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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

BEFORE THE STATE BOARD OF MEDICINE

**IN THE MATTER OF THE PETITION FOR REINSTATEMENT
OF THE LICENSE TO PRACTICE MEDICINE AND SURGERY OF
MATTHEW RONALD DEJOHN
Petitioner**

**DOCKET NO. 0531-49-15
FILE NO. 15-49-02859**

FINAL ADJUDICATION AND ORDER

**IAN J. HARLOW
COMMISSIONER OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

**MARILYN J. HEINE, M.D., CHAIR
STATE BOARD OF MEDICINE**

**2601 North Third Street
Post Office Box 69523
Harrisburg, Pennsylvania 17106-9523**

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PROTHONOTARY

Department of State

HISTORY

This case is before the State Board of Medicine (Board) for review of the hearing examiner's proposed adjudication and order examiner issued on July 29, 2015. The hearing examiner's proposed adjudication and order sets forth the history of the case. On August 4, 2015; the Board issued notice of its intent to review the hearing examiner's proposed report and order. The Commonwealth filed a brief on exceptions on August 10, 2015, challenging the proposed order's requirement that the Professional Health Monitoring Program through the Disciplinary Monitoring Unit monitor Petitioner during the proposed probationary period. (Commonwealth's Brief on Exception, dated August 10, 2015). On August 20, 2015, Petitioner filed a brief on exceptions challenging the proposed adjudication and order's suggestion that Petitioner admitted that he committed "immoral conduct" in the February 3, 2015 Consent Agreement and Order. (Petitioner's Brief on Exceptions, filed August 20, 2015). Petitioner acknowledges that he committed "unprofessional conduct" but contends he never agreed that he committed "immoral conduct." (*Id.*).

The Board reviewed the entire record in this matter at its September 16, 2015 meeting, and now issues this adjudication and order in final disposition of the matter. The Board appends the hearing examiner's proposed adjudication and order to this final adjudication and order as "Attachment A."

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION

It is consistent with the authority of the Board under the Medical Practice Act of 1985 (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. §422.1 *et seq.*, and the Administrative Agency Law, 2 Pa. C.S. §504, for the Board to adopt the hearing examiner's proposed findings of fact, conclusions of law, and discussion if the Board determines that they are complete and the evidence supports them.

The Board has reviewed the entire record in this case and concluded that the evidence supports the proposed findings of fact and conclusions of law, and, therefore, it adopts the hearing examiner's proposed findings of fact and conclusions of law. The Board hereby incorporates the hearing examiner's proposed findings of fact and conclusions of law by reference as if they were set forth fully in this adjudication and order.

The Board concludes that the facts and the law support most of the hearing examiner's discussion and hereby adopts the hearing examiner's discussion with the exception of the first, complete paragraph on page 13 and the first three, complete paragraphs on page 24 of the discussion. The Board hereby incorporates the hearing examiner's discussion, with the exception of the first, complete paragraph on page 13 and the first three, complete paragraphs on page 24 of the discussion by reference as if set forth fully in this adjudication and order. The Board does not adopt the discussion contained in the first, complete paragraph on page 13 and the first three, complete paragraphs on page 24 of the discussion.

The Board adds the following discussion.

A physician who exhibits boundary issues with a patient greatly concerns the Board. When the physician exhibiting trouble recognizing appropriate boundaries is a psychiatrist, the Board is even more concerned. When the patient with whom a psychiatrist is having difficult

recognizing and maintaining proper boundaries is a minor, the Board is even more gravely concerned.

In the present case, Petitioner's conduct was egregious. Petitioner exchanged thousands of emails with his patient outside of regularly-scheduled counseling sessions, emails that were familiar and social in tenor. During the email conversations, Petitioner and his patient would use nick names rather than their given names or surnames. Many of the emails were of a frank, sexual nature. Petitioner did not discourage or terminate email conversations with his patient but appears to have encouraged them. The fact that Petitioner treated this patient differently than his other patients increases rather than decreases the Board's concern. Perhaps one of the most troubling aspects of Petitioner's conduct is the effort he made to maintain a relationship with his patient when she told him that she would no longer be treating with him – Petitioner opened an anonymous email account for himself and his patient with an encrypted email service.

The Board recognizes that Robert M. Wettstein, M.D., (Dr. Wettstein) offered a psychiatric opinion that Petitioner is able to practice medicine with reasonable skill and safety to patients. Although Dr. Wettstein's opinion supports the reinstatement of Petitioner, it also supports the imposition of a period of probation. Dr. Wettstein indicates that Petitioner's participation in long-term individual psychotherapy is indicated in this case given Petitioner's failure to monitor and manage his own feelings and conduct during the course of his treatment with patient A.F. Dr. Wettstein indicates that a course of individual psychotherapy of indefinite duration of at least six months is strongly recommended for Petitioner to further understand his conduct and to prevent another unsatisfactory treatment outcome elsewhere. Dr. Wettstein's recommendation recognizes that there is some risk that Petitioner could engage in similar conduct in the future. To fulfill its responsibility to public health and safety, the Board must

strive to minimize such a risk. To minimize the risk of Petitioner engaging in similar conduct in the future, the Board will require Petitioner to serve a three year period of probation after it lifts the suspension of his license.

During his period of probation, the Board will require Petitioner to undergo long-term psychodynamic psychotherapy with a licensed psychiatrist or psychologist. The Board is aware that Petitioner had identified a licensed clinical social worker as the therapist with whom he intended to satisfy Dr. Wettstein's recommendation. Given Petitioner's scope of practice as a psychiatrist and the nature of his violations, the Board concludes that a licensed psychiatrist or psychologist is better suited than a licensed clinical social worker to provide the therapy that Dr. Wettstein recommends. The Board will provide some flexibility to Petitioner in identifying the licensed psychiatrist or psychologist he wishes the Board to approve for his care, counseling and treatment, but the psychiatrist or psychologist he selects should, as Dr. Wettstein recommends, be experienced in treating health care professionals in long-term psychodynamic psychotherapy. Given its responsibility for protecting the public health and safety and the importance it places upon Dr. Wettstein's recommendation that Petitioner undergo long-term psychodynamic psychotherapy, the Board will not lift the suspension upon Petitioner's license until it has approved the licensed psychiatrist or psychologist to provide such therapy.

Given Petitioner's inability to maintain the appropriate boundary with patient A.F. and his apparent efforts to continue to contact with her even after she indicated that she would no longer be treating with him, the Board is specifically prohibiting Petitioner from further treatment of A.F. during his term of probation. Given A.F.'s age when Petitioner failed to maintain appropriate boundaries and Dr. Wettstein's recognition that some there is some risk of another unsatisfactory treatment outcome in the future, the Board concludes that to protect the

public it is necessary to preclude Petitioner from providing care and treatment to all minors during the term of his probation.

With respect to the exception that Petitioner presents, the Board's review of the record indicates that the hearing examiner was well aware of the underlying conduct that led to the imposition of the disciplinary action in the February 3, 2015 consent agreement and order. Regardless of whether it is more properly characterized as "unprofessional conduct" or "immoral conduct", the Board is also aware of the actual conduct that led to the initial disciplinary action against Petitioner, and it is the actual conduct, rather than the characterization of the conduct, that guides the Board's decision. The Board agrees with the Commonwealth's contention raised in its brief on exceptions that the Probation Compliance Office would be the most appropriate monitor of Petitioner's compliance with the terms and conditions of his probation.

Accordingly, the following order shall issue:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

In the Matter of the Petition for	:	
Reinstatement of License to Practice	:	Docket No. 0531-49-15
Medicine and Surgery of	:	
Matthew Ronald DeJohn, M.D.,	:	File No. 15-49-02859
Petitioner	:	

ORDER

NOW, this 4th day of February, the State Board of Medicine (Board) having duly convened and considered the entire record, and based upon the foregoing Findings of Fact, Conclusions of Law, and Discussion hereby **ORDERS** that the license to practice medicine and surgery issued to **Matthew Ronald DeJohn, M.D.**, license number, **MD432541**, to remain **ACTIVELY AND INDEFINITELY SUSPENSION**. Upon submission of the name of licensed psychiatrist or psychologist who is experienced in treating health care professional in long-term psychodynamic psychotherapy to provide care, counseling and treatment to Petitioner who is approved by the Board, the Board may administratively reinstate Petitioner's license to **PROBATIONARY** status for no less than **THREE YEARS** subject to the following terms and conditions:

1. Petitioner shall undergo care, counseling, and treatment that consists of long-term psychodynamic psychotherapy by a licensed psychiatrist or psychologist approved by the Board.
2. If the licensed psychiatrist or psychologist approved by the Board is unable at any time to continue to direct Petitioner's care, counseling, or treatment, Petitioner shall notify the Probation Compliance Officer, Bureau of Enforcement and Investigation, Box 2649, Harrisburg, PA 17105-2649, within fifteen days of the licensed physician or psychologist he has selected to provide continued care, counseling or treatment for Board approval.

3. The licensed psychiatrist or psychologist that the Board has approved to provide care, counseling or treatment shall provide quarterly reports to the Probation Compliance Officer, Bureau of Enforcement and Investigation, Box 2649, Harrisburg, PA 17105-2649. The quarterly reports shall verify that Petitioner is continuing to receive care, counseling or treatment; that Petitioner is complying with his provider's recommendations; and that Petitioner is capable of practicing medicine with reasonable skill and safety to patients.
4. Petitioner shall not practice medicine and surgery on, or provide medical care, treatment or services, to patients under the age of eighteen.
5. Petitioner shall not practice medicine and surgery on, or provide medical care, treatment or services to, patient A.F.

GENERAL

6. Petitioner shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Petitioner holds a license to practice a health care profession. Summary traffic violations shall not constitute a violation of this Order.
7. Petitioner shall at all times cooperate with the Bureau of Professional and Occupational Affairs and its agents and employees in the monitoring, supervision and investigation of Petitioner's compliance with the terms and conditions of this Order, including requests for, and causing to be submitted at Petitioner's expense, written reports, records and verifications of actions that may be required by the Bureau of Professional and Occupational Affairs.
8. Petitioner shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.

9. Petitioner shall notify the Bureau of Professional and Occupational Affairs, in writing, within five (5) days of the filing of any criminal charges against Petitioner, the initiation of any legal action pertaining to Petitioner's practice of the profession, the initiation, action, restriction or limitation relating to Petitioner by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any investigation, action, restriction or limitation relating to Petitioner's privileges to practice the profession at any health care facility.
10. Petitioner shall notify the Bureau of Professional and Occupational Affairs by telephone within 48 hours and in writing within five (5) days of any change of Petitioner's home address, phone number, employment status, employer and/or change in practice at a health care facility.

VIOLATION OF THIS ORDER

11. Notification of a violation of the terms or conditions of this Order shall result in the IMMEDIATE VACATING of the stay order, TERMINATION of the period of probation, and ACTIVATION of the suspension of Petitioner's license(s) to practice the profession in the Commonwealth of Pennsylvania as follows:
 - a. The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition that indicates that Petitioner has violated any terms or conditions of this Order.
 - b. Upon a probable cause determination by the Committee that Petitioner has violated any of the terms or conditions of this Order, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within suspension, terminating this probation and activating the suspension of Petitioner's license.

- c. Petitioner shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Petitioner's last registered address on file with the Board, or by personal service if necessary.
- d. Within twenty (20) days of mailing of the preliminary order, Petitioner may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Petitioner's violation of probation, in which Petitioner may seek relief from the preliminary order activating the suspension. Petitioner shall mail the original answer and request for hearing to the Bureau of Professional and Occupational Affairs' Prothonotary, 2601 N. Third Street, Harrisburg, PA 17110, and a copy to the prosecuting attorney for the Commonwealth, as well as all subsequent filings in the matter.
- e. If the Petitioner submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Petitioner's request for a formal hearing.
- f. Petitioner's submission of a timely answer and request for a hearing shall not stay the suspension of Petitioner's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.
- g. The facts and averments in this Order shall be deemed admitted and uncontested at this hearing.
- h. If the Board or hearing examiner after the formal hearing makes a determination against Petitioner, a final order will be issued sustaining the suspension of Petitioner's license and imposing any additional disciplinary measures deemed appropriate.
- i. If Petitioner fails to timely file an answer and request for a hearing, the Board, upon motion of the prosecuting attorney, shall issue a final order affirming the suspension of Petitioner's license.

- j. If Petitioner does not make a timely answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or the hearing examiner makes a determination against Petitioner sustaining the suspension of Petitioner's license, after at least 1 years of active suspension and any additional imposed discipline, Petitioner may petition the Board for reinstatement upon verification that Petitioner has complied with the Board's order, abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.
- k. Petitioner's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.
12. Nothing in this Order shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Order.
13. After successful completion of probation, Petitioner may petition the Board to reinstate Petitioner's license to unrestricted, non-probationary status upon an affirmative showing that Petitioner has complied with all terms and conditions of this Order and is fit to practice.

This order shall take effect immediately.

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**



IAN J. HARLOW,
COMMISSIONER

BY ORDER:

STATE BOARD OF MEDICINE



MARILYN J. HEINE, M.D.
CHAIR

For Petitioner:

Paul K. Vey, Esquire
Pietragallo Gordon, Alfano Bosick & Raspanti
One Oxford Center, 38th Floor
Pittsburgh, PA 15219

For the Commonwealth:

Mark R. Zogby, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 69521
Harrisburg, PA 17106-9521

Board Counsel:

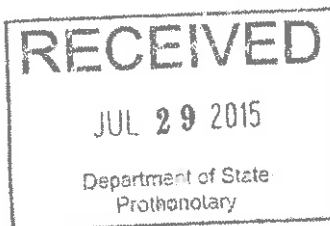
Wesley J. Rish, Esquire

Date of Mailing:

February 4, 2016

Attachment A

ORIGINAL



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

STATE BOARD OF MEDICINE

**In the Matter of the Petition for
Reinstatement of the License to Practice
Medicine and Surgery of Matthew
Ronald DeJohn, M.D.,
Petitioner**

File Number 15-49-02859

Docket Number 0531-49-15

PROPOSED ADJUDICATION AND ORDER

**Christopher K. McNally
Hearing Examiner**

**Commonwealth of Pennsylvania
Governor's Office of General Counsel
Department of State
Office of Hearing Examiners
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686**

7/29/15

✓
✓
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HISTORY

This case comes before the Office of Hearing Examiners for the Department of State (Department) to determine whether the State Board of Medicine (Board) should reinstate action upon the medical physician and surgeon license of Matthew Ronald DeJohn, (Petitioner), License Number MD432541, under Sections 41 and 42 of the Medical Practice Act,¹ (Act). 63 P.S. §§ 422.41, 422.42.

Petitioner's license to practice medicine and surgery was suspended indefinitely pursuant to the provisions of a Consent Agreement and Order (Consent Agreement) adopted by the Board on February 4, 2015.² On March 31, 2015, Petitioner, by and through his counsel, Paul K. Vey, Esq., and the firm of Pietragallo, Gordon, Alfano, Bosick & Raspanti, LLP commenced this action by filing a Petition for Reinstatement (Petition) with the Prothonotary.³ Petitioner also requested a hearing.

By order dated March 31, 2015, the Board delegated this matter to a hearing examiner to conduct a hearing and issue a proposed adjudication. On April 1, 2015, the Prothonotary issued a Notice of Hearing scheduling this matter before Hearing Examiner Christopher K. McNally, Esq., for May 12, 2015.⁴ Petitioner appeared with counsel on the date of the hearing. The Commonwealth was represented by Prosecuting Attorney Mark R. Zogby, Esq. Petitioner testified in support of his petition and offered documentary evidence. The Commonwealth cross-

¹ The act of December 20, 1985, P.L. 457, No. 112. 63 P.S. §§ 422.1 – 422.51a.

² *Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Matthew Ronald DeJohn, M.D.*, File Numbers 14-49-02432, 14-49-06427, Docket Number 0177-49-2015.

³ The Petition for Reinstatement of Medical License and Request for Hearing was incorrectly captioned with the title, file numbers and docket number of the prior proceeding in which the Board adopted a Consent Agreement. Upon filing with the Prothonotary, the correct title of this action was entered on the docket, and a new file number and docket number were assigned. The Order Delegating Case, Notice of Hearing and this proposed adjudication and order have corrected the title, file number and docket number for this proceeding.

⁴ "Hearing examiners are appointed by the Governor's Office of General Counsel to hear matters before the Board. Unless otherwise ordered by the Board, disciplinary matters shall be heard by a hearing examiner." 49 Pa.Code § 16.51.

examined Petitioner. The record remained open at the conclusion of the hearing to permit Petitioner to supplement the record.

On May 15, 2015, Petitioner and the Commonwealth filed a Joint Stipulation to Amend the Consent Agreement to correct a typographical error relating to the age of the Petitioner's patient identified in the Consent Agreement. On May 18, 2015, Petitioner filed an Affidavit in Support of Supplemental Record Submission which included additional documentary evidence made a part of the record. On May 21, 2015, the court reporter filed the hearing transcript, closing the record in this matter.

The Office of Hearing Examiners now issues this proposed adjudication and order as directed by the Board. In its order of March 31, 2015, the Board expressed its intent to review this proposed adjudication. 1 Pa. Code §§ 35.211 – 35.213. Therefore, pursuant to 1 Pa. Code § 35.226(a)(2), the parties have the right to file a brief on exceptions, and any error not raised by a brief on exceptions will be deemed waived. The Board is not bound by the hearing examiner's proposed adjudication or order, and may accept or reject, in whole or in part, the proposed adjudication and order.

FINDINGS OF FACT

1. Matthew Ronald DeJohn, M.D. (Petitioner), holds a license to practice medicine and surgery, License Number MD432541, which was issued on August 10, 2007, and expires on December 31, 2016. *(Board records.)*
2. Petitioner's license was suspended by Consent Agreement adopted by the Board on February 3, 2015, but may be reinstated by the Board pursuant to the Consent Agreement. *(Board records.)*
3. Petitioner's address of record with the Board is 4226 Sassafra Street, Erie, PA 16508. *(Hearing Transcript, page 11, line 17.)*
4. During all times material to these proceedings, Petitioner has been represented by counsel, Paul K. Vey, Esquire, and the firm of Pietragallo Gordon Alfano Bosick & Raspanti. *(Hearing Transcript, page 8; Exhibit P-2, attached Exhibit A.)*
5. In June 2012, patient A.F., who was age sixteen (16) at the time, was referred to Petitioner, a psychiatrist, for medication management related to diagnoses of panic/anxiety disorder, depression, insomnia, and eating disorder. *(Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.c.)*
6. In January 2013, Petitioner began counseling A.F., related to diagnoses of panic/anxiety disorder, depression, insomnia, and eating disorder, in conjunction with the aforementioned medication management. *(Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.d.)*
7. Petitioner's counseling sessions with A.F. were initially one (1) hour in length, but eventually increased in length to two and one half (2½) to three (3) hours, on a number of occasions; despite the actual length of the counseling sessions, which was documented in

Petitioner's office notes, Petitioner only billed A.F. for single counseling sessions of one (1) hour. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.e.*)

8. The counseling sessions between Petitioner and A.F. initially addressed A.F.'s eating disorder, but progressed to issues of love and acceptance and eventually progressed to A.F.'s repressed sexual feelings, with associated genital mutilation. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.f.*)

9. Petitioner hugged A.F. on more than one occasion during the counseling sessions, and Petitioner held A.F.'s hands on more than one occasion during the counseling sessions. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.g.*)

10. Petitioner instructed A.F. to masturbate as "homework" for their counseling sessions, in an attempt to address the issues related to genital self-mutilation. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.h.*)

11. From approximately January 2013 through approximately May 2014, while he was her treating psychiatrist, Petitioner exchanged thousands of emails with A.F. outside of regularly scheduled counseling sessions. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.i.*)

12. The email conversations took place on a daily basis and at times took place multiple times during a single day. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.j.*)

13. Some of the email conversations between Petitioner and A.F. took place well after midnight. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.k.*)

14. Some of the email conversations between Petitioner and A.F. took place while Petitioner was on vacation with his family. (*Hearing Transcript, Exhibit P-2, attached Exhibit A,*

at ¶ 3.l.)

15. Petitioner did not document any of the email conversations in A.F.'s treatment notes. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.m.*)

16. Petitioner did not bill for any of his email conversations with A.F. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.n.*)

17. Petitioner did not engage in the type of email conversations that he had with A.F. with any other patients. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.o.*)

18. A significant number of the email conversations between Petitioner and A.F. were not related to A.F.'s counseling and/or treatment with Petitioner. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.p.*)

19. A.F. was not in crisis or having a psychiatric and/or mental health emergency at the time of a number of the email conversations. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.q.*)

20. The tenor of a number of the email conversations between Petitioner and A.F. was familiar and social as opposed to psychiatrist/patient. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.r.*)

21. During the email conversations, Petitioner and A.F. referred to one another by nicknames as opposed to their given names or surnames. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.s.*)

22. A number of the email conversations between Petitioner and A.F. were of a frank sexual nature. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.t.*)

23. A.F. often told Petitioner that she loved him. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.u.*)

24. Rather than discouraging A.F.'s conduct and/or feelings, Petitioner repeatedly told A.F. that he loved her. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.v.*)

25. A.F. told Petitioner that she was developing romantic feelings for Petitioner and having sexual fantasies about Petitioner. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.w.*)

26. Rather than discouraging A.F.'s romantic feelings and sexual fantasies, Petitioner encouraged A.F. to describe her romantic feelings and sexual fantasies in email conversations and during counseling sessions. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.x.*)

27. Petitioner did not discourage or terminate the email conversations with A.F.; to the contrary, he was an active participant. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.y.*)

28. Despite the development of A.F.'s romantic feelings, sexual fantasies and extensive communication outside of office visits, Petitioner never attempted to terminate the psychiatrist/patient relationship and never attempted to refer A.F. to another psychiatrist. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.z.*)

29. In or around February 2014, A.F.'s parents discovered a number of emails between Petitioner and A.F. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.aa.*)

30. At that time A.F.'s parents told her to immediately terminate the psychiatrist/patient relationship with Petitioner. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.bb.*)

31. A.F. informed Petitioner via text message that she would no longer be treating with him, and Petitioner told A.F. that he would be able to work around her romantic feelings for him while continuing to treat her. Petitioner also informed A.F. that she was an adult and was not

required to stop treating with him simply because her parents did not approve. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.cc.*)

32. Although A.F. never returned to Petitioner for treatment after her parents found the above mentioned emails, Petitioner opened an anonymous email account for himself and A.F. with an encrypted email service. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.dd.*)

33. From February 2014 through May 2014, Petitioner and A.F. continued to have email conversations, of the nature described above, using the anonymous email accounts on the encrypted service. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.ee.*)

34. During the course of the investigation into the Petitioner's treatment and interaction with A.F., the Commonwealth discovered that Petitioner had written prescriptions for two individuals, not A.F., with whom he did not have a doctor/patient relationship. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.ff.*)

35. On about five (5) occasions, Petitioner wrote prescriptions for controlled substances, specifically Vicodin and Adderall, for one or both of the individuals without establishing a doctor/patient relationship, without obtaining a medical history, without performing a physical examination, without scheduling a follow-up reevaluation, without reaching a diagnosis, and without generating any medical records. (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 3.gg.*)

36. Petitioner engaged unprofessional conduct in violation of Section 41(8) of the Act 63 P.S. § 422.41(8) and the Board's regulations at 49 Pa. Code § 16.110(a) and 49 Pa. Code § 16.110(c). (*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 4.a.*)

37. Petitioner improperly prescribed controlled substances in violation of Section

41(8) of the Act, 63 P.S. § 422.41(8) and the Board's regulations at 49 Pa. Code § 16.92(b).
(*Hearing Transcript, Exhibit P-2, attached Exhibit A, at ¶ 4.b.*)

38. On February 4, 2015, Petitioner returned his wallet card and wall certificate.
(*Board records.*)

39. On February 6, 2015, Petitioner paid costs of investigation of \$6,358.08 in full.
(*Board records.*)

40. On February 3, 2014, the Board indefinitely suspended Petitioner's license to practice medicine and surgery. (*Board records.*)

41. On February 8, 2015, the Board reported Petitioner's discipline to the national databank. (*Board records.*)

42. From February 11, 2015 to February 13, 2015, Petitioner successfully attended and completed the "Maintaining Proper Boundaries" at the residential treatment campus of Sante Center for Healing located at 914 County Club Road, Argyle, TX 76226. (*Hearing Transcript, Exhibit P-2, attached Exhibits B, and C.*)

43. From October 25, 2014 to April 1, 2015 Petitioner attended and successfully completed fifty-eight (58) hours of remedial education on proper prescribing practices, including twenty-six (26) hours of AMA PRA Category 1 activities. (*Hearing Transcript, Exhibit P-2, attached Exhibits D and E.*)

44. On October 25, 2015, Petitioner attended and successfully completed a 9 credit Buprenorphine Training Program, in addition to the 58 hours of remedial education. (*Hearing Transcript, Exhibit P-2, attached Exhibit E.*)

45. On March 31, 2015, the Board issued an Order Delegating Case, directing the hearing examiner to conduct a hearing, issue a proposed adjudication and order, and determine

whether "...whether Petitioner has satisfied the requirements for reinstatement including whether Petitioner has the requisite honesty, trustworthiness, and integrity, and is able to practice with reasonable skill and safety to patients and is sufficiently competent to be entrusted to hold a license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania." *(Hearing Transcript, Exhibit P-2, attached Exhibit B-1.)*

46. On March 5, 2015, Petitioner was interviewed by Robert M. Wettstein, M.D., as part of a psychiatric evaluation to determine whether Petitioner is able to practice medicine with reasonable skill and safety to patients in the absence of illness, addiction to drugs or alcohol, or mental incompetence. *(Hearing Transcript, Exhibit P-2, attached Exhibit F.)*

47. In order to practice with reasonable skill and safety to patients, Petitioner requires a course of individual psychotherapy of indefinite duration, but no less than six months, with a psychotherapist who is experienced in treating health care professionals in long-term psychodynamic psychotherapy. *(Hearing Transcript, Exhibit P-2, attached Exhibit F.)*

48. Petitioner has submitted a statement made subject to penalties for unsworn falsification to authorities, 18 Pa.C.S. § 4904, that he has not practiced medicine or surgery in violation of the Board's order of February 3, 2015. *(Hearing Transcript, Exhibit P-2, attached Exhibit G.)*

49. As of the date of the hearing, Petitioner does not have any convictions or pending criminal cases in the Commonwealth of Pennsylvania. *(Hearing Transcript, Exhibit P-2, attached Exhibit H.)*

50. Petitioner has possessed current access to Practice Fusion ONC certified health records since September 18, 2013. *(Docket entries, Affidavit in Support of Supplemental Record Submission, attached Exhibit 1-A.)*

51. Petitioner has drafted an office policy regarding electronic communication, office hours, emergency/crisis services, expectations of physician-patient relationship, and appropriate methods of contacting Petitioner and his staff. (*Docket entries, Affidavit in Support of Supplemental Record Submission, attached Exhibit 2.*)

52. Petitioner has identified a psychotherapist, Lawrence E. Cross, M.A., M.S.W., LCSW, for regular or recurring appointments. (*Docket entries, Affidavit in Support of Supplemental Record Submission, attached Exhibit 3.*)

53. Petitioner voluntarily agreed to the Consent Agreement, which included notice of the procedures by which he could petition for reinstatement of his license to non-suspended status, and the standard by which reinstatement would be determined. (*Hearing Transcript, Exhibit P-2, attached Exhibit A at ¶ 12.*)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Finding of Fact Numbers 1 – 3.)
2. Petitioner had adequate notice of his burden of proof and the standard which he was required to meet for reinstatement, and was given an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact Numbers 1 – 4, 45, 53.)
3. Petitioner has met his burden of proof for reinstatement to probationary status subject to treatment and monitored practice. (Findings of Fact Numbers 1 – 44, 46 – 52.)

DISCUSSION

Procedural Due Process and Governing Law

Through the Consent Agreement and the Board's Order Delegating Case, Petitioner was provided with a written notice of the legal standard by which the Board would determine whether his license could be reinstated. The Consent Agreement also advised him of the procedures for petitioning for reinstatement of his license and to request a hearing before the Board. The notice of hearing issued by the Prothonotary further explained his procedural rights under the Administrative Agency Law, 2 Pa.C.S. §§ 501 – 508, and the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa.Code §§ 31.1 – 35.251. Throughout these proceedings Petitioner was represented by counsel.

Petitioner appeared at the hearing as scheduled. He and his counsel expressed a clear understanding of his burden of proof and his rights and the issues relevant to reinstatement of his license. At the conclusion of the hearing he was authorized to supplement the record, and again advised of his right to file a post-hearing brief. Petitioner waived his right to file a post-hearing brief in his post-hearing evidentiary submission.

Procedural due process requires notice and an opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Pennsylvania Bankers Ass'n v. Pennsylvania Dept. of Banking*, 981 A.2d 975 (Pa.Cmwlt. 2009). Notice requires that the agency apply an ascertainable standard for its decision. *See, e.g., Robinson Twp, Washington County v. DEP*, 623 Pa. 584, 698, 83 A.3d 901, 983 (2013).

The three-part standard by which reinstatement of Petitioner's license is to be determined was expressed by the Board when it adopted the Consent Agreement:

... Respondent will have the burden of demonstrating to the satisfaction of the Board that [1] the Respondent has the requisite honesty, trustworthiness, and

integrity, and [2] is able to practice with reasonable skill and safety to patients and [3] is sufficiently competent to be entrusted to hold a license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania.

(Hearing Transcript, Exhibit P-2, attached Exhibit A, Consent Agreement, ¶ 5.g.(6), page 12.)⁵

Petitioner admitted that his misconduct constituted a violation of Section 41(8) of the Act and violations of the Board's regulations relating to sexual misconduct. Section 41(8) provides in pertinent part:

Section 41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * * * *

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. In proceedings based on this paragraph, actual injury to a patient need not be established.

(i) The ethical standards of a profession are those ethical tenets which are embraced by the professional community in this Commonwealth.

* * * * *

63 P.S. § 422.41(8).

The pertinent excerpt of the Board's regulations provides:

§ 16.110. Sexual misconduct.

(a) Sexual exploitation by a Board-regulated practitioner of a current or former patient, or of an immediate family member of a patient, constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action under section 41(8) of the act (63 P. S. § 422.41(8)).

* * * * *

(c) When a Board-regulated practitioner is involved with the management or treatment of a patient other than the practitioner's spouse for a mental health disorder, sexual behavior with that former patient which occurs prior to the 2-year anniversary of the termination of the professional relationship constitutes unprofessional conduct, is prohibited and subjects the practitioner to disciplinary action under section 41(8) of the act.

* * * * *

49 Pa. Code § 16.110(a), (c).⁶

⁵ The identical language is used in the Board's Order Delegating Case, dated March 31, 2015. *See Hearing Transcript, Exhibit B-1.*

The Consent Agreement's recitation of "requisite honesty, trustworthiness, and integrity" corresponds to Section 22 of the Act, which requires "good moral character," as a condition for licensure. 63 P.S. § 422.22(b). Section 41(8) of the Act, quoted above, prohibits immoral and unprofessional conduct, which is contrary to good moral character.

For purposes of this adjudication, the phrase "able to practice with reasonable skill and safety" is interpreted to mean to the ability to practice medicine free "...of illness, addiction to drugs or alcohol, having been convicted of..." a felony under the Controlled Substances Act.⁷ 63 P.S. § 422.41(5).

The final element, requiring evidence of sufficient competence, is more pertinent to an individual who has been absent from the active practice of medicine for an extended period of time. In such cases, a petitioner may need to demonstrate general professional competency by passing an examination. However, for purposes of this case, Petitioner's knowledge of medical standards for prescribing medication and communicating with patients appears to be the relevant consideration.

The Board also established several conditions precedent to Petitioner's reinstatement hearing. Those conditions included the following criteria:

1. Return of his wallet card and wall certificate.
2. Payment of costs of investigation of \$6,358.08.
3. Completion of remedial education, including successful attendance and completion of:

⁶ The following relevant terms are defined by the Board's regulations:

* * * * *

Sexual behavior--Any sexual conduct which is nondiagnostic and nontherapeutic; it may be verbal or physical and may include expressions of thoughts and feelings or gestures that are sexual in nature or that reasonably may be construed by a patient as sexual in nature.

Sexual exploitation--Any sexual behavior that uses trust, knowledge, emotions or influence derived from the professional relationship.

* * * * *

49 Pa. Code § 16.1, relating to definitions.

⁷ The act of April 14, 1972, P.L. 233, No. 64, known as The Controlled Substance, Drug, Device and Cosmetic Act. 35 P.S. §§ 780-101 - 780-144.

- a. A course titled "Maintaining Proper Boundaries" at the residential treatment campus of Sante Center for Healing located at 914 County Club Road, Argyle, TX 76226.
 - b. 50 hours of remedial education on proper prescribing practices, including 25 hours of AMA PRA Category 1 activities.
- 4. A mental and physical evaluation conducted by a physician approved by the Board.
- 5. A current Criminal History Record Information check.
- 6. A signed verification of nonpractice.

Section 42 of the Act also authorizes the Board to use a range of protective and corrective remedies. In particular, the Act provides:

Section 42. Types of corrective action

(a) Authorized actions.--When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

* * * * *

(4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.

* * * * *

(6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.

* * * * *

(b) Failure to comply with conditions.--Failure of a board-regulated practitioner to comply with conditions set forth by the board shall be grounds for reconsideration of the matter and institution of formal charges against the board-regulated practitioner.

63 P.S. § 422.42(a)(4), (6), and (b).

In addition, the Consent Agreement to which Petitioner is a party includes his agreement that "Respondent shall comply with any and all other requirements of reinstatement imposed by the Board and/or set forth in the Act." Therefore, the Board has discretion to apply remedial and protective measures as a condition of reinstatement.

In totality, these criteria establish a sufficiently clear standard upon which the Board may determine whether to reinstate Petitioner's license, and if so, under what conditions. Petitioner

was on notice of these requirements for reinstatement at the time he executed the Consent Agreement, and was afforded a full and fair opportunity to present evidence in support of his burden of proof.

Facts

Petitioner has held a license to practice medicine and surgery since August 10, 2007. Petitioner's license was suspended by Consent Agreement adopted by the Board on February 3, 2015.

Petitioner's license was suspended based upon violations of the Act arising from his interaction with a patient identified as A.F. A.F. was age sixteen (16) at the time she was referred to Petitioner, a psychiatrist, for medication management related to diagnoses of panic/anxiety disorder, depression, insomnia, and eating disorder. The Consent Agreement recited A.F.'s age as 18, which was erroneous, but attributed to a scrivener's error by the Commonwealth. There is no evidence in the record to indicate whether that age difference is material to the case.

In January 2013, Petitioner began counseling A.F., related to diagnoses of panic/anxiety disorder, depression, insomnia, and eating disorder, in conjunction with the aforementioned medication management. Petitioner's counseling sessions with A.F. were initially one (1) hour in length, but eventually increased in length to two and one half (2½) to three (3) hours, on a number of occasions; despite the actual of the length of the counseling sessions, which was documented in Petitioner's office notes, Petitioner only billed A.F. for single counseling sessions of one (1) hour.

The counseling sessions between Petitioner and A.F. initially addressed A.F.'s eating disorder, but progressed to issues of love and acceptance and eventually progressed to A.F.'s

repressed sexual feelings, with associated genital mutilation. Petitioner hugged A.F. on more than one occasion during the counseling sessions, and Petitioner held A.F.'s hands on more than one occasion during the counseling sessions. Petitioner instructed A.F. to masturbate as "homework" for their counseling sessions, in an attempt to address the issues related to genital self-mutilation.

From approximately January 2013 through approximately May 2014, while he was her treating psychiatrist, Petitioner exchanged thousands of emails with A.F. outside of regularly scheduled counseling sessions. The email conversations took place on a daily basis and at times took place multiple times during a single day. Some of the email conversations between Petitioner and A.F. took place well after midnight. Some of the email conversations between Petitioner and A.F. took place while Petitioner was on vacation with his family.

Petitioner did not document any of the email conversations in A.F.'s treatment notes. Petitioner did not bill for any of his email conversations with A.F. to Petitioner did not engage in the type of email conversation that he had with A.F. with any other patients. A significant number of the email conversations between Petitioner and A.F. were not related to A.F.'s counseling and/or treatment with Petitioner. A.F. was not in crisis or having a psychiatric and/or mental health emergency at the time of a number of the email conversations.

The tenor of a number of the email conversations between Petitioner and A.F. was familiar and social as opposed to psychiatrist/patient. During the email conversations, Petitioner and A.F. referred to one another by nicknames as opposed to their given names or surnames. A number of the email conversations between Petitioner and A.F. were of a frank sexual nature.

A.F. often told Petitioner that she loved him. Rather than discouraging A.F.'s conduct and/or feelings, Petitioner repeatedly told A.F. that he loved her. A.F. told Petitioner that she

was developing romantic feelings for Petitioner and having sexual fantasies about Petitioner. Rather than discouraging A.F.'s romantic feelings and sexual fantasies, Petitioner encouraged A.F. to describe her romantic feelings and sexual fantasies in email conversations and during counseling sessions. Petitioner did not discourage or terminate the email conversations with A.F.; to the contrary, he was an active participant. Despite the above, Petitioner never attempted to terminate the psychiatrist/patient relationship and/or never attempted to refer A.F. to another psychiatrist.

In or around February 2014, A.F.'s parents discovered a number of emails between Petitioner and A.F. At that time A.F.'s parents told her to immediately terminate the psychiatrist/patient relationship with Petitioner. A.F. informed Petitioner via text message that she would no longer be treating with him, and Petitioner told A.F. that he would be able to work around her romantic feelings for him while continuing to treat her. Petitioner also informed A.F. that she was an adult and was not required to stop treating with him simply because her parents did not approve.

Although A.F. never returned to Petitioner for treatment after her parents found the above mentioned emails, Petitioner opened an anonymous email account for himself and A.F. with an encrypted email service. From February 2014 through May 2014, Petitioner and A.F. continued to have email conversations, of the nature described above, using the anonymous email accounts on the encrypted service.

During the course of the investigation into the Petitioner's treatment and interaction with A.F., it was discovered that Petitioner had written prescriptions for two individuals, not A.F., with whom he did not have a doctor/patient relationship. On about five (5) occasions, Petitioner wrote prescriptions for controlled substances, specifically Vicodin and Adderall, for one or both

of the individuals without establishing a doctor/patient relationship, without obtaining a medical history, without performing a physical examination, without scheduling a follow-up reevaluation, without reaching a diagnosis, and without generating any medical records.

On March 5, 2015, Petitioner was interviewed by Robert M. Wettstein, M.D., as part of a psychiatric evaluation to determine whether Petitioner is able to practice medicine with reasonable skill and safety to patients in the absence of illness, addiction to drugs or alcohol, or mental incompetence. Dr. Wettstein opined that Petitioner does not suffer from any severe mental disorder, substance use disorder or severe personality dysfunction or personality disorder, and that in the absence of such condition Petitioner is able to practice with reasonable skill and safety to patients. Dr. Wettstein strongly recommends a course of individual psychotherapy of indefinite duration, but at least six months, to allow Petitioner to further understand his misconduct, and to prevent another unsatisfactory treatment outcome elsewhere. Dr. Wettstein recommends that the selected psychotherapist have experience treating health care professionals in long-term psychodynamic psychotherapy.

Petitioner has submitted a statement made subject to penalties for unsworn falsification to authorities, 18 Pa.C.S. § 4904, that he has not practiced medicine or surgery in violation of the Board's order. As of the date of the hearing, Petitioner does not have any convictions or pending criminal cases in the Commonwealth of Pennsylvania.

Petitioner possesses current access to Practice Fusion ONC certified health records. His access has been available since September 18, 2013. Petitioner has drafted an office policy regarding electronic communication, office hours, emergency/crisis services, expectations of physician-patient relationship, and appropriate methods of contacting Petitioner and his staff. Petitioner has identified a psychotherapist, Lawrence E. Cross, M.A., M.S.W., LCSW, for

regular or recurring appointments.

Application of Law to Facts

This analysis of Petitioner's case in support of reinstatement will begin by noting that several of the conditions precedent to reinstatement are beyond dispute. As the Board's records confirm, Petitioner surrendered his licensure documents and he paid the assessed costs of investigation. The report of the Pennsylvania State Police verifies that he has a clean criminal record.

Other conditions precedent established by the Board are not contradicted by any evidence in the record. Petitioner has submitted the required verification of nonpractice. The Commonwealth expressly represented on the record that its role was to facilitate and assure that the Board has a full and complete record to exercise its discretion in deciding this case. *Hearing Transcript, page 10, lines 3 - 11*. At the conclusion of the hearing, the Commonwealth expressed its position that the record was sufficient, complete and thorough enough for the Board to exercise its discretion as the gatekeeper of the medical profession. *Hearing Transcript, page 89, lines 8 - 16*. The Commonwealth offered no evidence to contradict Petitioner's verification of nonpractice, nor provided any cause for doubt as to Petitioner's veracity. Likewise, Petitioner's evidence of the completion of remedial education is uncontradicted by the Commonwealth. Therefore, Petitioner's evidence also satisfies his burden of proof for these two conditions.

In addition, the completion of remedial education relating to psychiatrist/patient boundaries and prescribing practices relates to the Consent Agreement's standard for competence. Accordingly, Petitioner has satisfied the requirement to demonstrate his competence to resume practice.

Turning to Dr. Wettstein's evaluation, Petitioner's evidence serves not only as satisfaction of the final condition precedent to reinstatement, but also relates to the Consent Agreement's standard that Petitioner be able to demonstrate that he is able to practice with reasonable skill and safety. Although there is some precedent for the Board to reject the opinion of an expert, *Barran v. State Board of Medicine*, 670 A.2d 765 (Pa.Cmwlth. 1996), the facts recited in that case suggest that the psychologist whose testimony was rejected was selected by the applicant, not by the Board. (*N.B.* - "The Board stated that it did not find the testimony of Barran's psychologist compelling" *Barran*, at 768.) In this case, where the expert is selected from a panel approved by the Board, it would seem that the expert opinion should only be rejected when it is palpably and obviously in error.

Dr. Wettstein's opinion does appear to have several deficiencies. First, he did not have the benefit of reviewing the complaint or investigator's report in the underlying disciplinary action. He requested these sources but they were not available. *Hearing Transcript, Exhibit P-2, attached Exhibit F, page 2*. The reason for the unavailability was not explained. Nonetheless, Dr. Wettstein did not express any reservation or qualification about the validity of his opinion based upon his inability to review these documents.

Second, Dr. Wettstein had the Consent Agreement as part of his evaluation. He noted A.F.'s correct age of 16, but did not note the discrepancy with the age recited in the Consent Agreement. Therefore, it is impossible to tell whether he was aware of the discrepancy in the patient's age. Plainly, Dr. Wettstein rendered his opinion regarding Petitioner's fitness to resume practice based upon correct knowledge that Petitioner began a psychiatrist/patient relationship when A.F. was a minor. If the fact of A.F.'s age had been a material factor to his conclusions, Dr. Wettstein would have been expected to note that fact and explain.

Third, Dr. Wettstein's opinion includes the unclear statement that "No practice restrictions or limitations have been ordered or requested." *Hearing Transcript, Exhibit P-2, attached Exhibit F, page 10*. It is not clear whether Dr. Wettstein is expressing his own opinion, or simply noting that neither the Board nor any other person has ordered or requested restrictions or limitations on Petitioner's practice of medicine.

Neither of these defects appear to be fatal to the validity of Dr. Wettstein's opinion that Petitioner is safe to resume practice with reasonable skill and safety, subject to continued treatment and any other conditions that the Board may impose after review of the evidence. Therefore, Petitioner has sustained his burden of proof regarding his ability to resume practice subject to probationary conditions.

The necessity for probation with conditions intended and designed to protect patients is supported by several factors. First, Petitioner's license was suspended on February 3, 2015. As of the date of the hearing, he had only been suspended for about ten weeks. Although the alacrity with which Petitioner completed all of the conditions for reinstatement is commendable, the brief lapse of time from the suspension of his license to the close of the record raises a concern that any finding of fitness to resume practice lacks the benefit of an established record of rehabilitation.

Second, although the scrivener's error in the Consent Agreement regarding the age of A.F. does not permit a revision of the standard for reinstatement, this additional information should properly impact the conditions for probation. Under the circumstances, it would seem prudent to permit Petitioner's resumption of practice only subject to monitoring of his practice.

Third, although Petitioner submitted character references and supplemented the record with evidence of his access to an electronic patient health record program, Petitioner also has a

history of evasion and concealment. Petitioner has had access to the Practice Fusion system since September 18, 2013, but did not use it for A.F. He opened an anonymous email account and used encrypted communications. Monitoring of his practice seems prudent in light of this history.

Fourth, Dr. Wettstein recommended that Petitioner treat with a therapist who specializes in health care professionals. Dr. Wettstein also specifically recommended long-term psychodynamic psychotherapy. Petitioner was fully aware of Dr. Wettstein's recommendations and has selected Lawrence E. Cross of New Wilmington Psychotherapy & Counseling. Mr. Cross may be a suitable therapist, but from the position of the hearing examiner, there is nothing in the biography or background of Mr. Cross that was included in the supplemental record to suggest that he would be capable of satisfying Dr. Wettstein's recommendations.

Finally, Petitioner provided a draft of a policy that he would intend to adopt in his practice. At a minimum, there are several corrections required in the draft policy.⁸ In addition to typographical changes, the Board may deem it necessary or advisable to require other amendments to the draft policy before it is accepted. For example, the draft policy would only require signature of a minor patient's guardian. Although a guardian's assent would clearly be required, it may also be necessary to inform a minor patient of the policy and obtain the minor's acknowledgment. Also, the draft policy includes a disclaimer of liability for communications outside of regular office hours. The Board should determine whether that disclaimer is too broadly stated, or whether it is acceptable.

⁸ The necessary corrections and revisions include: the office telephone in the header on page 1 and in two places on page 2; correct the following lines - "any information soliciting medical advice via your PHR..."; "In the event secure messaging is inactive..."; "~~Confidentially~~Confidentiality will be strictly maintained..."; "4) Maintaining Proper Boundaries..."; and "Patient/Guardian ~~Signature~~Signature".

Because there is a need to monitor Petitioner, the hearing examiner recommends enrollment with the Professional Health Monitoring Program (PHMP) and its Disciplinary Monitoring Unit (DMU) for three years with some modification of the usual conditions. There is no evidence of substance abuse, and therefore, standard conditions that require drug testing, abstention and attendance at a support group are not recommended as a condition of probation. For the same reason, the proposed order also excludes the requirement that Petitioner document a period of sobriety as a condition for reinstatement following a violation of probation.

Furthermore, because Petitioner has already been evaluated by Dr. Wettstein, who has made recommendations for continued treatment, there is no provision for an initial evaluation with PHMP. However, the proposed order will require continued treatment with a provider approved by PHMP consistent with Dr. Wettstein's recommendation. Mr. Cross may act as Petitioner's treatment provider under the terms of this order if PHMP approves him.

Petitioner is a sole practitioner. He has several institutional clients who have engaged his professional services on behalf of their clients. Therefore, the standard language for monitored practice in PHMP does not fit Petitioner's practice. For this reason, the proposed order includes modifications to the monitored practice provisions that relate to Petitioner's status as an independent contractor rather than an employee.

As a deterrent, the order recommends a minimum three-year suspension of Petitioner's license if he violates probation. A formidable penalty for violation is expected to encourage compliance and deter others from similar violations. The remaining terms and conditions of probation set forth in the proposed order track the standard provisions for enrollment with PHMP

Accordingly, based upon the foregoing findings of fact, conclusions of law, and discussion, the following proposed order shall issue:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

In the Matter of the Petition for	}	
Reinstatement of the License to Practice	}	Docket No. 0531-49-15
Medicine and Surgery of Matthew	}	
Ronald DeJohn, M.D.,	}	File No. 15-49-02859
Petitioner	}	

FINAL ORDER

AND NOW, this 29th day of July, 2015, having duly reviewed and considered the entire record, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, **IT IS HEREBY ORDERED:**

The Petition for Reinstatement of the License to Practice Medicine and Surgery of Matthew Ronald DeJohn, M.D., License Number MD432541, is **GRANTED**, subject to the following conditions:

The **INDEFINITE SUSPENSION** of Petitioner's license shall be **STAYED** in favor of no less than **THREE YEARS** of **PROBATION**, and during the period of probation, Petitioner shall be subject to the following terms and conditions:

GENERAL

1. **Within 10 days of the issuance of a final Order by the Board**, Petitioner shall contact the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Programs ("PHMP"), Disciplinary Monitoring Unit ("DMU") to begin monitoring. PHMP's DMU contact information is:

Professional Health Monitoring Programs
Disciplinary Monitoring Unit
P.O. Box 10569
Harrisburg, PA 17105-0569
Tele (717)783-4857
or in PA (800)554-3428

2. Petitioner shall fully and completely comply and cooperate with the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Program (PHMP), Disciplinary Monitoring Unit (DMU) and its agents and employees in their monitoring of Petitioner under this order.

3. Petitioner shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Petitioner holds a license to practice a health care profession. Summary traffic violations shall not constitute a violation of this order.

4. Petitioner shall at all times cooperate with the PHMP and its agents and employees in the monitoring, supervision and investigation of Petitioner's compliance with the terms and conditions of this order, including requests for, and causing to be submitted at Petitioner's expense, written reports, records and verifications of actions that may be required by the PHMP.

5. Petitioner's failure to fully cooperate with the PHMP shall be deemed a violation of this order.

6. Petitioner shall not falsify, misrepresent or make material omission of any information submitted pursuant to this order.

7. Petitioner may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Petitioner seeks and receives prior written permission from the PHMP subject to any additional terms and conditions required by the PHMP.

8. In the event Petitioner relocates to another jurisdiction, within five (5) days of relocating Petitioner shall either enroll in the other jurisdiction's impaired professional program

and have the reports required under this order sent to the Pennsylvania PHMP, or if the other jurisdiction has no impaired professional program, Petitioner shall notify the licensing board of the other jurisdiction that Petitioner is impaired and enrolled in this Program. In the event Petitioner fails to do so, in addition to being in violation of this order, the periods of suspension and probation shall be tolled.

9. Petitioner shall notify the PHMP in writing within five (5) days of the filing of any criminal charges against Petitioner; the final disposition of any criminal charges against Petitioner, the initiation of any legal action pertaining to Petitioner's practice of the profession; the initiation of charges, action, restriction or limitation related to Petitioner's practice of the profession by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice; or any investigation, action, restriction or limitation related to Petitioner's privileges to practice the profession at any health care facility.

10. Petitioner shall notify the PHMP by telephone within 48 hours and in writing within five (5) days of any change of Petitioner's home address, phone number, employment status, employer and/or change in practice at a health care facility. Failure to timely advise the PHMP under this subsection due to the PHMP office being closed is not an excuse for not leaving a voice mail message with this information.

11. Petitioner shall cease or limit Petitioner's practice if the PHMP case manager directs that Petitioner do so.

EVALUATION - TREATMENT

12. Petitioner shall begin and continue treatment with a provider approved by PHMP consistent with the recommendations of Robert M. Wettstein, M.D.

13. Petitioner shall provide copies of any prior evaluations and counseling records and a copy of this Order to the treatment provider.

14. Petitioner shall authorize, in writing, the PHMP to receive and maintain copies of the written evaluation reports of the treatment provider(s).

15. If a treatment provider recommends that Petitioner obtain treatment, Petitioner must fully comply with those recommendations as part of these probationary requirements.

16. Petitioner shall arrange and ensure that written treatment reports from all PHMP-approved providers are submitted to the PHMP upon request or at least every sixty (60) days after the effective date of this Order. The reports shall contain at least the following information:

- a. Verification that the provider has received a copy of this Order and understands the conditions of this probation;
- b. A treatment plan, if developed;
- c. Progress reports, including information regarding compliance with the treatment plan;
- d. Physical evaluations, if applicable;
- e. The results of any testing;
- f. Modifications in treatment plan, if applicable;
- g. Administration or prescription of any drugs to Petitioner; and
- h. Discharge summary and continuing care plan at discharge.

17. Petitioner shall identify a primary care physician who shall send written notification to the Petitioner's PHMP case manager certifying Petitioner's health status as requested.

MONITORED PRACTICE

18. Practice includes employment or engagement as an independent contractor in any position requiring a current professional license.

19. Petitioner shall not practice unless the PHMP case manager has reviewed and approved Petitioner's draft policy for electronic communication and related matters, and gives written permission to practice.

20. If Petitioner is practicing, Petitioner shall give any contractor, employer, or supervisor a copy of this order and his written policy for electronic communication within five (5) days of the effective date of this order.

21. Petitioner shall give any prospective contractor, employer and supervisor a copy of this order when applying for employment in the practice of the profession.

22. Petitioner shall provide the PHMP by telephone within 48 hours, and in writing within five (5) days of the effective date of this order or obtaining employment, notification of the following:

- a. Name and address of the supervisor responsible for Petitioner's practice;
- b. The name(s) and address(es) of the place(s) at which Petitioner will practice the profession and a description of Petitioner's duties and responsibilities at such places of practice; and
- c. Any restrictions on Petitioner's practice.

23. Petitioner shall ensure that Petitioner's supervisor submits to the PHMP the following information in writing:

- a. Verification that the employer and supervisor have received a copy of this order and understand the conditions of this probation;
- b. An evaluation of Petitioner's work performance on a 60-day or more frequent

basis, as requested by the PHMP; and

c. Immediate notification of any suspected violation of this probation by Petitioner.

24. Petitioner, Petitioner's treatment providers, supervisor(s), employer(s) or other persons required to submit reports under this order shall cause such reports, data or other information to be filed with the PHMP, unless otherwise directed, at:

PHMP-DMU
Box 10569
Harrisburg, PA 17105-0569

25. Petitioner consents to the release by the PHMP of any information or data produced as a result of this probation, including written provider evaluations, to any treatment provider, supervisor, Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this order.

26. Petitioner shall sign any required waivers or release forms requested by the PHMP for any and all records, including medical or other health-related and psychological records, pertaining to treatment and monitoring rendered to Petitioner during this probation and any corresponding criminal probation, as well as any employment, personnel, peer review or review records pertaining to Petitioner's practice of the profession during this probation, to be released to the PHMP, the Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this order.

COSTS

27. Petitioner shall be responsible for all costs incurred in complying with the terms of this order, including but not limited to psychiatric or psychotherapy treatments, and reproduction of treatment of other records. Any toxicology screens, ROBS, and any subsequent reanalysis of specimens required by PHMP shall be paid for by Petitioner. Failure of Petitioner to

pay any of these costs in a timely manner shall constitute a violation of this order.

BUREAU/PHMP EVALUATIONS

28. Upon request of the PHMP, Petitioner shall submit to mental or physical evaluations, examinations or interviews by a PHMP-approved treatment provider or the PHMP. Petitioner's failure to submit to such an examination, evaluation or interview shall constitute a violation of this order.

VIOLATION OF THIS ORDER

29. Notification of a violation of the terms or conditions of this order shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the **INDEFINITE SUSPENSION** of Petitioner's license to practice the profession in the Commonwealth of Pennsylvania as follows:

- a. The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition that indicates that Petitioner has violated any terms or conditions of this order.
- b. Upon a probable cause determination by the Committee that Petitioner has violated any of the terms or conditions of this order, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within suspension, terminating this probation and activating the suspension of Petitioner's license.
- c. Petitioner shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Petitioner's last registered address on file with the Board, or by personal service if necessary.

- d. Within twenty (20) days of mailing of the preliminary order, Petitioner may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Petitioner's violation of probation, in which Petitioner may seek relief from the preliminary order activating the suspension. Petitioner shall mail the original answer and request for hearing to the Department of State Prothonotary, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649, and a copy to the prosecuting attorney for the Commonwealth, as well as all subsequent filings in the matter.
- e. If Petitioner submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Petitioner's request for a formal hearing.
- f. Petitioner's submission of a timely answer and request for a hearing shall not stay the suspension of Petitioner's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.
- g. The facts and averments in this adjudication and order shall be deemed admitted and uncontested at this hearing.
- h. If the Board or hearing examiner after the formal hearing makes a determination against Petitioner, a final order will be issued sustaining the suspension of Petitioner's license and imposing any additional disciplinary measures deemed appropriate.

- i. If Petitioner fails to timely file an answer and request for a hearing, the Board shall issue a final order affirming the suspension of Petitioner's license.
- j. If Petitioner does not make a timely answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or the hearing examiner makes a determination against Petitioner sustaining the suspension of Petitioner's license, after at least **THREE (3) YEARS** of active suspension and any additional imposed discipline, Petitioner may petition the Board for reinstatement based upon an affirmative showing that:
 - i. Petitioner has undergone an evaluation by a provider approved by PHMP;
 - ii. Petitioner has the requisite honesty, trustworthiness, and integrity for licensure as a physician;
 - iii. Petitioner is able to practice with reasonable skill and safety to patients;
 - iv. Petitioner is sufficiently competent to be entrusted to hold a license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania
 - v. Petitioner has abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.
- k. Petitioner's failure to fully comply with any terms of this order may also constitute grounds for additional disciplinary action.
- l. If the Board issues a Preliminary Order terminating the stay of the suspension and actively suspending Petitioner's license to practice the profession in accordance

with the procedure set forth above, Petitioner shall immediately cease the practice of the profession. Petitioner shall continue to comply with all of the terms and conditions of probation in this order during the active suspension until the Board issues a final order. Continued failure by Petitioner to comply with the unaffected terms and conditions of probation while awaiting the issuance of the final order by the Board may result in further disciplinary action against Petitioner.

COMPLETION OF PROBATION

30. After successful completion of the minimum period of probation, Petitioner may petition the Board, upon a form provided by PHMP, to reinstate Petitioner's license to unrestricted, non-probationary status upon an affirmative showing that Petitioner has complied with all terms and conditions of this order and that Petitioner's resumption of unsupervised practice does not present a threat to the public health and safety. Petitioner shall be required to remain in compliance with all terms and conditions of this order until the Board issues the order terminating Petitioner's probationary status.

The State Board of Medicine has announced its intention to review this Proposed Report in accordance with 1 Pa.Code § 35.226(a)(2). The parties have the right to file a brief on exceptions, and any error not raised by a brief on exceptions will be deemed waived. The Board is not bound by the hearing examiner's proposed adjudication or order, and may accept or reject, in whole or in part, the proposed adjudication and order.

BY ORDER:



CHRISTOPHER K. McNALLY
HEARING EXAMINER

Petitioner's attorney:

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Prosecuting Attorney:

Mark R. Zogby, Esquire

Board Counsel:

Wesley J. Rish, Esquire

Date of Mailing:

July 29, 2015

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 69523
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Order page of the Adjudication and Order.