Silverblatt prescribed Ambien and one other medication for his significant other, who was not a physician, and did not keep a patient chart for her. He also prescribed bio-identical hormone therapy for a patient with whom he had previously had a sexual relationship, but he did keep a patient record for her when she became his patient. There was no allegation that he did not examine those patients before prescribing to them.

Dr. Seman's treatment of Patient 1 presents several aggravating factors that were not present in the fact patterns of the cases he cited as similar cases. Patient 1 was in no regard a "family member" as defined by the Board's rule, and because she was not a medical professional, she did not have the training or sophistication to know whether Dr. Seman was giving her acceptable medical care. Further, over time, as Dr. Seman wrote prescriptions for more and more of the medications that Patient 1 used for ongoing medical concerns during the course of their relationship, she grew distant from her family doctor, who presumably had been examining her and giving her comprehensive medical care. That presented a risk to her health.

The disclosure of very sensitive personal health information to third parties is also a significant aggravating factor in this case. When Patient 1 became pregnant, Dr. Seman told numerous co-workers as well as Patient 1's nephew, whom she had raised as a son, about her pregnancy and the fact that she was considering having an abortion, without Patient 1's permission. Dr. Seman admitted that he disclosed Patient 1's personal health information to these people, all but one of whom held personal opinions against abortion, in the hope that they would counsel her not to terminate her pregnancy. Patient 1 and Dr. Seman agreed in their testimony that Patient 1's relationship with her nephew and her reputation at her workplace were damaged as a result of those disclosures. This is especially troubling because Patient 1 described the local area as a "small town community" in Columbiana County, where it may have been nearly impossible for her to simply find a different job with comparable pay and benefits. In her testimony, she spoke about how difficult it was for her to go to work every day at the Counseling Center, after Dr. Seman disclosed her private information to her co-workers.

Finally, while Dr. Seman self-reported his relationship with Patient 1 to the Board, he did so only when he knew that she was pregnant and had told him that abortion was not an option she was considering. After maintaining an 18-month affair with her, he likely knew at that point that he would not be able to hide his relationship with her any longer, and was working to limit the consequences that he would face.

Because of the damage caused to Patient 1 in this case and Dr. Seman's lack of regard for her wellbeing, a suspension of at least one year is warranted in this case, with conditions for reinstatement, followed by a period of probation.

PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION OF LICENSE**: The certificate of Christopher R. Seman, D.O., to practice osteopathic medicine and surgery in Ohio is **SUSPENDED** for an indefinite period of time, but not less than one year.

B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Seman's license to practice osteopathic medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Seman shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any. Dr. Seman shall not submit such application for at least one year from the effective date of this Order.

2. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Seman has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

3. **Professional Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Seman shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Seman submits the documentation of successful completion of the course(s) dealing with professional ethics, he shall also submit to the Board a

written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of osteopathic medicine in the future.

4. **Personal Ethics Course(s)**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Seman shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Seman submits the documentation of successful completion of the course(s) dealing with personal ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of osteopathic medicine in the future.

5. **Course(s) Concerning Physician/Patient Boundaries**: At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Seman shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Seman submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

C. **PROBATION**: Upon reinstatement or restoration, Dr. Seman's license shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

1. **Modification of Terms**: Dr. Seman shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

2. **Obey the Law**: Dr. Seman shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.

3. **Declarations of Compliance**: Dr. Seman shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Seman's license is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal Appearances**: Dr. Seman shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Seman's license is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

5. **Required Reporting of Change of Address**: Dr. Seman shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

6. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Seman is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Seman's certificate will be fully restored.

E. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Seman violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION**:

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Seman shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training. Further, Dr. Seman shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training.

   Further, within 30 days of the date of each such notification, Dr. Seman shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. Seman receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Seman shall provide a copy of this Order by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. Seman shall provide a copy of this Order by certified mail at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

   Further, within 30 days of the date of each such notification, Dr. Seman shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

   This requirement shall continue until Dr. Seman receives from the Board written notification of the successful completion of his probation.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

Ronda Shamansky

Ronda Shamansky, Esq.
Hearing Examiner

State Medical Board of
Ohio

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
www.med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 12, 2018

REPORTS AND RECOMMENDATIONS

Mr. Giacalone announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Mr. Giacalone asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: John Harlem Johnson, M.D.; and Christopher R. Seman, D.O. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

Mr. Giacalone asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

Mr. Giacalone noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matter of John Harlem Johnson, M.D.

Mr. Giacalone reminded all parties that no oral motions may be made during these proceedings.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

CHRISTOPHER R. SEMAN, D.O.

.....

Dr. Schottenstein moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Christopher R. Seman, D.O. Dr. Factora seconded the motion.

.....

Dr. Schachat exited the meeting during the discussion of this matter.

.....

A vote was taken on Dr. Schottenstein's motion to approve:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Mr. Giacalone	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion to approve carried.

State Medical Board of
Ohio

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
www.med.ohio.gov

September 13, 2017

Case number: 17-CRF-0123

Christopher R. Seman, D.O.
7306 Bye Road
East Palestine, Ohio 44413

Dear Doctor Seman:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(1) In the course of your practice, you undertook the treatment, provided care and/or prescribed medications to Patient 1, as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)

On or about March 9, 2015, you self-reported to the Board and subsequently confirmed to a Board Investigator that you engaged in sexual conduct with Patient 1, who was also a co-worker. On or about June 1, 2017, you stated under oath that you had provided non-controlled prescriptions without maintaining a patient record for and without performing any examination of Patient 1. You further stated that you engaged in a sexual conduct with Patient 1 from approximately October 2013 to January 2015. The prescriptions that you wrote for Patient 1 (including, Orth Tri-Cyclen on December 6, 2013, and January 10, 2014; Augmentin on December 23, 2013; Fluconazole on November 6, 2014, and January 9, 2015; and Bupropion on January 12, 2015) indicate that you provided medical care to her during the time you acknowledged engaging in sexual conduct with her.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code, as in effect between November 30, 2010, through June 29, 2016. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, as in effect between November 30, 2010, through June 29, 2016, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is "a departure from, or the failure to conform to, minimal standards of care of similar practitioners

Mailed 9-14-17

under the same or similar circumstances, whether or not actual injury to a patient is established."

Furthermore, for any violations that occurred on or after September 29, 2015, the board may impose a civil penalty in an amount that shall not exceed twenty thousand dollars, pursuant to Section 4731.225, Ohio Revised Code. The civil penalty may be in addition to any other action the board may take under section 4731.22, Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Kim G. Rothermel, M.D.
Secretary

KGR/MAP/BJR
Enclosures

CERTIFIED MAIL #91 7199 9991 7036 6913 4146
RETURN RECEIPT REQUESTED

cc: Eric Plinke
Dinsmore & Shohl LLP
191 West Nationwide Blvd, Suite 300
Columbus, OH 43215

CERTIFIED MAIL #91 7199 9991 7036 6913 4153
RETURN RECEIPT REQUESTED

IN THE MATTER OF CHRISTOPHER ROBERT SEMAN, D.O.

17-CRF-0123

SEPTEMBER 13, 2017, NOTICE OF OPPORTUNITY FOR HEARING - PATIENT KEY

SEALED TO PROTECT PATIENT CONFIDENTIALITY AND MAINTAINED IN CASE RECORD FILE.