

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
GENERAL DIVISION

CLERK OF COURTS

GEORGE JAMIL-ELIAS]
BOUTROS, M.D.,]
Appellant,]
vs.]
STATE MEDICAL BOARD OF]
OHIO,]
Appellee.]

CASE NO. 09CVF08-12821

JUDGE BENDER

TERMINATION NO: 10
BY: MK
FINAL APPEALABLE ORDER

DECISION AND ENTRY ON MERITS OF REVISED CODE 119.12
ADMINISTRATIVE APPEAL, AFFIRMING ORDER ISSUED
AUGUST 14, 2009 BY STATE MEDICAL BOARD OF OHIO

Issued this 1ST day of DEC 2010.

BENDER, J.

This case is a Revised Code 119.12 administrative appeal, by George Jamil-Elias Boutros, M.D. (Appellant), from an Order that the State Medical Board of Ohio issued on August 14, 2009, imposing conditions for the restoration of Appellant's expired certificate to practice medicine and surgery in Ohio, as well as probationary conditions and reporting requirements. The record that the Board has certified to the Court reflects the following facts, which are undisputed.

I. Facts

Appellant is a 54-year-old ophthalmologist who lives in California. He received his medical degree from the American University of Beirut, Lebanon, in 1980. Appellant then participated in a cataracts-research fellowship for two years in Germany.

In 1982, Appellant immigrated to the United States and, in 1985, completed a three-year residency in ophthalmology at Tulane University, in New Orleans, Louisiana.

From 1985 to 1988, Appellant worked as a locum tenens (temporary) physician at various locations throughout the United States. In 1986, he received his certificate to practice medicine and surgery in Ohio.

From 1988 to 1989, Appellant was employed as an ophthalmologist at the South Williamson Appalachian Regional Hospital in South Williamson, Kentucky. From 1989 to April 1990, Appellant conducted a solo practice in ophthalmology in Iola, Kansas. He then moved to San Diego, California, where he received training in Lasik surgery, with the intention of opening his own Lasik surgery center. That plan did not come to fruition.

In July 2002, Appellant became employed as an ophthalmologist at Trinity Hospital in Minot, North Dakota. From June 2003 to June 2004, with the sponsorship of Trinity Hospital, he completed a retinal-surgery fellowship at St. Michael's Hospital in Toronto, Ontario, Canada. In July 2004, Appellant returned to his employment as an ophthalmologist at Trinity Hospital. In August 2004, Appellant was terminated from that employment.

In September 2004, Appellant was involuntarily committed to the psychiatric unit at Trinity Hospital for three days, based upon a petition alleging that he was a danger to himself or to others. That petition was ultimately dismissed.

On December 17, 2004, Appellant entered into an agreement with the North Dakota Board of Medical Examiners (North Dakota Medical Board), to participate in an evaluation of his mental and physical health at Rush Behavioral Health Center in Oak Park, Illinois (Rush). Appellant agreed that he would not practice medicine until the

North Dakota Medical Board had an opportunity to act on the findings of the Rush evaluation. On December 22, 2004, Appellant reported to Rush and was evaluated by a team of physicians.

On January 2, 2005, the Rush evaluators issued their evaluation of Appellant. They opined, to a reasonable degree of medical and psychiatric certainty, that Appellant's psychiatric history was most consistent with a diagnosis of Bipolar Disorder, Not Otherwise Specified/Rule Out Bipolar Type II. The evaluators opined that, because Appellant's psychiatric condition was chronic and oftentimes progressive, he needed to adhere to certain recommendations. Those recommendations included that Appellant receive treatment from an approved psychiatrist, that he obtain a practice monitor/mentor for at least two years, and that he enter into a contract with a monitoring/advocacy organization of the licensing board in each of the states where he practiced medicine.

On January 27, 2005, Appellant entered into an agreement with the North Dakota Medical Board, pursuant to which he agreed to enroll in that Medical Board's "Physicians Health Program," and pursuant to which that Medical Board agreed that it would not initiate disciplinary action against Appellant, so long as he did not violate the terms of the agreement. Appellant acknowledged in the agreement that he had been diagnosed as having Bipolar Disorder.

In 2005, Appellant worked briefly as an ophthalmologist in Ohio.

In May or June 2005, Appellant began practicing ophthalmology in California.

On July 1, 2005, Appellant failed to renew his Ohio medical license; it was therefore automatically suspended pursuant to R.C. 4731.281(D).ⁱ

At various times, Appellant has held medical licenses in Kentucky, Louisiana, Massachusetts, Michigan, New Hampshire, North Carolina, North Dakota, Washington, and West Virginia, in addition to his California and Ohio licenses.

At the time of the 2007 hearing before the State Medical Board of Ohio, which gave rise to this appeal, Appellant was practicing ophthalmology in California and held only one medical license, in California.

II. Proceedings before the State Medical Board of Ohio

Revised Code 4731.22(B)(19) provides:

§ 4731.22. Grounds for discipline ***

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

*** If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. ***

By letter dated February 24, 2005, the State Medical Board of Ohio notified Appellant that, based upon the January 2005 Rush evaluation and other factors detailed in the letter, the Board had reason to believe that Appellant suffered from a mental illness that rendered him unable to practice medicine according to acceptable and

prevailing standards of care, as set forth in R.C. 4731.22(B)(19), and ordered him to submit to a psychiatric evaluation. On March 24, 2005, at the Board's request, Stephen Noffsinger, M.D., a physician who is board-certified in psychiatry and in the subspecialty of forensic psychiatry, conducted a forensic evaluation of Appellant.

By letter dated March 10, 2006, Dr. Noffsinger opined to the Medical Board, to a reasonable degree of medical certainty, that Appellant suffered from Bipolar I Disorder, Most Recent Episode Manic, in Full Remission. Dr. Noffsinger opined that Appellant was presently capable of practicing medicine according to acceptable and prevailing standards of care, so long as appropriate treatment, monitoring, and supervision were put in place. Dr. Noffsinger opined that, due to Appellant's Bipolar I Disorder, he had been unable to practice according to acceptable and prevailing standards of care during a manic episode that he experienced in July, August, and September 2004. Dr. Noffsinger opined that Appellant's Bipolar I Disorder was treatable, but because Appellant was not currently receiving any form of treatment for his disorder, it was Dr. Noffsinger's opinion that Appellant remained at a substantial risk for another mood episode (manic or depressive), which would again make him unable to practice according to acceptable and prevailing standards of care. Dr. Noffsinger recommended that, in order for Appellant to be able to practice according to acceptable and prevailing standards of care, certain restrictions and conditions should be placed on his practice, including that he should receive outpatient psychiatric treatment by a Board-approved psychiatrist, receive a mood-stabilizing medication in order to prevent further mood episodes, periodically have his blood level of mood-stabilizing medication checked to insure continued compliance with his medication, not use illicit substances, and submit to random urine toxicology screens as prescribed by his treating psychiatrist.

In April 2006, Appellant, through counsel, provided additional materials to the Medical Board, which he asserted were pertinent to his evaluation at Rush. The additional materials were provided to Dr. Noffsinger for his review.

By letter dated June 30, 2006, Dr. Noffsinger reported to the Medical Board that the additional materials did not change the diagnosis he made in his March 10, 2006 report, and that the additional materials did not change his recommendations regarding the treatment and monitoring of Appellant's condition.

By letter dated August 9, 2006, the Medical Board notified Appellant:

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

(1) By letter dated February 24, 2005, the Board notified you of its determination that it had reason to believe that you were in violation of Section 4731.22(B)(19), Ohio Revised Code, and ordered that you submit to a psychiatric evaluation to be conducted by Stephen Noffsinger, M.D. The determination was based upon one or more reasons outlined in such letter, including that you were previously evaluated in or about December 2004, at the request of the North Dakota State Board of Medical Examiners, at Rush Behavioral Health [Rush], a medical center in Oak Park, Illinois; and the evaluators at Rush opined, to a reasonable degree of medical and psychiatric certainty, that your "psychiatric history [was] most consistent with a diagnosis of Bipolar disorder, not otherwise specified/rule out Bipolar type II." The evaluators at Rush further opined that, since your psychiatric condition was chronic and frequently progressive, you needed to adhere to certain recommendations, including that you receive treatment from an approved psychiatrist, obtain a practice monitor/mentor, and enter into a contact [sic] with a monitoring/advocacy organization of the licensing board in the specific states where you practice. You reported to Dr. Noffsinger on or about March 24, 2005, for purposes of the examination.

(2) By letter dated March 10, 2006, Dr. Noffsinger notified the Board that it was his opinion to a reasonable degree of medical certainty

that you suffer from the mental disorder of Bipolar I Disorder, Most Recent Episode Manic, in Full Remission, and that you were presently capable of practicing medicine according to acceptable and prevailing standards of care, so long as appropriate treatment, monitoring and supervision are put in place. Dr. Noffsinger also opined with reasonable medical certainty that due to your Bipolar I Disorder, you were unable to practice medicine according to acceptable and prevailing standards of care during the manic episode that you experienced in July, August and September 2004. Dr. Noffsinger further determined that your Bipolar I Disorder is amenable to treatment, but because you were not presently receiving any form of treatment for your disorder, it was his opinion with reasonable medical certainty that you remained at a substantial risk for another mood episode (manic or depressive). Dr. Noffsinger further recommended that in order for you to be able to practice medicine according to acceptable and prevailing standards of care, certain restrictions and conditions should be placed on your practice, including that you should receive outpatient psychiatric treatment by a psychiatrist approved by the Board; receive a mood stabilizing medication; periodically have your blood level of mood stabilizing medication checked to insure continued compliance with your medications; not use any illicit substances; and submit to random urine toxicology screens as prescribed by your treating psychiatrist.

On or about April 10, 2006, your attorney provided to the Board additional materials that he asserted, on your behalf, were pertinent to your evaluation at Rush. Said additional materials, as well as other additional pertinent records and documents, were provided to Dr. Noffsinger. By letter dated June 30, 2006, Dr. Noffsinger notified the Board that the additional materials did not change the diagnosis he made in his report dated March 10, 2006, and he further indicated that the additional materials did not change his recommendations regarding treatment and monitoring of your condition.

Your condition as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitutes "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that affects cognitive, motor, or perceptive skills," as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. ***

At Appellant's request, a Hearing Examiner conducted a six-day hearing in May, June and August 2007, on the Medical Board's proposed action against Appellant's Ohio medical license. The State presented the testimony of Dr. Stephen Noffsinger, the psychiatrist who had examined Appellant at the Board's request. Appellant testified and presented the testimony of Shamim Anwar, M.D., Haifa Boutros (Appellant's wife), Madeline Free, M.D., Michael Brinkenhoff, M.D., Jerome Niswonger, M.D., Mark Blackmer, Oscar Pakier, M.D., and Edward Kelly, M.D. Numerous exhibits were admitted into evidence.

As of July 1, 2007, Appellant's Ohio medical license had been expired and therefore suspended for two years pursuant to R.C. 4731.281(D). Pursuant to that statute, in order to practice medicine and surgery in Ohio, Appellant was obligated to apply to have his license restored.

In November 2008, fifteen months after the hearing before the Hearing Examiner concluded, Appellant filed a motion with the Medical Board to admit additional evidence. The Hearing Examiner granted the motion, over the State's objection, and the additional evidence was filed in March 2009.

On July 6, 2009, the Hearing Examiner issued her Report and Recommendation, in which she provided a 102-page summary of the evidence and rendered factual findings and conclusions of law. The Hearing Examiner determined that Appellant's mental illness, specifically Bipolar I Disorder, Most Recent Episode Manic, in Full Remission, as testified to by Dr. Noffsinger, rendered Appellant "[unable] to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely

affects cognitive, motor, or perceptive skills," as that language is used in R.C.

4731.22(B)(19).

The Hearing Examiner recommended that the Medical Board impose certain conditions for the restoration of Appellant's expired medical license, should he ever seek its restoration, and that the Board impose probationary conditions for at least ten years should Appellant's license ever be restored. The Hearing Examiner recommended that, within thirty days of the effective date of the Board's Order, Appellant be required to report the Order to certain entities.

On August 5, 2009, Appellant filed objections to the Hearing Examiner's Report and Recommendation.

The members of the Medical Board reviewed the record and then considered the matter at the Board's August 12, 2009 meeting:

Dr. [Dalsukh] Madia directed the Board's attention to the matter of George Jamil-Elias Boutros, M.D. He advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation and were previously distributed to Board members.

Dr. Madia continued that a request to address the Board has been timely filed on behalf of Dr. Boutros.

Ms. [Sallie] Debolt advised that Dr. Boutros has withdrawn his request to address, as he was unable to attend the meeting due to his recently undergoing surgery.

DR. [ANITA] STEINBURGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF GEORGE JAMIL ELIAS BOUTROS, M.D. DR. [DARSHAN] MAHAJAN SECONDED THE MOTION.

Dr. Madia stated that he would now entertain discussion in the above matter.

Dr. [Nandlal] Varyani noted that Dr. Boutros is a practicing ophthalmologist. This case is before the Board because of behavior

problems, as well as problems with his medical practice. Dr. Boutros let his Ohio license expire in 2007 [sic]. Dr. Varyani stated that the Proposed Order notes that the license has expired and has been inactive for more than two years, and indicates that the Board shall not consider restoration of his certificate to practice medicine until certain conditions are met. Dr. Varyani stated that those conditions require psychiatric treatment, which Dr. Boutros is under right now. Dr. Varyani reviewed the other proposed conditions for restoration of Dr. Boutros [sic] license, noting that it's basically boilerplate language. Dr. Varyani stated that because Dr. Boutros isn't present today, he would suggest that the Board just go along with the Proposed Order.

Since Dr. Boutros' license is expired, Dr. [Marchelle] Suppan asked whether it might not be appropriate to table this issue indefinitely, until such time as Dr. Boutros would seek to reapply for license. The Board could let it sit out there in limbo and not do anything with it.

Dr. Steinbergh stated that the Board did cite Dr. Boutros for an inability to practice according to acceptable and prevailing standards due to mental illness. She stated that the record itself is replete with information about Dr. Boutros. Although Dr. Boutros' license has expired, the Board has the obligation and responsibility to take action.

Dr. Steinbergh stated that she agrees with the Conclusion of Law that states that he is unable to practice according to acceptable and prevailing standards. She agrees with the rationale that is in place. If Dr. Boutros wants to practice in Ohio, he will have to reapply. She added that this Order only goes in place if Dr. Boutros decides he'd like to practice in Ohio.

Dr. Steinbergh stated that she did read Dr. Boutros' objections, and she felt that his attorney at this time was just simply developing an appeal to the courts. She thought the objections were very distracting and didn't really go to the case.

Dr. Steinbergh stated that she agrees with the Proposed Order.

Dr. Varyani stated that the only reason he didn't go into detail is because most of the Board have already read this case. He stated that he really likes the Proposed Order because it basically says that if Dr. Boutros applies for restoration of his license, he must meet certain conditions. Dr. Varyani stated that if the Board didn't put conditions on his application for restoration in Ohio, the Board would be leaving him totally uncovered. *Board Minutes, Aug. 12, 2009, pp. 18641 - 18642.*

Following discussion on August 12, 2009, the Medical Board unanimously voted to adopt the Hearing Examiner's Report and Recommendation. The Board concluded that Appellant was unable to practice medicine according to acceptable and prevailing standards of care by reason of mental illness, as set forth in R.C. 4731.22(B)(19). The Board ordered that it would not restore Appellant's expired Ohio medical license unless certain conditions were met, imposed a ten-year probationary period upon Appellant if his license were ever restored, and imposed a "required reporting" directive on Appellant.

Pursuant to the "required reporting" directive, the Board ordered Appellant, within thirty days of the effective date of the Board's Order, to provide a copy of the Board's Order to: (1) all employers or entities with which he was under a contract to provide health-care services or was receiving training, and to the chief of staff at each hospital or health-care center where he had privileges or appointments; (2) the proper licensing authority of any state or jurisdiction in which he currently held any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently held any license or certificate; and (3) at the time of application, to the proper licensing authority of any state or jurisdiction in which he applied for any professional license or reinstatement/restoration of any professional license.

On August 14, 2009, the Board mailed a copy of its Order to Appellant. The Order became effective on August 14, 2009.

This appeal followed.

III. Standards of Appellate Review

Revised Code 119.12, which governs this appeal, provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

When considering an appeal from an order of the Medical Board, a reviewing court is bound to uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621.

“Reliable” evidence is dependable; that is, it can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St. 3d 570, 571. In order to be reliable, there must be a reasonable probability that the evidence is true. *Id.*

“Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. *Id.* “Substantial” evidence is evidence with some weight; it must have importance and value. *Id.*

In *Farrand v. State Med. Bd. of Ohio* (1949), 151 Ohio St. 222, 224, the Supreme Court of Ohio observed:

*** The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [persons] equipped with the necessary knowledge and experience pertaining to a particular field. In providing for an appeal from the decision of such a board or commission, the General Assembly did not intend that a court should substitute its judgment for that of the specially created board or commission but did intend to confer a revisory jurisdiction on the court. Otherwise, the section would not have contained the provision, “in the hearing of the appeal the court shall be confined to the record as certified to it by the agency, provided, however, the court may grant a request for

the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.”

The Supreme Court has recognized that the General Assembly has granted to the Medical Board a broad measure of discretion. “When reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession.” *Pons*, 66 Ohio St. 3d at the syllabus. A reviewing court “will not substitute its judgment for the board’s where there is some evidence supporting the board’s order.” *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 578. “The Board is entitled to rely on its collective expertise in deciding whether there was a violation.” *Gelesh v. State Med. Bd. of Ohio*, Franklin App. No. 10AP-169, 2010-Ohio-4378, at ¶39.

IV. Analysis

Appellant’s first argument in support of this appeal is that the Medical Board had no statutory authority to impose the “required reporting” directive of its Order on Appellant, inasmuch as his Ohio medical license had expired. This argument is not well taken for the following reasons.

First, the fact that Appellant’s Ohio medical license is expired has no effect upon the Board’s authority to take disciplinary action against the license. The Medical Practice Act provides that, “Failure by an individual to renew a certificate of registration in accordance with this chapter shall not remove or limit the board’s jurisdiction to take any disciplinary action under this section against the individual.” R.C. 4731.22(M)(3).

Second, the Medical Practice Act provides that the Board may “limit” an individual’s certificate to practice medicine and surgery in Ohio. R.C. 4731.22(B). Although the term “limit” is not defined in the Medical Practice Act, the Tenth Appellate

District has provided guidance on the meaning of the word "limitation" for purposes of the Act.

In *Gross v. Ohio State Med. Bd.*, Franklin App. No. 08AP-437, 2008-Ohio-6826, at ¶¶35-36, the Court of Appeals held:

*** Although the General Assembly did not define "limitation" for purposes of former R.C. 4731.22(B)(22), we cannot conclude that a definitive meaning of this term proves elusive. In *State v. Dorso* (1983), 4 Ohio St. 3d 60, 4 Ohio B. 150, 446 N.E. 2d 449, the Supreme Court of Ohio explained that "[a] legislative body need not define every word it uses in an enactment. *** [A]ny term left undefined by statute is to be accorded its common, everyday meaning. *** 'Words in common use will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them.'" *Id.* at 62, quoting *Eastman v. State* (1936), 131 Ohio St. 1, 1 N.E. 2d 140, paragraph five of the syllabus, appeal dismissed, 299 U.S. 505, 57 S. Ct. 21, 81 L. Ed. 374. Cf. R.C. 1.42 (providing that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly").

*** The term "limitation" in common usage is characterized by enforceable restrictions imposed upon the scope or exercise of a privilege or power. Thus, in the context of former R.C. 4731.22(B)(22), *the term "limitation" reasonably may be construed as referencing an action taken by a medical licensing agency in another jurisdiction that imposed an enforceable restriction upon the scope or exercise of a person's medical license.* (Emphasis added.)

Furthermore, the Medical Board has defined the term "limitation" in Ohio Adm.

Code 4731-13-36(D), which provides:

4731-13-36. Disciplinary actions.

For purposes of [Chapter] *** 4731.*** of the Revised Code ***:

(D) "Limitation" means to preclude the certificate holder from engaging in a particular conduct or activity, to impose conditions on the manner in which that conduct or activity may be performed, or to require the certificate holder to abide by specific conditions in order to continue practicing medicine. A limitation shall be either temporary or permanent.

By imposing the “required reporting” directive on Appellant, the Medical Board required Appellant to abide by specific conditions in order to resume practicing medicine in Ohio. The Board therefore did “limit” Appellant’s Ohio medical license as permitted by R.C. 4731.22(B). The “required reporting” directive is a reasonable restriction imposed by the Board, to ensure that the entities which employ Appellant’s services as a physician, or which regulate his practice, are aware of the Board’s action, and the nature of its action against Appellant. The Court concludes that the Board’s “required reporting” directive is in accordance with law.

Appellant’s second argument in support of this appeal is that the Medical Board erred in adopting Dr. Noffsinger’s expert psychiatric opinion because it was based, in part, on hearsay evidence. The Ohio Rules of Evidence “may be taken into consideration by the board or its hearing examiner in determining the admissibility of evidence, but shall not be controlling.” Ohio Adm. Code 4731-13-25(A). Appellant’s argument is not well taken.

Appellant’s third argument in support of this appeal is that the Medical Board erred in adopting Dr. Noffsinger’s expert psychiatric opinion because he was not, in Appellant’s estimation, as credible as Appellant’s expert psychiatric witness, Dr. Edward Kelly, who disagreed with Dr. Noffsinger’s opinion that Appellant had Bipolar I Disorder, Most Recent Episode Manic, in Full Remission.

With respect to this argument, the Hearing Examiner’s observations on the issue of credibility are instructive:

After observing Dr. Boutros over the course of six days of hearing, and giving careful attention to his demeanor during his testimony as well as considering his testimony in the context of all the other evidence, the Hearing Examiner concluded that Dr. Boutros was not a reliable witness

with regard to his disputed behaviors in 2004. *Report and Recommendation, p. 104.*

With regard to the reports of the two expert witnesses, the Hearing Examiner found that both experts (Drs. Kelly and Noffsinger) were qualified to render expert psychiatric opinions. However, both written reports had weaknesses. Some of the information on which Dr. Noffsinger initially relied lacked a firm factual foundation, and he was then obliged to address new information during the hearing. However, on the whole, the Hearing Examiner found Dr. Noffsinger's evaluation and expert opinion to be more reliable and persuasive. Not only was his overall presentation convincing, but, in addition, his assessment of Dr. Boutros' credibility and his assessment of the underlying documentation was consistent with the assessments made by the Hearing Examiner. Much of Dr. Boutros' criticism of Dr. Noffsinger's opinion focused on Dr. Noffsinger's acceptance of reported incidents that Boutros denied happened, or that Dr. Boutros asserted had been misinterpreted. However, the Hearing Examiner did not accept Dr. Boutros' version of these incidents, as explained above. Further, although Dr. Boutros attacked the foundation of Dr. Noffsinger's opinions and his credibility, the Hearing Examiner found Dr. Noffsinger to be a truthful and credible witness, with no improper bias for or against either party. In addition, the Hearing Examiner found that there is a sufficient foundation of factual material in the hearing record to support his opinion regarding medical diagnosis.

Dr. Kelly's evaluation was not found to be persuasive for a variety of reasons. First, in forming his opinions, he accepted statements as true that the Hearing Examiner rejected as unreliable. He also discounted statements that the Hearing Examiner found to be trustworthy. For example, Dr. Kelly accepted as true practically all the statements and descriptions given by Dr. Boutros and his wife, who had hired him, but he rejected the statements of numerous other witnesses because he viewed them as having self-interest and bias. Second, Dr. Kelly relied heavily on statements made to him directly, which the Hearing Examiner did not have the opportunity to review. With regard to the interviews he conducted, there were no written statements, affidavits, or transcripts of the alleged statements of these witnesses. Third, during his testimony, Dr. Kelly was simply not as persuasive and believable as Dr. Noffsinger. Dr. Kelly appeared to be less objective in his approach.

Although the Hearing Examiner found the conclusions and opinions of Dr. Noffsinger to be more persuasive on the whole, it is important for the Board to exercise its own collective medical expertise in determining the appropriate diagnosis based on the evidence and in determining whether Dr. Boutros is unable to practice according to acceptable and prevailing

standards of care by reason of a medical condition unless he receives treatment, monitoring, and supervision. The Board is *not* precluded, as a matter of law, from agreeing with either of the expert witnesses. If the Board finds that the diagnosis reached by Dr. Noffsinger is reliable, based on the evidence and on its own medical expertise, the Board may agree with his diagnosis. Likewise, there is nothing in Dr. Kelly's report and testimony that, as a matter of law, would preclude the Board from relying on his opinion. (Emphasis in original.) *Report and Recommendation*, pp. 108 - 109.

A hearing examiner, as the finder of fact, may take note of the inconsistencies in the evidence and resolve them accordingly, believing all, part, or none of a witness's testimony. *D'Souza v. State Med. Bd. of Ohio*, Franklin App. No. 09AP-97, 2009-Ohio-6901, at ¶17, discretionary appeal not allowed, 2010-Ohio-2212. In the instant case, the Hearing Examiner provided an impressively thorough, meticulous, and comprehensive recitation of the evidence, took note of the inconsistencies in that evidence, and then resolved those inconsistencies accordingly. Her conclusion was that Dr. Noffsinger was more credible than Dr. Kelly. The Hearing Examiner therefore believed Dr. Noffsinger when he opined, to a reasonable degree of medical probability, that Appellant had Bipolar I Disorder, Most Recent Episode Manic, in Full Remission. The Medical Board did not err in adopting Dr. Noffsinger's expert psychiatric opinion.

Appellant's fourth argument in support of this appeal is that the Medical Board's Order is not supported by reliable, probative, and substantial evidence. For the following reasons, the Court does not agree.

Dr. Noffsinger, an associate professor of psychiatry at the medical school at Case Western Reserve University, testified on behalf of the State at the hearing below. He is board-certified in psychiatry and forensic psychiatry. Since 1996, Dr. Noffsinger has served as the Chief of Forensic Psychiatry at Northcoast Behavioral Healthcare, a psychiatric hospital in Northfield, Ohio. He also provides psychiatric services for the

Cuyahoga County Court of Common Pleas. Dr. Noffsinger's professional background is set forth in detail at pages 22 - 34 of the transcript. He testified as follows:

[By the Assistant Attorney General.]

Q. Dr. Noffsinger, based upon your education, training, experience, evaluation of George Boutros, along with your review of the items which you reviewed in preparing your report, do you have an opinion based upon a reasonable degree of medical probability as to whether or not George Boutros, M.D., has an ability to practice medicine and surgery according to acceptable and prevailing standards of care?

A. Yes, I have an opinion.

Q. And what is your opinion?

A. That so long as he is in treatment and under psychiatric monitoring, Dr. Boutros is able to practice medicine.

Q. And can you opine on what treatment and monitoring would be necessitated in order for Dr. Boutros to practice medicine according to acceptable and prevailing standards?

A. Well, because there is a substantial likelihood that he will have future manic episodes that would impair his ability to practice, he needs to be in treatment with a psychiatrist, qualified psychiatrist, who will be able to evaluate his symptoms, prescribe a mood stabilizing medication which will lower the risk of future manic episodes, and then also be able to monitor him for a return of his symptoms.

So I would recommend again that he have outpatient treatment by qualified psychiatrists every two weeks, to take mood stabilizing medication, that he comply with all medications prescribed by his treating psychiatrist, that if he's taking a mood stabilizer in which we can check blood levels, that he can comply with blood levels to make sure that he's taking the medication and taking them within therapeutic dosage.

He should also authorize a psychiatrist to submit regular updates to the Medical Board about his symptoms and his compliance with treatment, and that should he experience a future manic episode, that he should agree to temporarily suspend his practice due to his symptoms until the manic episode has resolved, and then he should

really not use any kind of substances and be willing to submit to random urine toxicology screens. *Transcript, pp. 85 - 86.*

The State Medical Board of Ohio is authorized to take action against a medical license if the licensee is “[unable] to practice according to acceptable and prevailing standards of care by reason of mental illness[.]” R.C. 4731.22(B)(19). Dr. Noffsinger’s testimony constitutes reliable, probative, and substantial evidence that Appellant is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental illness, unless he is in outpatient treatment with a qualified psychiatrist, taking mood-stabilizing medication, and is being monitored by the psychiatrist for the return of his symptoms. The Court “will not substitute its judgment for the board’s where there is some evidence supporting the board’s order.” *Harris v. Lewis*, 69 Ohio St. 2d at 578. In the instant case, there clearly is such evidence.

In addition, the members of the Medical Board were entitled to use their own expertise to conclude that Appellant is impaired by reason of mental illness, as set forth in R.C. 4731.22(B)(19). *Pons*, 66 Ohio St. 3d at the syllabus. The Court will therefore defer to the expertise of the collective Board members in reaching such a conclusion.

Appellant’s fifth, and final, argument in support of this appeal is that the Medical Board violated Appellant’s due-process rights by posting Dr. Noffsinger’s diagnosis of Appellant’s condition on the Board’s website. This argument is not well taken because R.C. 4731.22(B)(19) provides:

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter *** to submit to a mental examination ***. If the board finds an individual unable to practice because of the reasons set forth in this division, the board shall require the individual to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed authority to practice. An individual affected under this division shall be afforded an

opportunity to demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's certificate. For the purpose of this division, *any individual who *** receives a certificate to practice under this chapter* accepts the privilege of practicing in this state and, by so doing, *shall be deemed* to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and *to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.* (Emphasis added.)

Dr. Noffsinger's examination and diagnosis of Appellant were not subject to the physician-patient privilege. By its very terms, the physician-patient privilege attaches only to communications made within the physician-patient relationship, that is, communications made relating to the medical treatment of the patient. *In re Banks*, Scioto App. No. 07CA3192, 2008-Ohio-2339, at ¶19. Dr. Noffsinger did not examine Appellant for the purpose of providing medical treatment to Appellant. To the contrary, he examined Appellant for the limited purpose of providing an expert medical opinion to the Medical Board. Accordingly, the physician-patient privilege did not attach to the examination or to Dr. Noffsinger's resulting diagnosis. Furthermore, even if the physician-patient privilege did somehow attach to the examination or the diagnosis, the physician-patient privilege is not a constitutional privacy right. *State v. Desper*, 151 Ohio App. 3d 208, 2002-Ohio-7176, at ¶36, appeal denied, 98 Ohio St. 3d 1540, 2003-Ohio-1946.

Due process requires that a person with a protected interest is entitled to notice and an opportunity to be heard in order to preserve the individual's rights under the due-process clauses of the Ohio and United States Constitutions. *Gelesh*, 2010-Ohio-4378, at ¶18, citing *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314. Appellant was given notice and an opportunity to be heard. His due-process rights were not violated.

V. Conclusion

Upon consideration of the entire record on appeal, the Court finds that the August 14, 2009 Order of the State Medical Board of Ohio, imposing conditions for the restoration of Appellant's expired certificate to practice medicine and surgery in Ohio, as well as probationary conditions and reporting requirements, is supported by reliable, probative, and substantial evidence and is in accordance with law. The Order is therefore **AFFIRMED**.



JUDGE JOHN F. BENDER

Copies mailed to:

JAMES M. MCGOVERN, ESQ. (0061709), Counsel for Appellant, 604 E. Rich St.,
Columbus, OH 43215-5341

BARBARA J. PFEIFFER, AAG (0029609), Counsel for Appellee, 30 E. Broad St., Fl. 26,
Columbus, OH 43215-3428

i Revised Code 4731.281(D) provides:

*** Failure of any certificate holder to register and comply with this section shall operate automatically to suspend the holder's certificate to practice. *** If the certificate has been suspended pursuant to this division for two years or less, it may be reinstated. The board shall reinstate a certificate to practice suspended for failure to register upon an applicant's submission of a renewal application, the biennial registration fee, and the applicable monetary penalty. *** If the certificate has been suspended pursuant to this division for more than two years, it may be restored. Subject to section 4731.222 of the Revised Code, the board may restore a certificate to practice suspended for failure to register upon an applicant's submission of a restoration application, the biennial registration fee, and the applicable monetary penalty and compliance with sections 4776.01 to 4776.04 of the Revised Code. The board shall not restore to an applicant a certificate to practice unless the board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate issued pursuant to section 4731.14, 4731.56, or 4731.57 of the Revised Code. ***

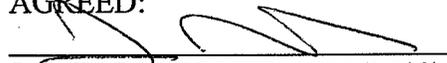
IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

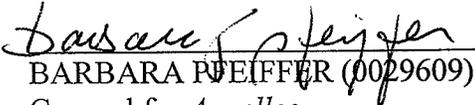
George Jamil-Elias Boutros, M.D. :
Appellant, : Case No. 09CV 08-12821
v. : Judge J. Bender
State Medical Board of Ohio, :
Appellee. :

DECISION AND AGREED ENTRY GRANTING
APPELLANT'S MOTION FOR STAY FILED
AUGUST 24, 2009

Upon consideration of Appellant's Motion for Stay filed August 24, 2009, the authority of the Court pursuant to R.C. 119.12, and the agreement of the parties, the Court hereby Stays the August 12, 2009 Order of the State Medical Board of Ohio (Board), upon the condition that Appellant does not seek restoration of his license to practice medicine and surgery in the state of Ohio during the pendency of this appeal and until this Court renders a final decision on the merits of this appeal. Any such attempted restoration during the pendency of this appeal and until this Court renders a final decision on the merits of this appeal shall be considered null and void and shall not be processed by the Board.

AGREED:


JAMES MCGOVERN (0061709)
Counsel for Appellant


BARBARA PFEIFFER (0029609)
Counsel for Appellee

IT IS SO ORDERED:


JUDGE J. BENDER

25 AUG 09
DATE

Copies to: James McGovern, Esq., Counsel for Appellant
Barbara Pfeiffer, Esq., Counsel for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2009 AUG 25 PM 1:25
CLERK OF COURTS

copy

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GEORGE JAMIL-ELIAS BOUTROS, MD :
9 Sega Drive :
Chico, CA 95928 :

09 CVF 08 12821

CASE NO.

JUDGE

CATEGORY F

Appellant,

Vs.

STATE MEDICAL BOARD OF OHIO :
30 East Broad Street, 3rd Floor. :
Columbus, OH 43215-6127 :

Appellee.

2009 AUG 24 PM 2:58

STATE MEDICAL BOARD
OF OHIO

NOTICE OF APPEAL

Appellant, George Jamil-Elias Boutros, MD, through his undersigned counsel, hereby gives Notice of his appeal of the attached Entry of Order ("Order") of the State Medical Board of Ohio, which was mailed August 14, 2009. The Board's Order is not supported by reliable, probative and substantial evidence and is not in accordance with law. Appellant reserves the right to identify additional errors and grounds for this appeal after the certified record of the Board's proceeding has been filed, but Appellant is able to identify the following errors and grounds for appeal that are known at this time:

1. The Board's Order is not supported by the requisite evidence given the Board's failure to address or take into account the inconsistencies, distortions and falsifications in the testimony of the Board's expert (Dr. Noffsinger), before relying upon and adopting Dr. Noffsinger's opinion that Dr. Boutros suffered from a mental impairment that necessitated

CLERK OF COURTS

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FRANKLIN CO. OHIO

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STATE MEDICAL BOARD
OF OHIO

imposing conditions for restoration, probationary terms and reporting requirements upon Dr. Boutros' expired Ohio medical license.

2. The Board's Order is not supported by the requisite evidence given the lack of any rational basis for the Board to conclude that all Dr.

Boutros' witnesses and his key exhibit (2 independent psychiatrists, 2 physician supervisors, Dr. Boutros and his wife, 1 expert forensic psychiatrist and a 5 day arbitration with all of its findings) were not to be credible, while finding that the Board's only witness (Dr. Noffsinger) was credible.

3. The Board's Order is not supported by the requisite evidence nor is it in accordance with law given that most all of the statements collected by Trinity Hospital (Dr. Boutros' former employer) and relied upon by the Board's expert (Dr. Noffsinger) and ultimately the Board, in concluding that Dr. Boutros suffered from a mental impairment are hearsay.

4. The Board's Order is not supported by the requisite evidence nor is it in accordance with law given that most all of the hearsay statements collected by Trinity Hospital (Dr. Boutros' former employer) and relied upon by the Board's expert (Dr. Noffsinger) were contradicted by sworn testimony generated during the arbitration proceeding that occurred between Dr. Boutros and Trinity Hospital.

5. The Board's Order is not in accordance with law given that the Board has no authority under R.C. Ch. 4731 to impose any of the reporting requirements set forth in Section E. of the Order.

6. The Board's Order is not supported by the requisite evidence nor is it in accordance with law given that the reporting requirements set forth in

Section E. of the Order could effectively be in place for the rest of Dr. Boutros' life when read in conjunction with both the conditions for reinstatement of Dr. Boutros's expired Ohio license set forth in Section A. of the Order and the probationary conditions set forth in Section B. of the Order.

7. Dr. Boutros was denied due process in violation of the Ohio and United States Constitutions when the Board knowingly acted in the manner described in numbered paragraphs 1-6 above.

8. Dr. Boutros was denied equal protection in violation of the Ohio and United States Constitutions when the Board knowingly acted in the manner described in numbered paragraphs 1-6 above.

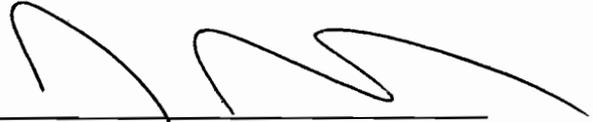
9. The Board's Order and the Board's reporting of the Order are not in accordance with law given the inherent violations of the Americans With Disabilities Act that accompany the mental impairment diagnosis that was adopted by the Board, reported by the Board before during and after the administrative hearing process (on the Board's web-site and other public means) and utilized as the basis for imposing conditions for restoration, probationary conditions and reporting requirements upon Dr. Boutros in relation to his expired Ohio medical license.

Dr. Boutros reserves the right to raise additional grounds for this appeal as additional information regarding the Order is produced by the Board or

**other entities in response to Dr. Boutros' information requests / Public
Records Requests and/or after the Board prepares and file the record
pursuant R.C. 119.12.**

In accordance with R.C. 119.12, the original of this Notice of Appeal is being filed with the State Medical Board of Ohio and a copy is being filed with the Franklin County Court of Common Pleas.

RESPECTFULLY SUBMITTED,



~~JAMES M. MCGOVERN~~ 0061709

GRAFF & ASSOCIATES

604 East Rich St.

Columbus, OH 43215

(614) 228-5800 tele.

(614) 228-8811 fax

Counsel for Dr. Boutros

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and accurate copy of the foregoing was served upon the following:

Barbara Pfeiffer
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, OH 43215

by e-mail this 24th day of August, 2009.



~~JAMES M. MCGOVERN~~

0061709

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

August 12, 2009

George Jamil-Elias Boutros, M.D.
9 Segal Drive
Chico, CA 95928

Dear Doctor Boutros:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 12, 2009, 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. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink that reads "Lance A. Talmage, M.D." The signature is written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3184 0378
RETURN RECEIPT REQUESTED

Cc: James M. McGovern, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3184 385
RETURN RECEIPT REQUESTED

Mailed 8-14-09



CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 12, 2009, 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 George Jamil-Elias Boutros, M.D., 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.



Lance A. Talmage, M.D.
Secretary

(SEAL)

August 12, 2009

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

GEORGE JAMIL-ELIAS BOUTROS, M.D.*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 12, 2009.

Upon the Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney 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 ORDERED that:

- A. **CONDITIONS FOR RESTORATION:** The certificate of George Jamil-Elias Boutros, M.D., to practice medicine and surgery in the State of Ohio has EXPIRED, and has been in inactive status for more than two years. The Board shall not consider restoration of Dr. Boutros' certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Restoration:** Dr. Boutros shall submit an application for restoration, accompanied by appropriate fees, if any.
 2. **Psychiatric Assessment Evidencing Fitness to Practice; Recommended Limitations and/or Treatment Plan, If Any:**
 - a. Before submitting his application for restoration, Dr. Boutros shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist acceptable to Dr. Boutros. Upon approval by the Board, Dr. Boutros shall obtain from the approved psychiatrist an assessment of Dr. Boutros' current psychiatric status. The assessment shall take place no more

than ninety days prior to the submission of the restoration application, unless otherwise approved by the Board.

- b. Prior to the assessment, Dr. Boutros shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to that psychiatrist.
 - c. Upon completion of the assessment, Dr. Boutros shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:
 - i. A detailed report of the evaluation of Dr. Boutros' current psychiatric status and condition. This report shall include a history of Dr. Boutros' treatment by psychiatrists, psychologists, or other providers of mental-health care, if any, since August 2007;
 - ii. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Boutros' current needs;
 - iii. A statement regarding any recommended limitations upon his practice; and
 - iv. The basis for the treatment recommendation, including reports of physical examination and psychological or other testing.
 - d. Should the psychiatrist approved by the Board recommend psychiatric treatment, and upon approval of a psychiatric treatment plan by the Board, Dr. Boutros shall participate in such treatment, including but not limited to seeing his treating psychiatrist at the recommended rate of visits or as otherwise directed by the Board. The treating psychiatrist, and any treating psychologist or other treating therapist, must be approved by the Board. Sessions shall be in person and may not be conducted by telephone or other electronic means. Dr. Boutros shall otherwise comply with his psychiatric treatment plan, which may include taking medications as prescribed, if any, and submitting to periodic tests of his blood level of required medication(s), if any.
3. **Certification of Compliance with Approved Treatment Plan:** If a psychiatric treatment plan is approved as described above, then, prior to restoration of the certificate, Dr. Boutros shall provide, from the treating psychiatrist approved by the Board, a certification acceptable to the Board that Dr. Boutros has been in full compliance with the treatment plan for a period of at least sixty days or other period approved by the Board. This certification of sixty days of compliance

with the approved treatment plan must be received by the Board prior to the restoration of Dr. Boutros' certificate to practice in Ohio.

4. **Practice Plan; Monitoring Physician:** Upon submission of his application for restoration, Dr. Boutros shall submit to the Board a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Boutros' activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. Dr. Boutros must receive the Board's approval for such a plan prior to restoration of his certificate to practice in Ohio.
5. **Certification of Compliance with the Orders of Other Medical Boards:** At the time he submits his application for restoration, Dr. Boutros shall submit to the Board certification from other medical licensing boards, dated no earlier than sixty days prior to his application for restoration, that Dr. Boutros has maintained full compliance with any order of, or agreement with, any other medical licensing board.
6. **Absence from Practice:** In the event that Dr. Boutros has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Boutros' fitness to resume practice.

B. **PROBATIONARY CONDITIONS:** Upon restoration of his certificate to practice medicine and surgery in Ohio, Dr. Boutros' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten (10) years:

1. **Obey the Law:** Dr. Boutros shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
2. **Personal Appearances:** Dr. Boutros shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested 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.
3. **Quarterly Declarations:** Dr. Boutros 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 this Order becomes

effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Continued Compliance with Psychiatric Treatment Plan:** Dr. Boutros shall continue to comply with the approved psychiatric treatment plan, if any, until such time as the Board determines that no further treatment is necessary.

To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Boutros shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Boutros' responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Boutros' quarterly declaration. The psychiatric treatment plan, if any, may be modified by the Board during the probationary period. **Further, the treating psychiatrist shall report to the Board within 72 hours if he or she believes that Dr. Boutros is, or may be, experiencing a manic episode.** It shall be Dr. Boutros' responsibility to ensure that the Board is notified if a manic episode should occur.

5. **Comply with Practice Plan:** Dr. Boutros shall practice in accordance with the plan of practice approved by the Board prior to restoration of his certificate. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Boutros' activities will be directly supervised and overseen by a monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Boutros and provide the Board with reports on Dr. Boutros' progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Boutros' quarterly declaration. It shall be Dr. Boutros' responsibility to ensure that the reports are timely submitted.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Boutros shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Boutros shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Boutros shall ensure that the previously designated monitoring physician also notifies the Board directly of his or his inability to continue to serve and the reasons therefor.

Dr. Boutros shall obtain the Board's prior approval for any alteration to the practice plan that was approved by the Board prior to the restoration of his certificate.

6. **Absence from Ohio:** In the event that Dr. Boutros should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Boutros must

notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of the probationary period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

7. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Boutros 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.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Boutros' certificate will be fully restored.
 - D. **RELEASES:** Dr. Boutros shall provide the following to the Board, to treating and monitoring physicians, and to others involved in the monitoring process: continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Boutros' psychiatric condition and/or related conditions. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
 - E. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER.**
 1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Boutros shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Boutros provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Boutros shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.
 2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Boutros shall provide a copy of this Order 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 Agency, through which he currently holds any license or certificate.

Dr. Boutros further shall provide a copy of this Order 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. This requirement shall continue until Dr. Boutros receives from the Board written notification of the successful completion of the probation.

3. **Required Documentation of the Reporting Required by Paragraph E:** Dr. Boutros shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

- F. **VIOLATION OF BOARD ORDER; DISCRETIONARY SANCTION IMPOSED:** If Dr. Boutros violates 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.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

August 12, 2009

Date

2009 JUL -6 AM 7: 23

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of *
Jamil-Elias Boutros, M.D., * Hearing Examiner Davidson
Respondent. *

REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated August 9, 2006, the State Medical Board of Ohio notified George Jamil-Elias Boutros, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board stated that its proposed action was based, among others things, on a Board-ordered examination of Dr. Boutros by Stephen Noffsinger, M.D., who diagnosed a bipolar disorder in full remission and opined that Dr. Boutros is capable of practicing medicine and surgery according to acceptable and prevailing standards of care so long as he has appropriate treatment, monitoring, and supervision. (St. Ex. 2)

The Board alleged that Dr. Boutros' medical condition renders him unable "to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(19). (St. Ex. 2)

The Board received Dr. Boutros' request for hearing on August 28, 2006. (St. Ex. 3)

Appearances

Richard Cordray, Attorney General, and Barbara J. Pfeiffer, Assistant Attorney General, for the State.

James M. McGovern, Esq., for the Respondent.

Hearing Dates: May 30 through June 1, 2007, and August 20 through 22, 2007.¹

PROCEDURAL MATTERS

1. Following the hearing, the record was held open for counsel to file written closing arguments. (Tr. at 1435-1436, 1442) Written arguments were submitted. In January 2008, Dr. Boutros filed a motion regarding the sealing and/or redaction of portions of the record, and the State filed a memorandum in opposition in February 2008. In November 2008, the Respondent filed a motion

¹ This matter does not have a case number because the notice of opportunity for hearing was issued before October 2007.

to admit additional evidence, and the State opposed this motion. The Hearing Examiner granted the motion, and the additional evidence was filed on March 11, 2009. On July 2, 2009, the Hearing Examiner ruled on the Respondent's motion to seal/redact portions of the record. (St. Exs. 4A-4G)

2. Prior to October 2007 when the system of Case Record Files was created, the prehearing filings in the Board's administrative actions were admitted as a State's exhibit. Typically, the State compiled all the prehearing filings (motions, notices, memoranda, entries, etc.), and the parties stipulated to their admission as State's exhibits. These filings were referred to as "the procedural exhibits." In the present matter, the State's counsel respectfully declined to compile all the prehearing filings as a State's exhibit. Instead, the State offered the following documents as the State's presentation of procedural exhibits, marked as State's Exhibits 1 through 4: the notice of Board-ordered examination, the notice of opportunity for hearing, the hearing request, and the State's initial scheduling letter.

Following the hearing, the Hearing Examiner admitted a number of documents to the record as additional procedural exhibits and labeled them as follows:

- State's Exhibit 4A: Motion of Respondent to Dismiss and/or for Protection under the Americans with Disabilities Act; State's Memorandum in Opposition; and Respondent's Reply Memorandum.
- State's Exhibit 4B: Closing argument submitted by the State.
- State's Exhibit 4C: Closing argument submitted by the Respondent.
- State's Exhibit 4D: Motion of Respondent to Seal or Redact Portions of the Evidence; State's Memorandum in Opposition.
- State's Exhibit 4E: Motion of Respondent to Admit Additional Testimony of Dr. Noffsinger; State's Memorandum in Opposition; and Respondent's Reply Memorandum.
- State's Exhibit 4F: Entry granting Respondent's Motion to Admit Additional Testimony; Respondent's Notice of Filing Additional Testimony.
- State's Exhibit 4G: Entry granting in part and denying in part Respondent's Motion to Seal or Redact.

SUMMARY OF THE EVIDENCE

The entire transcript and all exhibits were thoroughly reviewed, although some items are not discussed in the following summary.

Educational Background and Overview of Medical Practice - 1988 through 2007

1. George Jamil-Elias Boutros, M.D., testified that he earned his medical degree from the American University in Beirut, Lebanon, in 1980, after which he participated in a research fellowship on cataracts in Germany. In 1982, he relocated to the United States and completed a residency in ophthalmology at Tulane University in Louisiana in 1985. Dr. Boutros also stated that he participated in a short fellowship at Harvard University. (Tr. at 971-972)

2. Dr. Boutros testified to the following employment: from 1985 to 1988, intermittent work at various locations in the United States; from 1988 to 1989, employment as an ophthalmologist at the South Williamson Appalachian Regional Hospital in Kentucky; from 1989 to April 1990, a solo practice in ophthalmology in Washington State; and, from 1990 to 2001, a solo practice in Iola, Kansas. Dr. Boutros stated that he next moved to San Diego where he undertook two months of training in Lasik surgery, with the plan of having his own Lasik surgery center. However, this plan dissolved when he was suspended from the practice and the prospective partner was indicted for fraud, as discussed more fully below. (Tr. at 972, 1005-1006, 1328-1332)
3. In July 2002, Dr. Boutros accepted a position as an ophthalmologist with Trinity Hospital in Minot, North Dakota. From June 2003 through June 2004, Dr. Boutros participated in a fellowship in retinal surgery at St. Michael's Hospital in Toronto, Canada. In July 2004, Dr. Boutros returned to Trinity Hospital. However, in August 2004, Trinity terminated his employment.² (Tr. at 972, 1006-1007; State's Exhibit [St. Ex.] 11)
4. In 2005, Dr. Boutros worked briefly in Ohio. In May or June 2005, Dr. Boutros accepted a position in California. In June 2006, Dr. Boutros left that position and accepted a new position in California. Dr. Boutros stated that he was employed in California at the time of the hearing. (Tr. at 983-984)
5. Dr. Boutros testified that he has held licenses in twelve states, including Ohio, but that, at the time of the hearing, he held a license only in California. Dr. Boutros explained that he had let his license in Ohio expire by nonrenewal, and that he had not renewed the licenses in the other states. (Tr. at 973, 982-983, 986)

Bipolar Disorder Generally

6. In its notice of opportunity for hearing, the Board alleged that Stephen Noffsinger, M.D., had diagnosed Dr. Boutros with Bipolar I Disorder. Accordingly, much of the evidence at hearing was directed toward the criteria for diagnosing Bipolar I Disorder in relation to certain acts and conduct of Dr. Boutros as reported.³ (St. Ex. 2)
7. Dr. Noffsinger testified as an expert on behalf of the State.⁴ He stated that bipolar disorder is a mood disturbance with both elevated and depressive components. (Tr. at 64-65, 94-95) He

²In 2004, Dr. Boutros filed a legal action against Trinity Hospital and others, including claims of breach of contract, wrongful termination of employment, and other claims. The matter was referred to arbitration, and a labor arbitrator later ruled that Trinity acted wrongfully in terminating the employment contract, as discussed more fully below. In connection with the arbitration, numerous statements were taken and many witnesses testified in deposition and/or at the arbitration hearing in 2005. (Resp. Exs. A, VVV, WWW)

³The record includes numerous psychiatric evaluations of Dr. Boutros. They are discussed in greater detail below.

⁴Dr. Noffsinger is an associate professor of psychiatry at the medical school at Case Western Reserve University. He is board-certified in psychiatry and forensic psychiatry. Since 1996, he has served as the Chief of Forensic Psychiatry at Northcoast Behavioral Healthcare, a psychiatric hospital in Northfield, Ohio. Dr. Noffsinger also provides psychiatric services for the Cuyahoga County Court of Common Pleas. (St. Ex. 5, Tr. at 22-30) His professional background is set forth in greater detail in the hearing transcript at pages 22-30.

testified that the criteria for diagnosing Bipolar I Disorder are set forth in the DSM-IV(TR) [hereinafter “DSM-IV”], a manual published by the American Psychiatric Association that sets forth the criteria for various mental disorders.⁵ (Tr. at 64-65, 94-95) The DSM-IV states that diagnosing Bipolar I Disorder requires that the patient has exhibited at least one episode of mania. (Tr. at 94-95, citing DSM-IV at 362)

8. The criteria for a manic episode are set forth in the DSM-IV as follows:
 - A. A distinct period of abnormally and persistent elevated, expansive or irritable mood, lasting at least one week (or any duration if hospitalization is necessary).
 - B. During the period of mood disturbance, three (or more) of the following symptoms have persisted (four if the mood is only irritable) and have been present to a significant degree.
 - (1) inflated self-esteem or grandiosity.
 - (2) decreased need for sleep (e.g., feels rested after only 3 hours of sleep).
 - (3) more talkative than usual or pressure to keep talking.
 - (4) flight of ideas or subjective experience that thoughts are racing.
 - (5) distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli).
 - (6) increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation.
 - (7) excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g., engaging in unrestrained buying sprees, sexual indiscretions, or foolish business investments).
 - C. The symptoms do not meet criteria for a Mixed Episode.
 - D. The mood disturbance is sufficiently severe to cause marked impairment in occupational functioning or in usual social activities or relationships with others, or to necessitate hospitalization to prevent harm to self or others, or there are psychotic features.
 - E. The symptoms are not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication, or other treatments) or a general medical condition (e.g., hyperthyroidism).

Note: Manic-like episodes that are clearly caused by somatic antidepressant treatment (e.g., medication, electroconvulsive therapy, light therapy) should not count toward a diagnosis of Bipolar I Disorder.

(Tr. at 94-95) (citing DSM-IV(TR) at 362)

⁵ Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (2000).

9. Edward Kelly, M.D., J.D., testified as an expert on behalf of Dr. Boutros.⁶ He testified that bipolar disorder may be diagnosed in a variety of categories, including Bipolar I Disorder, Bipolar II Disorder, and Bipolar Disorder NOS (not otherwise specified). Dr. Kelly explained that a diagnosis of Bipolar I Disorder requires a finding that the individual experienced a manic episode and that Bipolar II disorder requires a hypomanic episode.⁷ He testified that Bipolar Disorder NOS is a “catch all” diagnosis and indicates that the individual did not meet the requirements for a clear Bipolar I or Bipolar II diagnosis. Dr. Kelly testified that patients who are diagnosed with Bipolar I Disorder should be treated with prophylactic mood stabilizers, but that those who are diagnosed with other forms of bipolar disorder should not be treated prophylactically. (Tr. at 579-580)⁸
10. Dr. Kelly testified that it is “quite unusual” for an individual to have a first bipolar episode after the age of 45. He stated that it is very important to rule out other causes of the behavior, including drug use, hyperthyroidism, or delirium. Dr. Kelly further testified that a single episode of mania is also unusual, but acknowledged that the DSM-IV requires only one episode for diagnosis. (Tr. at 545-547, 551-552)
11. Madeline Free, M.D., testified at the hearing on behalf of Dr. Boutros.⁹ She had examined Dr. Boutros in 2004 in North Dakota. Dr. Free testified that an appropriate psychiatric diagnosis includes diagnosing the patient in five areas, or axes. She explained that Axis I describes mental illness, while Axis II describes personality disorders and mental retardation. Axis III relates to physical and surgical medical illnesses, and Axis IV describes acute and chronic stress factors. Axis V sets forth a global assessment of functioning. Dr. Free testified

⁶ Dr. Kelly testified that he received a law degree in 1981 and later obtained a medical degree from Ross University School of Medicine in Dominica in the Caribbean. He stated that he was licensed as a physician in 2000. Dr. Kelly completed a psychiatry residency during which he “moonlighted” at Trinity Hospital, and he also completed a forensic psychiatry fellowship in 2003. Dr. Kelly is board-certified in psychiatry and forensic psychiatry. He is currently practicing as a forensic psychiatrist at Western State Hospital in the State of Washington. He is also a licensed attorney in California. Dr. Kelly’s professional background is set forth in greater detail in the hearing transcript. (Tr. at 489-496, 600- 601, 661-662)

⁷ The term “hypomania” has been defined as follows:

A condition similar to mania but less severe. The symptoms are similar with elevated mood, increased activity, decreased need for sleep, grandiosity, racing thoughts, and the like. However, hypomanic episodes differ in that they do not cause significant distress or impair one’s work, family, or social life in an obvious way while manic episodes do.

Hypomanic people tend to be unusually cheerful, have more than ample energy, and need little sleep. Hypomania is a pleasurable state. It may confer a heightened sense of creativity and power. However, hypomania can subtly impair a person’s judgment. Too much confidence can conceal the consequences of decisions.

Medical Dictionary, at Medicine.Net.com, <<http://www.medterms.com/script/main/hp.asp>> (22 June 2009). This definition is consistent with the descriptions provided by Dr. Kelly. (Tr. at 549, 558, 625)

⁸The evaluations of all the psychiatrists are described below in greater detail.

⁹ Dr. Free received her medical degree from the American University of the Caribbean in Montserrat and completed a residency in psychiatry at the University of North Dakota in Fargo. She received her license in 1995. Dr. Free stated that she is a staff psychiatrist at Medcenter One in Bismarck, North Dakota. Dr. Free stated that she is a hospitalist and generally does not see patients as outpatients. Dr. Free testified that she is not board certified; she explained that she has attempted the examination five times and failed each time. (Tr. at 309-310, 338, 352)

that failure to determine all five axes would be a “slipshod evaluation” or an evaluation “done in a hurry.”¹⁰ (Tr. at 322-323)

12. Dr. Free stated that it would be very unusual for an individual to experience his first manic episode after the age of 50. She said that ninety percent of individuals would experience the first episode before the age of 50. The majority present with symptoms in their twenties, and the remainder in their thirties. Dr. Free stated that the recurrence rate for manic episodes is sixty percent within a three-year or four-year period. (Tr. at 325, 329)
13. Oscar Pakier, M.D.,¹¹ testified at the hearing on behalf of Dr. Boutros. He had examined Dr. Boutros in 2005 in California. Dr. Pakier testified that it would be unusual for an individual to experience a first manic episode after the age of fifty, but that it does happen. He further testified that, if the individual has a “full blown” manic episode, the “likelihood of having a second episode over the course of their life tends to be fairly high,” and would be probably as high as 80 percent.” The younger the onset of the first episode, the more likely it is that there will be a second. Moreover, when the first episode occurs later in life, the second occurrence may not happen for a long period of time. (Tr. at 457-458, 471-472)
14. Shamim Anwar, M.D.,¹² testified by deposition in North Dakota in lieu of live testimony, pursuant to a subpoena issued at Dr. Boutros’ request. Dr. Anwar had examined Dr. Boutros in 2004 in North Dakota. He testified that a person who has one manic episode in eighty years, even in the absence of any depressive episodes, would properly be diagnosed as suffering from a bipolar disorder. He further testified that fifty percent of people with bipolar disorder will experience the first manic episode between the ages of twenty-five and thirty-five. The other fifty percent may experience the first episode at any point in their lives, even in their eighties. (Anwar Transcript [Anwar Tr.] at 58-63, 72)
15. Dr. Anwar testified that Bipolar Disorder NOS is the diagnosis that should be used when other factors may be contributing to the manic presentation. He cited examples of drug use and stress. The difference between Bipolar I Disorder and Bipolar II Disorder, which both have a depressive component, is that Bipolar I requires a manic episode and Bipolar II requires only a hypomanic episode. (Anwar Tr. at 103-106)

¹⁰ For additional discussion on the diagnostic axes, see the hearing transcript at 322-323, 446-451, 475, 564, 576-577.

¹¹ Dr. Pakier, who is board-certified in psychiatry and neurology with a subspecialty in geriatric psychiatry, testified that he has treated hundreds of patients with bipolar disorder. His professional background is set forth in detail in the hearing transcript. (Tr. at 440-442)

¹² Dr. Anwar completed his medical education in 1984 in Pakistan and did six months of surgical training in Pakistan. He then trained for a year in general surgery and a year in cardiac surgery, with further training in emergency medicine and ICU, followed by several years of family-medicine practice in Iran. He came to the U.S. in 1994, and completed a psychiatry residency in 1998. He testified that he has practiced medicine in Ohio, New York, New Jersey, Connecticut, and North Dakota. (Anwar Tr. at 9-11; Resp. Ex. VVV at 784, 785; Ohio eLicense Center, <<https://license.ohio.gov/lookup/default.asp?division=78>>) Dr. Anwar also testified during the arbitration hearing in *Boutros v. Trinity Hospital et al.* (Resp. Ex. VVV at 784).

Dr. Boutros' Psychiatric History

16. Dr. Boutros testified that, prior to the events at issue here, he had sought psychiatric help for depression on three occasions. Dr. Boutros testified that he had suffered his first period of depression in the 1980s when his first wife divorced him. He stated that he had seen a psychiatrist who prescribed an antidepressant medication. Dr. Boutros testified that he had taken the medication for a few weeks and then discontinued it and that his symptoms resolved. (Tr. at 1001)
17. Dr. Boutros testified that the second time he experienced depression was in the late 1980s, when his business was not doing well. He stated that he saw a psychiatrist, took antidepressant medications for a few weeks, and discontinued the antidepressants because of unpleasant side effects. He stated that his symptoms resolved. (Tr. at 1002)

On a third occasion, in the early 1990s, Dr. Boutros stated that he saw a psychoanalyst who did not prescribe medications. He said he underwent psychoanalysis for a year and a half. The psychoanalyst diagnosed anxiety and discharged him. Dr. Boutros testified that, during his psychoanalysis, he learned that he has some narcissistic traits, some quasi-histrionic traits, and a great need for attention. (Tr. at 1002, 1004-1005)

Dr. Boutros' Testimony Regarding the Practice Opportunity in San Diego - 2002

18. Dr. Boutros testified that, in 2002, he worked for a few months at Laser Eye Care Center in San Diego, California. Dr. Boutros explained that the Laser Eye Care Center was a chain of approximately 25 centers in Southern California owned by Dr. Anthony Garbat. Dr. Boutros testified that Dr. Garbat had recruited him with a promise to give him his own center. Dr. Boutros stated that he secured a million-dollar loan to start his own Lasik practice. Dr. Boutros testified, however, that, after the events of September 11, 2001, he had decided that starting a business based on an elective procedure would not be wise. Dr. Boutros testified that he paid \$25,000 in fees and cancelled the loan. (Tr. at 1006)
19. Dr. Boutros further testified that, after he had relocated to Southern California, Dr. Garbat had been indicted on charges of Medicare fraud and that he had been forced to terminate his relationship with Dr. Garbat. Dr. Boutros later admitted, however, that he had left Dr. Garbat's practice only after Dr. Garbat had suspended him. Dr. Boutros testified that he had entered the relationship "assuming" that he would purchase a majority holding in the practice. Shortly after joining, however, Dr. Garbat had accused Dr. Boutros of trying to take over the practice, among other things, and had suspended Dr. Boutros from practicing at any Laser Eye Care Center. Dr. Boutros testified that he had tried to continue practicing at the center despite the suspension, and Dr. Garbat had blocked him from entering. At that point, Dr. Boutros resigned. (Tr. at 1005-1006, 1327-1329)
20. Despite his earlier testimony that he had decided to cancel the bank loan, Dr. Boutros testified that the *bank* had canceled the loan after Dr. Garbat was indicted. (Tr. at 1331-1332)

Dr. Boutros' First Year at Trinity Hospital: 2002-2003

21. In early 2002, Trinity Hospital [Trinity] in Minot, North Dakota offered Dr. Boutros a position to provide general ophthalmology services. Dr. Boutros accepted the offer and signed a contract. On July 1, 2002, Dr. Boutros started his employment at Trinity Regional Eye Care Center [Trinity Eye Care], formerly known as the Williams Eye Care Center. (Tr. at 1007; St. Ex. 11)
22. Dr. Boutros testified that the first person he met in Minot was Suzanne Watne, the Administrator at Trinity Eye Care. Her husband, Matthew Watne, was a local realtor. (Tr. at 1009- 1010)
23. Tammi Fugere, L.P.N.,¹³ a certified ophthalmic technician at Trinity and the surgical coordinator for Trinity Eye Care, testified that, when Dr. Boutros joined the practice in 2002, she had spent a lot of time working with him. In particular, Ms. Fugere scrubbed with Dr. Boutros for surgeries in order to help orient him to the facility. She testified that, during the first year, Dr. Boutros was very pleasant at work. Nevertheless, he had difficulty as a surgeon and experienced “a lot of complications.” (Resp. Ex. Ex. PP-3)
24. Denise Dahl, R.N.,¹⁴ stated that she had been the circulating nurse for many of Dr. Boutros’ surgeries during his first year at Trinity. Ms. Dahl testified that she had had concerns about the “patient outcome” for a number of Dr. Boutros’ surgical patients. She stated that she had voiced these concerns to her supervisors. (Resp. Ex. NN at 8-12, 15-16) A local optometrist, Shawn Nelson, O.D., confirmed that there had been a poor outcome with a patient he had referred to Dr. Boutros, and that he had not referred further patients. (Resp. Ex. WW)
25. Dawn Albertson,¹⁵ Dr. Boutros’ secretary during his first year at Trinity, testified that Dr. Boutros had been friendly and polite to her, but other employees had complained that he was rude to staff and patients. Ms. Albertson further testified that Dr. Boutros had missed a diagnosis and “botched” a few surgeries during the first year. (Resp. Ex. LL at 1-4)
26. Dr. Boutros testified that, during his first few months at Trinity, he had found that he was having too many complications. He realized that, having been away from surgery for too long a time, he no longer had the necessary surgical skills. Moreover, he found that he was short with patients and “was not in the mood of spending time with the patients.” His practice did not flourish. He felt that he had made a mistake in moving to North Dakota and believed he could not be happy there. After six months, Dr. Boutros decided to resign. (Tr. at 1007-1010; St. Ex. 11)

¹³ Ms. Fugere stated that she had worked at Williams Eyecare Center, owned by Dr. Darrell Williams, an ophthalmologist, for twenty years. Although Trinity purchased Dr. William’s practice, both Dr. Williams and Ms. Fugere remained with the new practice. Ms. Fugere testified during a deposition in connection with the 2005 arbitration hearing involving a lawsuit Dr. Boutros filed against Trinity; she did not testify during the Ohio Board hearing. (Resp. Ex. PP-2)

¹⁴ Ms. Dahl gave deposition testimony in connection with the 2005 arbitration hearing, but did not testify during the Ohio Board hearing. (Resp. Ex. NN)

¹⁵ Ms. Albertson gave deposition testimony in connection with the 2005 arbitration hearing, but not during the Ohio Board hearing. She stated she was Dr. Boutros’ secretary. (Resp. Ex. LL)

27. Dr. Boutros testified that he had discussed the situation with Todd Grages, vice-president of Trinity. Dr. Boutros testified that he had informed Mr. Grages that, if things did not improve, he would leave Trinity. He testified that Mr. Grages and other ophthalmologists at Trinity suggested that Dr. Boutros complete a one-year fellowship in retinal surgery, sponsored by Trinity. Trinity offered to loan Dr. Boutros \$120,000, a loan that would be forgiven upon his successful completion of the fellowship and five years of service. In addition, Trinity offered to pay him \$350,000 per year for the five years. Dr. Boutros accepted the offer and obtained a fellowship position in Toronto, Canada. (Tr. at 1007, 1010-1011)

Retinal Surgery Fellowship in 2003-2004

28. Dr. Boutros and his family relocated to Toronto. From June 2003 through June 2004, Dr. Boutros participated in and successfully completed a vitreo-retinal fellowship at St. Michael's Hospital in Toronto. Dr. Boutros testified that the year in Toronto was hard and demanding, although he was excited to be practicing in a more stimulating subspecialty. (Tr. at 544, 1012-1015; St. Ex. 11)

Staff Observations of Dr. Boutros in Toronto

29. In May 2004, Trinity sent a group of nurses and technicians to join Dr. Boutros in Toronto for a week to learn procedures related to retinal surgery. (Resp. Exs. OO at 7-8, PP at 14)
30. Judith Erickson, a certified ophthalmic assistant, testified that she had been sent to Toronto to train for assisting Dr. Boutros during retinal surgery.¹⁶ Ms. Erickson stated that, when she observed Dr. Boutros in Toronto, his behavior was "very erratic." She said that he had talked about his real estate interests and a surgical-instrument invention but that he devoted little attention to his fellowship. (Resp. Ex. OO at 12) Ms. Erickson testified that she had observed different surgeons performing retinal surgery during the week and had become familiar with the surgical routine. Thereafter, she observed Dr. Boutros perform a surgery and noted that he had failed to initiate an infusion line before surgery, which was the routine. She testified that Dr. Wong, his supervisor, told Dr. Boutros three times to insert the line. Each time, Dr. Boutros replied, "No, I don't need it." After the third refusal, Dr. Wong took over the case and stated, "This is why there are complications." (Resp. Ex. OO at 11-12)

Ms. Erickson further testified that, on one occasion, Dr. Boutros had told her a story about one of his instructors, telling her that the instructor had pulled the retina out of a patient's eye during a surgery, saying, "I just wanted to show you that it can be done." Dr. Boutros stated that, afterward, the patient was blind in that eye. Ms. Erickson thought that the story was "bizarre." (Resp. Ex. OO at 1-12, 28)

31. Denise Dahl, R.N., testified that, while in Toronto, she had observed Dr. Boutros perform surgeries and witnessed Dr. Boutros' supervisors reprimanding him. Moreover, Ms. Dahl

¹⁶Ms. Erickson gave deposition testimony in connection with the 2005 Arbitration Hearing, but not before the Ohio Board. (Resp. Ex. OO)

testified that Dr. Boutros had not completed any of these surgeries and that an instructor had had to take over every procedure that she witnessed. (Resp. Ex. NN at 12-13)

32. Tammi Fugere, a certified ophthalmic technician, testified that, in Toronto, she had observed that Dr. Boutros was having complications with his surgeries and that his supervisors had had to intervene. She stated that Dr. Boutros had asked the same questions repeatedly and had not been focused on his fellowship. She testified that he seemed to be fixated on who was doing what to set up his retina clinic at Trinity, and she had advised him to concentrate on his retina training and that she would make sure the equipment was taken care of in North Dakota. (Resp. Ex. PP at 5-6, 19-20) Ms. Fugere further testified that she had been concerned about Dr. Boutros' behavior outside the fellowship. She stated that he had been driving erratically and swearing, which surprised her. Ms. Fugere stated that she had repeatedly encouraged him to focus on his training because she was concerned that he might have problems when he returned to Trinity. (Resp. Ex. PP at 5-6)
33. Ms. Fugere stated that, after they returned from the training in Toronto, they had a clearer understanding of the equipment and instruments that Dr. Boutros needed, and she thought "things were progressing nicely" for preparation of the retina practice. Ms. Fugere testified that Dr. Boutros nonetheless continued to be "so worried" about the equipment and instruments in North Dakota. (Resp. Ex. PP at 24-25)

Dr. Boutros' Relationship with the Watnes

34. Dr. Boutros testified that, while he and his wife were in Toronto, a friend had called Mrs. Boutros and told her about a house that was for sale in Minot. Dr. Boutros stated that the house was one that Matt Watne had previously shown them when they moved to Minot. Dr. Boutros stated that, in May 2004, the house was for sale by the owner, and he had purchased the house without involving Mr. Watne. Dr. Boutros testified that Mr. Watne had been angry and sent an e-mail stating that the Boutroses had been unethical. Dr. Boutros testified that he had apologized but knew they had been under no obligation to purchase the house through Mr. Watne. (Tr. at 1016-1017)
35. Dr. Boutros further testified that, while living in Toronto, he had maintained contact with Suzanne Watne, the administrator of Trinity Eye Care, because they were working to develop the infrastructure of his retina practice. They discussed the physical space, equipment, marketing, and scheduling. Dr. Boutros explained that he had hoped to see patients immediately upon his return to North Dakota. (Tr. at 1015-1016)
36. Suzanne Watne testified¹⁷ that Dr. Boutros had contacted her in the spring of 2004, saying that he was tired and had had "enough of the fellowship." He told her he was leaving the fellowship early. He asked Ms. Watne to arrange for him to return to Toronto in September to complete his fellowship obligations. (Resp. Ex. VVV at 1154-1155) [However, he stayed through June and completed the fellowship.]

¹⁷ Ms. Watne prepared a written statement and also testified during the 2005 arbitration hearing. She did not testify during the Ohio Board hearing. (St. Ex. 24, Resp. Ex. VVV at 1138-1230)

Return to Trinity - July 2004 through August 11, 2004

37. Dr. Boutros returned to Trinity on or about July 1, 2004. The first month at Trinity was to set up the new retina clinic, and Dr. Boutros was to start seeing patients regularly in August 2004. (Resp. Ex. XX at 23; Resp. Ex. BBB at 12; Resp. Ex. PP at 25)
38. Ms. Fugere stated that she was working under Ms. Watne's supervision to set up the retina practice, which required coordination with many different people. (Resp. Ex. PP) Ms. Parisek stated that she had been communicating with Dr. Boutros in Toronto by telephone and fax regarding his equipment needs and that she was getting price quotations from suppliers and ordering supplies, and that she had assured Dr. Boutros that the equipment was being obtained. (Resp. Ex. XX at 5-6, 21-24) Further, Ms. Peterson stated that she was involved in discussions with Dr. Boutros toward the end of his fellowship regarding the equipment, and that she participated in ordering equipment. She stated that, in July 2004, after Dr. Boutros returned to Trinity Eye Care, they got the vitrectomy equipment in, and she and Dr. Boutros worked on setting up the wet lab, and practiced in the lab with a pig's eye. (Resp. Ex. VVV at 709-710)
39. Dr. Boutros testified that, when he returned to Trinity in July 2004, he was shocked to find that "nothing" had been done to set up his retinal practice. He testified that Trinity had purchased only one piece of equipment, which he said served the hospital in ways other than the retina practice. He said there were no offices, patient schedule, or business cards. Dr. Boutros held Suzanne Watne responsible for Trinity's failure to organize his practice. (Tr. at 1042-1043)
40. Dr. Boutros stated that, although he was disappointed that his practice was not ready, he was excited and upbeat about some "collateral projects." These included developing a commercial land project, working on a prototype of a surgical instrument that was invented by one of his Toronto colleagues, and writing four to five "surgical and medical articles." (St. Ex. 11)
41. Dr. Boutros did not have a regular schedule for seeing patients until August 2, 2004. (St. Ex. 11)

Evidence Regarding a Change in Dr. Boutros' Behavior

42. Suzanne Watne testified that Dr. Boutros had exhibited "strange behavior immediately upon his return in the beginning of July." Ms. Watne stated that Dr. Boutros had been unable "to maintain logical conversation." She provided the following examples:
 1. In the beginning of July an attempt was made to meet on details in regards to the future retina practice. This took place in the surgery office where I wanted him to proof several pages on consents, [and] the focus all of a sudden would jump to an invention he was working on, then jumped to a conversation stating that he would not make his money doing retina, then jumped to a conversation that he was taking me out of the office for a business meeting, then jumped to a conversation about how I had to get his cell phone, pager, etc. We left the office and he took me to Watne Realtors to meet with my husband, Matthew

- Watne. He stated he had a business deal for Matt to work on. Matt later called him and turned down his proposal. He then brought me back to the office and said he would be back to take me to lunch. He returned and took me to Grizzly's. I brought along an agenda to discuss needing doctors orders, update on equipment, etc. All the while he would not talk about retina. He had a conversation about how unhappy he was his first year here at Minot, that people only lived here because they had to and they were losers, etc. He then said he changed at Toronto and became excited about life again. He had an investor for some invention and that is why we went to Watne Realtors earlier. On the way back to the office his driving was very fast and it seemed to me a little out of control. There were times he would miss stop signs and even a red light. I had taken this as being very tired after being a year in a retinal fellowship.
2. The second attempt to meet was a couple of weeks later. He called again stating we should have a business lunch. I thought this a good idea because I still had not received any doctor's orders for surgery; we needed to touch base with Lana @ CMC, etc. When he arrived at the office he was all over the place talking on his cell phone, etc. We finally left the office and all of the sudden he pulled into the gas station next to CMC. He was in there for a short time and he came out. He stated he met a "warrior" there the night before. He could not sleep so he went there at five in the morning for something. He got into a conversation with this "chief" for a couple of hours and then decided to bring him home to Haifa and the kids. He said he had him play the role of a warrior to his kids. He also shared blood with this warrior. Then he jumped to a conversation about his niece and that she was anorexic and being treated in Los Angeles, CA. He was very unprofessional with his speech (using extreme foul language), talking in a very fast forced speech that he was going to sue those doctors. He was very upset because they would not let [him] see his niece. He stated he could cure her immediately. From there he told me he had a business venture to show me and took me 4-wheeling back behind the grain hopper. I asked at that point to be taken back to the office. He did not; instead he went up a hill, got out and gave me a bottle of water. He wanted to videotape me discussing this business venture so he could send it to his investor in Canada. I asked again to be taken back to the office. He just laughed at me and took me back. This I guess was our "business lunch."
 3. The following day I visited with Dr. Boutros about his behavior. I did tell him I was worried for him and that I felt we were not focusing on the retina practice. I also asked that any other meetings be held here in the office only. I also asked that the meetings and business we discuss only be professional not personal in nature. In that conversation he would get upset, then laugh and interrupt me constantly. He did eventually agree to keep things professional and that he would work on focusing more on retina. We did touch base later that day, he met with me in my office and did stress how upset he had gotten with me earlier and that he would have even liked to slap me. I told him I did not mean to be disrespectful in any way, but that I felt it to be important to focus

on retina and keep our dealings professional. He then said he was going to work at being my new best friend and walked out. I did call Todd at administration to update him on all of the above matters.

(St. Ex. 24; see, also, Resp. Ex. VVV at 1166-1188)

43. Tammi Fugere testified that, when Dr. Boutros returned to Trinity in July 2004, his behavior was different from before. Ms. Fugere described his behavior as “manic” and stated that he was not focused on his medical practice at Trinity. She became concerned that he often wanted to talk about things other than his retina practice, such as real estate in Toronto and his patenting of a surgical instrument with one of the doctors there. (Resp. Ex. PP at 7-12, 26-27)
44. Jill Martinson Radekopp, O.D.,¹⁸ testified that, when Dr. Boutros returned from Toronto, he had changed. Dr. Radekopp stated: “His speech pattern was much more rapid. He seemed more tightly wound. He would ask questions, and while you were trying to answer the questions, he would jump in with another train of thought or another question.” (Resp. Ex. VV at 6)
45. Linda Guidinger,¹⁹ an insurance clerk at Trinity Eye Care, testified that she had known Dr. Boutros before his fellowship, when she had thought of him as unfriendly because he had not spoken to her although she had seen him often. In contrast, when he returned from Toronto, Dr. Boutros “acted like I was his best friend.” She described Dr. Boutros as “overly friendly” and “hyper” upon his return to North Dakota. (Resp. Ex. QQ at 5-13, 17-18)
46. Shirley Isla,²⁰ a medical secretary at Trinity, testified that, before Dr. Boutros left for the fellowship, she had few conversations with him and he would just say hi in passing. She stated that, upon his return to Trinity in July 2004, his behavior was different. It did not cause her concern, only curiosity. He was more talkative, and he would come in and ask them how they were doing, and he would be “very excited” and “extraordinarily happy.” She stated that the first time it happened, she did not react, but the second time, she and her co-worker “kind of looked at each other.” She further stated that there was an incident when Dr. Boutros was very upset and talking on his cell phone in the parking lot and waving his arms, and it was raining. She reported that Dr. Boutros was “soaking wet” but continued to talk on the phone in the rain, although she acknowledged that the rain diminished. Ms. Isla received a telephone call from Linda Guidinger about it, and Ms. Guidinger “thought it was strange because he was out in the parking lot in the rain.” Ms. Isla testified that Ms. Guidinger was concerned, and that she herself was worried about Dr. Boutros, so she called a supervisor. (St. Ex. RR at 4-15)
47. Dawn Albertson, Dr. Boutros’ secretary during his first year at Trinity, stated that Dr. Boutros behaved differently when he returned from Toronto. She stated that he fidgeted constantly and

¹⁸ Ms. Radekopp testified, in a deposition in connection with the 2005 arbitration proceedings, that she had been employed as an optometrist at Williams Eyecare Center/Trinity Eye Care since 1987. She stated that she worked with Dr. Boutros before and after his fellowship in Toronto. (Resp. Ex. VV-1 through VV-5)

¹⁹ Ms. Guidinger testified in a deposition for the 2005 arbitration proceedings. (Resp. Ex. QQ)

²⁰ Ms. Isla testified in a deposition for the 2005 arbitration proceedings. (Resp. Ex. RR)

spoke very quickly. Ms. Albertson stated that Dr. Boutros “could not stand still.” She stated that he had not been like that before going to Toronto. (Resp. Ex. LL at 9-22)

48. Judith Erickson, an ophthalmic assistant, testified that Dr. Boutros was “hyper, very hyper” while in Toronto and after he returned to Trinity. (Resp. Ex. OO at 18) Ms. Erickson described an incident that occurred when Dr. Boutros tested new vitrectomy equipment:

Well, we were trying out the equipment--they get pigs’ eyes that we can use, you know, that he can try out the equipment on. And he was--had the power too high and was basically sucking the pig’s eye into the tubing. I mean, the rep and we all looked at each other like – and the rep said, “You’re using too much power,” and he said, “I just wanted to see what happened.”

(Resp. Ex. OO at 17)

49. Two nurses—Lana Parizek, R.N.,²¹ and Paula Wahl, L.P.N.²²—also testified regarding Dr. Boutros’ behavior. Ms. Parizek testified that she had worked with Dr. Boutros before and after his fellowship in Toronto. She testified that, when Dr. Boutros returned from Toronto, he had changed, he was “a different person.” She stated that she had difficulty getting Dr. Boutros to focus and to make decisions. Ms. Parizek had difficulty getting him to concentrate on the task before him. She stated that Dr. Boutros was “more talkative” and more personal. Moreover, Ms. Parizek stated that, when she scheduled meetings for which Dr. Boutros’ participation was mandatory, he arrived late and left early. (Resp. Ex. XX at 1-7, 20, 24)

Ms. Wahl, who worked directly with Dr. Boutros after his return from the fellowship, testified that Dr. Boutros was constantly pacing, losing focus during patient examinations, and unable to follow a time schedule. She said that his mood cycled between highs and lows, and that she had believed that his behavior was not “normal” and that he needed “help.” (Resp. Ex. K at 943-944)

50. Two physicians also provided information, Evelyne Kindy, M.D.,²³ and Robert Sanke, M.D.²⁴ Dr. Kindy testified that, when Dr. Boutros returned from his fellowship, he was a different man than the man she had known a year earlier. When he returned to Trinity, he was “loud” and “strange,” and he appeared to be under stress. Dr. Kindy also observed that Dr. Boutros seemed to be “very happy.” Dr. Kindy testified that Dr. Boutros had approached her one day and started talking about different projects he was exploring. One

²¹ Ms. Parizek testified during a deposition for the 2005 arbitration proceedings, and she also testified at the arbitration hearing. (Resp. Exs. XX, VVV at 703)

²² Ms. Wahl provided a written statement, testified in a deposition for the 2005 arbitration, and testified during the arbitration hearing. (St. Ex. 24; Resp. Ex. K; Resp. Ex. VVV at 748)

²³ Dr. Kindy testified during a deposition for the 2005 arbitration, noting that she had been an ophthalmologist at Trinity Eye Care since 1997. (Resp. Ex. TT)

²⁴ Dr. Sanke testified in a deposition in connection with the 2005 arbitration, noting that he had been an ophthalmologist at Trinity Eye Care since 1999. (Resp. Ex. AAA) He also provided the written statement as noted.

involved an entertainment park for four-wheeling and another was a project involving a medical instrument. She stated that he had invited her to join these ventures, but she told him she was not interested. Dr. Kindy testified that she had found his behavior to be strange in that they did not have “that kind of relationship.” Moreover, Dr. Boutros’ excitement was “so palpable” that Dr. Kindy had felt uncomfortable. (Resp. Ex. TT at 1-10)

51. Dr. Sanke reported a variety of observations in a November 2004 written statement: that his first encounter with Dr. Boutros upon his return from Toronto was on August 4, 2004, when Dr. Boutros said he was writing a book about retina surgery, displayed an affect consisting of “rapid, intense, and highly energetic speech with a flood of different ideas occurring almost simultaneously together,” spoke in a “highly disrespectful” way regarding the attending surgeons and professors with whom he had worked in Toronto, calling them “assholes” and questioning their abilities and attitudes, and exhibited “rapid, intense, and highly energetic speech with a flood of different ideas occurring almost simultaneously together.” (St. Ex. 27) Dr. Sanke stated that, on August 5, 2004, Dr. Boutros had grasped his hand in a hallway and said they must have a business lunch. When Dr. Sanke asked what the meeting would be about, Dr. Boutros answered, “Don’t ask questions, we have to do this.” Dr. Sanke described similar speech and manner as before. (St. Ex. 27) Dr. Sanke then described additional incidents on other days. (St. Ex. 27)

However, when Dr. Sanke was subsequently questioned during a deposition in September 2005, after Dr. Boutros commenced legal actions against Trinity and others (discussed below), his recollection was different. Dr. Sanke stated that Dr. Boutros, on his return from Toronto, had seemed “a little nervous sometimes, but nothing unusual.” Dr. Sanke testified that he had not been concerned about Dr. Boutros’ mental health. (Resp. Ex. AAA)

52. Dr. Boutros explained that he had been “very happy” when he returned to Minot in July 2004. He stated that he had been excited about things such as the retina practice, the new home, and a settled environment for his family. He would be making the most money he had ever made, and it was like the American Dream. He explained that, in his enthusiasm, he had said hello to everyone and tried to be “humorous.” Dr. Boutros stated that, along with his “enthusiasm,” he had probably brought “some personal baggage,” which “did impact people differently.” He acknowledged that his behavior had changed. (Tr. at 1022-1023)
53. Dr. Boutros denied, however, that the change had been significant. He stated that the change “did not impact them [his co-workers] as severely and as strongly as you would get the feeling of when you read those reports.” (Tr. at 1023)

Dr. Boutros’ Interaction with Lee Jeannotte

54. Lee Jeannotte,²⁵ a 33-year-old Native American, was interviewed in September 2004 on behalf of the North Dakota Board of Medical Examiners. Mr. Jeannotte stated that he had been

²⁵ Mr. Jeannotte provided the statements to Christopher Carlson, an attorney from Bismarck, North Dakota, during an interview in September 2004, and Mr. Carlson provided his report to the North Dakota Board. (St. Ex. 20)

employed as a clerk at a BP Amoco gas station and convenience store in Minot, working from 11:00 p.m. until 7:00 a.m. (St. Ex. 20)

55. During the interview, Mr. Jeannotte stated that Dr. Boutros had been in the store a few times when, one morning at 4:00 a.m., Dr. Boutros “made a bee-line to the counter with his hand held out and said ‘Hi, I’m George Boutros.’” Mr. Jeannotte stated that Dr. Boutros had shaken his hand and would not let go. Dr. Boutros asked him repeatedly, “Do you want to be in business?” Mr. Jeannotte stated that Dr. Boutros had been “like an Amway dealer on crack-cocaine.” (St. Ex. 20)
56. The interviewer reported the remainder of Mr. Jeannotte’s interview as follows:

This first encounter occurred in July. [Lee] and the doctor walked outside of the store and he said the doctor began telling him that they could make a lot of money. Lee said he responded that he didn’t want to be involved in anything like Amway and that the doctor responded that his did not involve Amway. He said, ‘I can’t tell you right here and now. Can we have a meeting someplace?’

The doctor found out that Lee was getting off work at 7:00 a.m. and told him that he could come back to get him to ‘go for a ride.’ Lee said the doctor was a little guy, and he didn’t feel physically threatened by him in any way so he agreed. He said the doctor came and picked him up at 7:00 a.m. exactly and that the two of them waited for Lee’s relief worker, Sandy, to show up.

Lee and the doctor drove to an area that has some grain silos located on Valley Street in Minot. Apparently on the back side of the silos there is a lot of vacant space with steep rolling hills that people use to ride motorcycles on and other recreational vehicles.

Lee said the doctor started driving around on these hills off of the roads. He was driving an Isuzu Trooper. He drove them around for about 5 minutes and then when they got up to the highest peak the doctor told him to get out.

Lee said they got out of the car and the doctor said, ‘Do you see all this land? What would you think if I told you we could buy all of this land and start a 4-wheel drive off-road theme park for \$5,000.00?’ Lee said that the doctor explained that the \$5,000.00 would not buy it all, but it would get Lee a loan to buy the land, hire lawyers and accountants, etc. Lee said it sort of made sense to him.

Mr. Jeannotte said the doctor began asking him strange questions. He asked him what his deepest, darkest secret was and Lee mentioned something to him. He said the doctor responded, ‘If that’s the worst you’ve ever done, I’m going to make you do worse. I’m going to teach you how to lie.’

The doctor asked Lee if he wanted to go to his house to wake up his kids and get introduced to the doctor's wife. Lee agreed to do this.

They went to the doctor's house and the doctor made breakfast for Lee. Lee said the doctor had him introduce their "plan" to his wife as if it was Lee's idea. He said it was very strange and the wife was not in the least bit interested in the idea of a 4-wheel drive off-road theme park. Lee said he had the impression that once he left the house the wife was going to "rip into him."

Lee said the doctor stopped in at the store a few times later but never had time to talk. Lee said they have a customer who is a retired military man named Rick Stratten. Lee said Stratten comes into the store almost every night, in the wee hours. Lee said that Rick had told him he had been in business several times and Lee thought perhaps he should introduce Dr. Boutros to him. One evening, when Rick was there, Dr. Boutros came in "super wide-awake." He said the doctor's eyes were vivid and intense and he was "in your face." He again described the doctor as an Amway salesman on crack.

Lee introduced the doctor to Mr. Stratten. When Mr. Stratten said that he was retired from the military it set George Boutros "off on a mission." Lee said the doctor started badgering Rick as to whether or not he had done anything bad when he served in Vietnam. He said that Mr. Stratten answered his questions by saying he did some things he didn't like to do but he only did his duty while he served. Lee said the doctor finally burst out and said that the US military is not the world's police and that instead they are the world's thugs. Lee said he found this to be very offensive and that Rick was offended too.

At this point, Lee said he wanted to forget Dr. Boutros. He said the doctor left the store but said he wanted to talk later regarding business. A couple of days later the doctor came over saying he had something to show Lee. He said he had gotten someone who lived in Toronto who was willing to put \$2m into the project. He said the man's name was Mr. Vasco.

Lee said he helped Dr. Boutros put together some kind of a video on a disk showing the land where the 4-wheel drive theme park would be located and that they drove to the Federal Express office to mail the disk to Mr. Vasco. On the way there, Lee said the doctor asked him how much he paid for rent and said, 'What would you say if I bought you a house? You wouldn't have to get the loan, but your payments would be \$265.00 a month and at the end you would own it.'

Lee said when Mr. Stratten came to the store he would bring his dog along. The doctor developed an affection for the dog. He said he asked Rick if he could take the dog for a ride one night and Rick wouldn't let him. The doctor then asked if Rick would let him take the dog for a walk around the parking lot and Rick agreed to do this.

Mr. Jeannotte said Dr. Boutros was beginning to irritate customers. The doctor always came in sometime after 1:00 in the morning and would stay sometimes just a few minutes, but other times several hours. He said the doctor would come up to customers and say “how are you today.” When the customer would say, “fine” the doctor would respond by saying “why?” Customers would ignore him but Lee said it was starting to get on people’s nerves.

Lee said the doctor also started bringing up the fact that Mr. Jeannotte was Native American. He would say things like, “you know the local white people don’t want you and your people involved in this thing. They think you are stupid.”

The doctor told Lee he wanted to set up a charity on the reservation. He said he began coming in every night with some weird statement and then leave.

Mr. Jeannotte said on two occasions the doctor doused him with bottled water for no apparent reason.

Apparently Lee was starting to get worried and told his boss, Lori Zavalney, about the doctor. He said that Lori told him to tell the doctor to stop coming to the store. Lee said he has trouble with confrontation and didn’t do it, at least not right away.

Mr. Jeannotte said he heard from a bunch of people that the doctor was in the process of losing his job. One evening the doctor came in at 1:00 a.m. and did tell Lee that he was losing his job.

Mr. Jeannotte gave me a copy of a three-page letter that Dr. Boutros apparently sent to another person named George, who he was trying to get involved in this financial project. I have attached this to this report.²⁶ You will notice at the bottom of the first page, it states, in describing the various people involved in this project, that “Warrior Lee Jeannotte” is involved. It also states that Mr. Jeannotte is from the Bottineau Indian Tribe in Bottineau.

Mr. Jeannotte told me that when he saw this letter, he [was] mad at the doctor and told him he was not a warrior and he came from Belcourt, not Bottineau and that his tribe was Turtle Mountain Tribe, not the Bottineau Tribe.

Mr. Jeannotte said Dr. Boutros was becoming a real pain. He said he would always buy a water or smokes or something, but was always asking a lot about the proposed business and a lot about Mr. Jeannotte’s tribe.

Mr. Jeannotte said that on the day the doctor told him he was fired, he said he wanted to meet with the tribal council. Mr. Jeannotte said he told the doctor the

²⁶ This letter, which is part of St. Ex. 20, is quoted below.

town in which the council met and where the office building was and whom he needed to talk to. Mr. Jeannotte told the doctor that if he did get a hold of anybody on the reservation he shouldn't bring up any racial matters. Mr. Jeannotte said the next day the doctor said he wanted Lee to call a tribal council member at 4:00 in the morning. Lee said he refused.

Mr. Jeannotte said the doctor told him the next day that he had taken it upon himself to contact Les Lafountain at the tribal offices.

The doctor told Mr. Jeannotte that he drove to Belcourt to meet with Mr. Lafountain. He said he was going to meet with him about putting an eye clinic on the reservation. He said Mr. Lafountain told him he could see him but he would have to wait for a couple of hours. The doctor told Lee that he asked Mr. Lafountain if it would be okay for him to "4-wheel" around the reservation while he was waiting for his appointment with Mr. Lafountain.

Mr. Lafountain told the doctor he could not drive around on the reservation but the doctor told Lee that he went ahead and did it anyway.

Mr. Jeannotte said he was very upset when he heard that the doctor had done this because there are many sacred places on the reservation and a person shouldn't just drive around without knowing where they are going. He said at this point he decided to do what his boss had told him to do before, that is, to tell Dr. Boutros to quit coming around the store.

Mr. Jeannotte's father is in law enforcement and his dad suggested to Lee that he speak with Officer Kukowski at the Minot Police Department. Mr. Jeannotte said he contacted Officer Kukowski and in checking things out Officer Kukowski found out that Dr. Boutros had "made a big scene" at Trinity when he was fired. Mr. Jeannotte got some sort of a "no trespassing" order issued to keep Dr. Boutros away from the station.

Mr. Jeannotte said he obtained a "no trespassing order on Dr. Boutros." He said that Officer Kukowski told him that before serving the no trespassing order he should call the police department. That night the doctor drove into the parking lot where Lee worked and Lee called the police department. Lee said he tried to keep the doctor in the store but he decided to drive off. As he was driving off the police showed up.

According to Mr. Jeannotte, the police took the "paperwork" from him and "chased down" Dr. Boutros' car and served him the no trespassing order.

Mr. Jeannotte said he did not realize the no trespassing order had Lori Zavalney's [the owner's] unlisted telephone number on it.

Mr. Jeannotte said the event with the police occurred around midnight. He said that at 4:00 a.m. he started getting calls on his cell phone from the doctor over and over, that he would not answer. He said he finally turned his phone off. A little while later he said the store telephone rang. He said he answered it and it was Lori Zavalney telling him that Dr. Boutros had called her at home. She was quite concerned because of the fact that he had obtained her unlisted phone number.

At this point Mr. Jeannotte turned on his cell phone and there was a message from Dr. Boutros. Jeannotte said he called the police and said he wanted to press harassment charges against the doctor. He let the police listen to the recording from the doctor and they made a copy of it. Mr. Jeannotte also let me listen to the tape.

Mr. Jeannotte said he filed a complaint for harassment against the doctor and has not “heard a peep from him since.”

Mr. Jeannotte’s father suggested that Lee contact the customs office. Apparently he suggested this because they were wondering if Dr. Boutros is a citizen of the United States. Lee said he went to the customs office and ended up spending quite a bit of time visiting with Special Agent Christopher Geier of Homeland Security.

According to Jeannotte, Agent Geier told him that terrorists are “going after” black Muslims in the prisons and Indians on the reservations. Lee said Agent Geier made some phone calls and came back and told Lee that he thought they were just dealing with a doctor who had lost his mind.

(St. Ex. 20)

57. Dr. Boutros testified that he had frequented the BP station near his home to get coffee and cigarettes during the night. He stated that he developed a friendship with a clerk at the station, Lee Jeannotte. (Tr. at 1108, 1109; St. Ex. 20)
58. Dr. Boutros testified that he had seen Mr. Jeannotte “almost daily” in July and August 2004. (Tr. at 1108, 1109; St. Ex. 20)
59. Dr. Boutros acknowledged that he may have shaken Mr. Jeannotte’s hand without standing in line, but he asserted that he had not cut in line to purchase something. Accordingly, Dr. Boutros objected to the statement in which Mr. Jeannotte suggested that Dr. Boutros had “jumped line.” (Tr. at 1109)
60. Dr. Boutros stated that his friendship with Mr. Jeannotte had “jump started” when Mr. Jeannotte pulled out his empty pockets to show how poor he was. Dr. Boutros testified that he had tried to help Mr. Jeannotte find jobs, such as trying to involve Mr. Jeannotte in setting up computerized medical records for the eye clinic. Dr. Boutros stated that he had also

tried to interest Mr. Jeannotte in setting up a volunteer clinic on the tribal land.
(Tr. at 1108-1110)

61. Dr. Boutros acknowledged that he had offered to buy a house and rent it to Mr. Jeannotte. Dr. Boutros also acknowledged that he had asked Mr. Jeannotte to share his “deepest darkest secret.” (Tr. at 1114, 1118)
62. Dr. Boutros further acknowledged that he had taken Mr. Jeannotte to his home in the morning so his children could meet a Native American, and that he had taken Mr. Jeannotte to the site of the potential theme park. He denied, however, that his wife had reacted poorly to the land-development scheme. (Tr. at 1110, 1113)
63. Dr. Boutros acknowledged that he had called Mr. Jeannotte “Warrior,” which upset Mr. Jeannotte. He said Mr. Jeannotte was also upset about Dr. Boutros’ referring to his tribe by the wrong name and for four-wheeling on the tribal land. Dr. Boutros acknowledged that he had talked a lot about tribal issues. He explained, however, that the reason for this conduct was that “Indian tribe land” is endemic with diabetes and retina disease, and he had thought he could set up a clinic for the tribe because he was not working. Dr. Boutros denied calling a tribal member at 4:00 a.m. (Tr. at 1120, 1124, 1126)
64. Dr. Boutros testified that he had asked Mr. Jeannotte to take him to the tribal leaders so that Dr. Boutros could discuss the clinic, but Mr. Jeannotte did not take him. Therefore, Dr. Boutros went on his own. Dr. Boutros testified that he had gone to meet Mr. Lafountain at the reservation, but he said he had asked if he could engage in four-wheeling while he was waiting for the meeting. Dr. Boutros asserted that he had been told to go to a specific area to do the four-wheeling because much of the Indian land is sacred. (Tr. at 1125-1127)
65. Regarding the allegation that Dr. Boutros was “always” talking about the proposed business venture and Mr. Jeannotte’s tribe, Dr. Boutros agreed that it was “partially true.” Dr. Boutros also agreed that he had discussed the tribe “a lot,” but stated that he had discussed the proposed land-development only a little bit. Dr. Boutros expressly denied that he had behaved like an Amway salesman on crack. (Tr. at 1111, 1125)
66. Dr. Boutros admitted that he had told Mr. Jeannotte that an investor in Toronto had agreed to contribute \$2 million to the land-development project. Dr. Boutros stated at the hearing that his statement was “semi-true.” (Tr. at 1117)
67. Dr. Boutros stated that Mr. Jeannotte had introduced him to a friend who was a Vietnam veteran. Dr. Boutros testified that he had felt “great sympathy” for this veteran. Dr. Boutros acknowledged that he had asked if he could take the man’s dog for a ride, which was refused. (Tr. at 118, 1110)
68. Dr. Boutros stated that he did not believe that he had irritated the customers at the store, but he acknowledged that he could have done so without being aware of it. (Tr. at 1119)

69. Dr. Boutros admitted that, on two occasions, he had doused Mr. Jeannotte with water. Dr. Boutros explained, however, that Mr. Jeannotte had said he wanted to be a Christian, so Dr. Boutros sprayed him with water from a water bottle. (Tr. at 1121-1122)
70. Dr. Boutros testified that he had been shocked when he was served with the no-trespass order. Dr. Boutros asserted, however, that he had been told by the officer serving the notice that Mr. Jeannotte was not a good person and had been ostracized from his tribe for doing something bad. (Tr. at 1108-1109)

Dr. Boutros' Venture in Commercial Property Development

71. Dr. Boutros testified that, when he returned to North Dakota, he decided to purchase an 80-acre site just outside Minot. He wanted to develop the land into a theme park for four-wheel driving. He thought it would be a wonderful business opportunity, and also would provide a chance for him to beautify Minot. (Tr. at 1080-1081)
72. Dr. Boutros testified that he had devised a plan whereby he would be the facilitator of a theme-park development involving a group of investors. (Tr. at 1365-1366) His ideas and plans for the park included trails for several different kinds of vehicles, vehicle rentals, horseback riding, skiing, pools and water slides, a botanical garden, a fitness track, a hotel, expensive housing, fine dining, and an "Indian/cowboy village with gambling and alcohol," as set forth in the letter (described above by Mr. Jeannotte. (St. Ex. 20)
73. In correspondence dated August 1, 2004 (as noted above by Mr. Jeannotte, who provided a copy), Dr. Boutros described the current status of his land-development venture in Minot as follows:

* * *

Any way so far here is the list of people who offered to partner with us on this deal

Business School at the Minot State University, Minot USA: Business Plan development

Dean Boeckel: Owner Action Cycles and professional all terrain motorcyclist
Minot, USA: All terrain vehicle trainer/renter

Dennis and Derek Osbment: Heavy machine operator, carpenter, painter, musician,
Minot, USA: Foreman

Gary Kramlich: Broker with Watne Reality, Minot, USA: Investor

[Dr. Boutros lists himself as "Facilitator"]

George Schwartz: Accountant at Mergers and Acquisitions, Toronto, Canada:
Accountant

Marc Anderson, Accountant, Business school, Minot State University, Minot, USA: Accountant

Ed Ehr owner of 80 Acres of potential 200 Acres park has issued strong interest in joining

Warrior Lee Jeannotte from Bottineau Indian Tribe in Bottineau expressed interest of his tribe joining in. A tribal meeting is being arranged. He can provide resources that include labor, security and Internet expertise. (Lee was the one who generated the so-called theme park web site and cd business card on his own within a few hours

Both of the last two issues should show progress by Tuesday.

The park will offer all seasons activities from skiing, sliding in the winter to 4 wheeling, horse back riding, water slides with pools, a botanical garden (a small one) and possible and Indian/cowboy village with gambling and alcohol. It will have multiple community oriented activities including a fitness track, hopefully with the backing of Trinity Hospital, and a non for profit organization for charity work and advertising and mass marketing.

We already have a sort of a web site, and one cd business card...I think we are on the way.

George If you don't mind Vasco promised me that if he gets this by 9 am, then he will call me back with some more information...

George I am really excited about this.

(St. Ex. 20, punctuation and spelling as in original)

74. Dr. Boutros also testified at the hearing regarding these land-development activities. He acknowledged that he had engaged in the following activities in development the theme park:

- He discussed the matter with Ed Ehr, the owner of the land.
- He discussed the matter with George Schwartz, an accountant from Toronto.
- He discussed the matter with Mark Anderson, an accountant from Minot.
- He discussed the matter with Gary Kramlich, a realtor from Minot.
- He took Lee Jeannette to the site, and had him design a theme-park website and a CD business card.
- He met with Todd Grages, vice-president of Trinity, and took Mr. Grages to the site.
- He took Suzanne Watne to see the land and made a video of her advertising the project.
- He discussed his plans with a heavy machine operator and carpenter from Minot.
- He discussed the matter with an all-terrain motorcyclist and owner of a bicycle shop in Minot.
- He met with the dean of a local business college to discuss the project.

(Tr. at 1081-1089; St. Exs. 20, 40)

75. Dr. Boutros asserted that all of these people had encouraged him in his theme-park plans. He said he had “thoroughly investigated” the idea in July and August 2004. (Tr. at 1081-1089; St. Ex. 40)
76. Shawn Nelson, O.D., testified that he had only two or three limited conversations with Dr. Boutros upon his return to Minot after the fellowship. However, Dr. Nelson stated that Dr. Boutros told him about the four-wheel-driving park that he was hoping to open and that Dr. Boutros was wanting to get the park going. Dr. Nelson stated that he and Dr. Boutros had a mutual acquaintance, Mark Anderson, who had introduced Dr. Boutros to a co-worker at the college’s business department to talk about establishing a business plan. Dr. Nelson stated that Mark Anderson had asked him about Dr. Boutros’ four-wheel-driving park, and Dr. Nelson had responded that, in rural America, “you can go four-wheeling almost anywhere you like,” and that he had expressed doubt regarding the park’s being a wise investment. (Resp. Ex. WW at 11-13)
77. Dr. Boutros denied that he had invested significant time or energy into this scheme. He stated that he had invested only 40 to 80 hours of time over a two-month period. He said that he had spent only two hours per week on the project. (Tr. at 1365-1366)

Dr. Boutros’ Focus on Developing a Surgical Instrument

78. Dr. Boutros testified that, while in Toronto, one of the other physicians had a plan for developing a new surgical instrument. This physician asked Dr. Boutros for his assistance, and Dr. Boutros agreed to help. Dr. Boutros said he was very excited about it. (Tr. at 1017-1018)
79. Dr. Boutros further testified that he had mentioned his involvement in developing the surgical instrument to a colleague when he returned to Trinity. He stated that, when he discussed it, his colleague did not “respond well.” Dr. Boutros believed that the reason for the reaction was jealousy. (Tr. at 1017-1019, 1140)

Dr. Boutros’ Focus on his Anorexic Niece

80. One of the exhibits in this matter was a record of Dr. Boutros’ cell-phone calls during the summer of 2004 on his Trinity cell phone, showing numerous telephone calls late at night and during the early-morning hours. (St. Ex. 14) Dr. Boutros did not deny making these calls but explained that he had a good reason. Dr. Boutros testified that, in July 2004, he had received a telephone call from his sister, who informed him that his niece was suffering from anorexia. Dr. Boutros stated that he had made numerous phone calls during the nights and early mornings in order to help his niece. (Tr. at 995-997; Resp. Ex. II at 10; Resp Ex. VVV at 517-518)
81. Dr. Boutros acknowledged that he had gotten very involved, but indicated it had been necessary and important. According to Dr. Boutros, his sister had told him that his niece was almost dead. He asserted that a psychiatrist friend had told him to get on the phone and “call every single soul” he knew that had “any idea, any contact” with the niece. He asserted that Dr. Hakim had told him that he must “make sure they call this person and keep an intense contact with her,” because, by doing so, Dr. Boutros would “save her life.” Also, Dr. Boutros

said that his reason for making so many phone calls at night was that many of the people he called resided in Lebanon. (Tr. at 995-997; Resp. Ex. II at 10; Resp Ex. VVV at 517-518)

Dr. Boutros' Lack of Sleep

82. Dr. Boutros acknowledged that he might have said he had “stayed up all night” making phone calls. However, he said he had actually meant to say that he had “stayed up at night” making phone calls, not “all” night. Dr. Boutros acknowledged that he had not always slept at night, but he said he had nonetheless received sufficient sleep during the summer of 2004. Dr. Boutros asserted that he slept after taking the children to school in the morning, and that he then woke up before the children came home. He also stated that sometimes he slept at night. (Tr. at 1089-1090) Ms. Watne stated that Dr. Boutros had once told her that he had not slept the night before. (St. Ex. 24 at 31)
83. However, Dr. Boutros also testified that he is not really sure how much he slept. He stated that “it doesn’t feel like” it was less than five hours in a twenty-four hour period. (Tr. at 1140)

Dr. Boutros' Late Arrival for Scheduled Patients

84. Rose Ulland, a secretary who worked with Dr. Boutros, stated that Dr. Boutros had been frequently late, as much as “nearly two hours” for scheduled patients. (St. Ex. 32)
85. Paula Wahl, a nurse who worked with Dr. Boutros, stated that she had worked with Dr. Boutros on the first day he saw patients after his return to Minot. She stated that he had told her to check patients and dilate pupils while he remained at home, and then to call him to come to the clinic, explaining that it would take him only ten minutes to get there. However, Ms. Wahl stated that, over the next several days, he increased the time from ten minutes to fifty minutes. (St. Ex. 23)
86. Ms. Wahl further stated:

I explained to him that he had a patient at 8 am starting his morning and 1:30 pm starting his afternoon on Friday and he could judge his time accordingly. He became upset with me and stated it was my job to call him and give him the appropriate time to get to the clinic. Each time he arrived late, he would tell the patient it was my fault, because I had not called him and given him the appropriate amount of time to get there.

In between patients, if I was not standing there at the door and directing him to the next patient, he would disappear. I would have to call his cell phone. Once he ran home to get a cable for his computer. He arrived an hour later, stating he was locked out of the house and had to crawl into a top window. Then the neighbors called the police.

On Wednesday, August 4th, he had a meeting between patients from 2:30 to 3:30. He was told he had a patient at 4 pm. I called him when the patient arrived and he did not answer his cell phone. I called the Centennial Unit, where his meeting

was, they stated he had left some time ago. I called his home and received no answer. I left a message on his home phone as well as his cell phone. I then called his wife's cell phone, she answered in San Diego, and had no idea where he was. At 4:30 I called the Trinity operator and had him paged, and again called his home and cell phones. At 5:00 I paged the hospital again and again tried his phones. I walked the patient downstairs to see Dr. Williams, as he was still seeing patients. At 5:30, Dr. Boutros called the clinic, said to take the patient back upstairs and he would be there soon to examine her. When I questioned him about his whereabouts, he stated he was sleeping and didn't hear the phone. When he arrived at the clinic, he apologized to the patient and me. After the patient left he explained to me about his painter friend, Dennis and his girlfriend had kept him up most of the night with relationship problems. He also stated that the ER called him in the early morning as well, so he didn't get much sleep the night before.

This relationship with his friend Dennis became an increasing problem the next week. Dennis would call him at the clinic on his cell phone and Dr. Boutros would race out to his car between patients to talk with him, as well as some relator [realtor] investors that he told me he was working with.

(St. Ex. 23)

87. Dr. Boutros explained that he did not have many patients and did not have an office, and that his home was close to the clinic. He said he preferred to wait at home between patients. Dr. Boutros testified that he had determined that, if he arrived at the clinic 45 minutes to one hour after the patient arrived at the clinic, he would arrive just as the patient was ready to be seen by him. (Tr. at 1100-1107)
88. He explained that Ms. Wahl had told him that it would take her twenty minutes to prepare a patient for him. Therefore, he had asked her to call him fifteen minutes before each patient would be ready for him. He stated that he eventually decided to ask for a 45 to 60-minute advance notice because it took longer for patients to be ready. Dr. Boutros did not explain about reported late arrivals of nearly two hours. (Tr. at 1100-1107)
89. Dr. Boutros testified that, between early August and mid-September, he saw 32 patients. (St. Ex. 11)

Dr. Boutros' Claim to Have a Broken Arm

90. Brenda Willoughby,²⁷ the administrative secretary for Dr. Williams, testified that, during the first week of August 2004, a staff member informed her that Dr. Boutros had called to say he was having car trouble and had asked her to pick him up. Ms. Willoughby testified that she telephoned Dr. Boutros to learn his location, and he was upset that she had called him. According to Ms. Willoughby, Dr. Boutros said: "I'm not stuck, but I broke my arm. I need to

²⁷ Ms. Willoughby testified in a deposition for the 2005 arbitration proceedings and also testified at the arbitration hearing. (Resp. Exs. CCC, VVV at 1259)

have that taken care of before I come into the clinic.” He told her he would go to the emergency room to have his arm looked at, and Ms. Willoughby then “relayed that upstairs so we could let the patients know he was going to be delayed.” Ms. Willoughby stated that, shortly thereafter, Dr. Boutros walked into the clinic, and his arm was not broken. (Resp. Ex. VVV at 1262-1264; Resp. Ex. CCC at 1-9; see, also, St. Ex. 26)

91. Ms. Wahl confirmed this incident. She testified that Brenda Willoughby had advised her that Dr. Boutros had broken his arm and was going to the emergency department. Ms. Wahl testified that two patients were waiting for Dr. Boutros at that time. She further stated that she had seen Dr. Boutros when he arrived at the clinic, and he was laughing and did not have a broken arm. Ms. Wahl said that she had not found this behavior to be amusing, and Dr. Boutros told her that she did not know how to have fun. (St. Ex. 23)
92. Dr. Boutros provided his own explanation of the incident. He asserted that the story about the broken arm was merely a joke. He also asserted that Ms. Willoughby was aware of the joke and knew that his arm was not broken when she reported it to staff. He explained that Ms. Willoughby, after receiving a message about Dr. Boutros’ car trouble, had called him. Dr. Boutros said that he and Ms. Willoughby had planned the joke together to retaliate against staff members who were always “pulling her leg.” Dr. Boutros stated that he had suggested to Ms. Willoughby that she tell the staff as a joke that Dr. Boutros would be late because he had broken his arm, and that Ms. Willoughby had agreed to do so. (Tr. at 1185-1186)
93. At the arbitration hearing,²⁸ Ms. Willoughby was asked: “Isn’t it true that, in the incident where he was talking about the broken arm, there was some discussion about a prank being pulled on Dr. Boutros where he said you want to pull a prank on them, tell them I have a broken arm? Do you recall any of that?” Ms. Willoughby responded as follows: “No. He just said that he had a broken arm, that he needed to go have it taken care of and that he would come to the office after that.” (Resp. Ex. VVV at 1265)

The Pornographic Video Shown to a Nurse

94. Paula Wahl testified that, on August 2, 2004, Dr. Boutros spent time training her. In doing so, he used his personal laptop computer to show her a video. She testified: “About 5 minutes into the video, a porno show started to be played” on Dr. Boutros’ laptop computer. (St. Ex. 23)
95. Ms. Wahl stated that Dr. Boutros told her he did not know how the pornography had gotten on his laptop computer, and he apologized. (St. Ex. 23)
96. Ms. Watne testified regarding that day: “He actually did very well that day; except for a part where he came in and told me he was calling the police because someone had put porno on his [personal computer].” (St. Ex. 23)

²⁸ In 2005, arbitration proceedings were held in the legal action that Dr. Boutros filed against Trinity Hospital, which included claims of breach of contract, wrongful termination of employment, and other claims against Trinity. (Resp. Exs. A, VVV)

Dr. Boutros' Discussing the Pornographic Video at an Anesthesia Department Meeting

97. Lana Parizek, R.N., testified that, during an initial meeting regarding anesthesia for the new retina-surgery clinic, Dr. Boutros told a story about pornography on his computer. He stated that the video showed “two naked women eating each other.” Ms. Parizek testified that she felt it was a “very inappropriate” statement to make in a professional setting. She stated that they were discussing anesthesia issues and suddenly this story just popped up. Ms. Parizek was “shocked that he had said that in a first meeting with the anesthetist.” She stated that “it was inappropriate to talk about that type of thing in our workplace,” and that she reported it to a supervisor. (Resp. Ex. XX at 27-29; St. Ex. 38)
98. Renee Peterson,²⁹ the chief nurse anesthetist, confirmed Ms. Parizek’s story regarding Dr. Boutros’ discussion of pornography during the meeting. She stated that it was an important meeting, because there were two surgical patients in the works, and she needed to have determinations regarding anesthesia preparation, protocols, general versus regional anesthesia for certain procedures, length of procedures, whether patients would be admitted overnight, and so forth. Ms. Peterson stated that she and Ms. Parizek needed Dr. Boutros to participate in making final decisions, but it was hard to get him to focus on one thing, and they could “never really get a decision made on things.” She stated that they would open a topic, but Dr. Boutros would then “talk a lot about a lot of things that didn’t have anything to do with retina surgery.” (Resp. Exs. YY, VVV) She explained further:

It was hard to get him to pay attention to the task at hand. He wandered off on what I would say were sidebar conversations that had nothing to do with the task at hand. So I felt like I was the one redirecting the meeting back to task all the time. * * * [E]very time you would discuss something, he would go off on tangents.

(Resp. Ex. YY at 10-11) Ms. Peterson stated that, in one of these digressions, Dr. Boutros started telling a story about pornography, stating that it had shown up on his computer when he was showing a training video and that he had been completely embarrassed. According to Ms. Peterson, Dr. Boutros continued to discuss the pornography, going on “in great detail.” She stated that Dr. Boutros gave details such as “things they were doing on the pornography,” but she did not repeat these details. She explained that it had made her uncomfortable, and she asserted she had tuned it out. (Resp. Ex. YY at 8-14; Resp. Ex. VVV at 691-694)

99. Ms. Peterson testified that she had found Dr. Boutros’ discussion of pornography to be improper: “It was very inappropriate. First time I had met the guy in a setting like this and you’re sitting at a table and discussing things. That isn’t anything to tell people you don’t know very well.” She further stated that the center was not ready for retinal surgery but that Dr. Boutros would not focus on getting things ready, although he insisted on setting a start date for surgery. (Resp. Ex. YY at 8-14; Resp. Ex. VVV at 691-694)

²⁹ Ms. Peterson testified during a deposition in connection with the 2005 arbitration, testified at the arbitration hearing, and also provided a written statement. (St. Ex. 30; Resp. Ex. YY at 1-6; Resp. Ex. VVV at 689)

100. Dr. Boutros stated that he does not remember telling Lana Parizek and Renee Peterson about the pornographic video. He suggested that their statements were not credible because their stories were inconsistent, in that one of them had described in detail the activity of the two women in the video, but the other had not. (Tr. at 1369-1371; St. Ex. 30, 38)

Dr. Boutros' Interaction with Patients Generally

101. Paula Wahl made the following statement regarding Dr. Boutros' treatment of his patients:

Aside from my observation of Dr. Boutros' behavior I always thought he gave the patient a very good examination, but seemed to have problems talking with the patient. As an example, with a young female patient who had blood in her vitreous, he told her she needed a vitrectomy with possible retinal work after her examination to stop the bleeding. He turned to me and said schedule her to follow my other case on the 24th and left the room. As I walked the patient and her husband downstairs to the surgery office to be scheduled, I asked her if all her questions were answered and if she fully understood the surgery. She said, no, but I trust Dr. Williams' reputation and if Dr. Williams trust[s] Dr. Boutros to work on her, I will just go ahead.

I did not have the time nor did I fully understand myself how to explain this to the patient. I voiced my concern to Suzanne about this patient later in the day.

In the two weeks I worked with Dr. Boutros I tried to [k]eep him focused with patient care. As a nurse, the patient would look to me for reassurance and guidance. It was becoming increasingly difficult to project confidence to the patient.

With all things considered, my professional standards and the standards of Williams Eye Clinic would be in jeopardy if the present behavior of Dr. Boutros continued.

(St. Ex. 23)

102. Dr. Boutros interpreted this statement to indicate that Ms. Wahl believed he had treated the patients respectfully while taking histories, performing examination, and performing laser surgery. He further stated that it is unlikely that he could have treated patients well and practiced professionally if he had been experiencing a manic episode. (Tr. at 1155-1156)

Dr. Boutros' Questions to a Native-American Patient & His Anger at Staff

103. Paula Wahl stated she had been assisting Dr. Boutros during the first week of August 2004, and he was scheduled to see a new patient of Native American heritage:

The patient was new to our clinic and a chart and paperwork needed to be completed. This process takes about 20 minutes. I waited until the patient and his mother were finished and started taking him back to an examination room.

At this moment Dr. Boutros arrived, darted in the room with me and shook the patient's hand. He asked him if he was an Indian? The patient stated he was. Dr. Boutros asked, 'no, man, really a full-blooded Indian?' The patient seemed confused, but answered yes. Then Dr. Boutros asked, 'Is it true Indians are noted for fighting a lot?' The patient looked at him and then stated, 'I don't know.' Dr. Boutros then asked, 'No, really, I heard Indians fight and drink a lot. You know I shared blood with an Indian?' I interrupted at this point and stated that the patient was here for a follow up after being in ER last night for a possible foreign body in the left eye. Would you like to look before I start the examination, I asked Dr. Boutros. He turned to me and said, you haven't checked him in yet? I said, no, I just got the patient to the room when you arrived. Dr. Boutros became angry and asked why he was called then, and asked me to call Suzanne immediately. He went out of the room. After I finished getting a history and vision on the patient, I went to ask Dr. Boutros if he wanted to examine for a foreign body before I did anything more. He loudly answered, 'Check him in like every other patient. You look and dilate as any retinal.'

(St. Ex. 23)

104. Dr. Boutros indicated that his behavior had not been inappropriate regarding "the Indian patient." He explained that he had inquired about diseases and alcoholism because he had been interested in setting up a volunteer clinic on the reservation. (Tr. at 1147-1148)
105. During the arbitration proceedings in 2005, this patient testified that he did not consider Dr. Boutros' comments to be discriminatory and that he had been pleased that Dr. Boutros was interested in his culture.³⁰ (Resp. Ex. GG; Resp. Ex. VVV at 490-492)

Further Stories Told to Patients and Staff

The Story about the Minneapolis Prostitute

106. Suzanne Watne stated that, on an occasion when Dr. Boutros was in Minneapolis viewing surgical equipment, he had telephoned her. Dr. Boutros told her how he had picked up a prostitute. He explained to her that he had not realized the woman was a prostitute until she reached for his groin. He asked Ms. Watne not to tell anyone about it, as he planned to "take this secret to his grave." Later, Ms. Watne learned that Dr. Boutros has shared the story with a patient. (St. Ex. 24 at 4)
107. Paula Wahl testified that, in August 2004, she had been assigned to work with Dr. Boutros. She stated that Dr. Boutros told many jokes to patients and often "left the patients confused about their medical condition." She stated that his joking had started to become a bigger problem, such as when he told an 80-year-old patient about picking up a woman in Minneapolis who turned out to be a prostitute. However, Ms. Wahl stated that, when telling

³⁰ In 2005, arbitration proceedings were held in the legal action that Dr. Boutros filed against Trinity Hospital, which included claims of breach of contract, wrongful termination of employment, and other claims against Trinity. In connection with the arbitration, the patient submitted an affidavit and also testified. (Resp. Exs. A, GG, VVV)

the story to the patient, Dr. Boutros did not say he had sex with the prostitute. (St. Ex. 23; Resp. Ex. K at 938-940)

108. Dr. Boutros explained regarding the incident with the prostitute in Minneapolis. He said he had been in his car and saw a woman trying to flag down cars. He thought that the woman might be in distress, so he stopped and asked her if she needed help. He said that the woman had jumped into his car uninvited. He said that she told him to take her downtown, and he said “fine.” Dr. Boutros testified that, a few minutes later, the woman put her hand on him: “Barely a few minutes later she puts her penis on me -- she puts her hand on my penis. I was extremely shocked from her behavior. I screamed at her -- I was really disgusted more than anything.” Dr. Boutros testified that he had screamed: “Take your hands off. I don’t believe you can do this thing.” Dr. Boutros testified that he then drove a few more blocks in silence, and the woman asked him to let her out, which he did. (Tr. at 1073-1074, 1340)
109. Dr. Boutros testified that he had been shocked and disgusted by the experience. Dr. Boutros explained that the reason he had called Suzanne Watne and told her about it was that his host in Minneapolis had thought it was a very funny story, so Dr. Boutros had “let his guard down” and repeated the story to Ms. Watne and to a patient at the clinic. He explained that the reason for telling the story to the patient was that he was making an effort to improve his bedside manner. (Tr. at 1073-1076)

The Story about the Gang Member’s Ring

110. On August 16, 2004, Cheryl Holcomb³¹ stated that, during the week of August 9, 2004, Dr. Boutros had brought a ring into a patient’s room. She described the incident, in part:

It was a large silver ring with what looked like a[n] eagle head on it. He was telling the patient he got it from the person who was painting his house. The person had got it from a gang member when he lived in a large city. It was used to try and destroy someone’s eye when they would have gang fights. He had talked the guy into selling it to him (Dr. Boutros) because he thought it was very interesting. The patient seemed a bit uncomfortable as he was telling this story to her.

(St. Ex. 36; see, also, St. Ex. 37)

111. Dr. Boutros explained about the ring and showing it to a patient. He said that the man he hired to paint his home had an unusual ring. Dr. Boutros said he saw the ring, commented that it was interesting, and he asked if he could have it. He stated that the painter had given him the ring. Dr. Boutros explained that the painter had said he obtained the ring from a gang member in Chicago and that the ring had been used to “gouge eyes” in fights. (Tr. at 1149-1150)

³¹ Ms. Holcomb provided a written statement in August 2004. She later provided a sworn statement in December 2004 in connection with the arbitration proceedings in North Dakota. (St. Ex. 36) Dr. Boutros testified that he thought Ms. Holcomb was “another tech” at the eye center. (Tr. at 1151)

Dr. Boutros testified that he had been “stunned” by the story about the ring. He stated that, to him, “it looked like it was a work of art that was being used in a very ugly fashion.”

Dr. Boutros testified that, before seeing the patient, he had taken the ring and put it on his hand, and walked in to see the patient. Dr. Boutros acknowledged that he had shown the ring to the patient, who had been startled. (Tr. at 1149-1150)

112. However, the patient to whom Dr. Boutros showed the ring later testified on his behalf during the arbitration proceedings. She stated that Dr. Boutros had performed a procedure successfully. She agreed that she had been “a little startled” when he showed her the ring. Nevertheless, the patient stated that, once he told the whole story about the ring, “everything was explained” and she had thought “it was a unique way of introducing himself.” Finally, the patient stated that she believed Dr. Boutros “is a man of high energy, very intelligent and professional,” and “very caring and kind.” (Resp. Ex. CC; St. Ex. 37)

The Story of the Murder for Profit

113. Judith Erickson testified that, at some point in early August, Dr. Boutros told a bizarre story to her. She described it as follows:

He had said that he had been approached by a young Hispanic woman and that she told him, confided in him, that her father had a lot of money, was a very influential individual, had taken in a homeless man and cleaned him up, sent him to the dentist because his teeth were very bad, took out an insurance policy on him and had him killed. And he was burned beyond recognition, and the only way they identified him was by his dental records. And that she was afraid. And he [Dr. Boutros] wanted to know her father’s number, and she said, why, and he said, if – I’m going to report it to the FBI, and if you don’t give me his number, I will give him your number.

(Resp. Ex. OO at 24. See, also, St. Ex. 33)

114. At the hearing, Dr. Boutros explained this incident was nothing, but was merely an example of how witnesses at Trinity could turn nothing into something.
(Tr. at 1027-1028)

Dr. Boutros’ Relationship with Suzanne Watne

115. Dr. Boutros testified that, when he had returned to Trinity after being in Toronto, Suzanne Watne had made “advances” to him. Dr. Boutros believed that she had been attracted to him and was making excuses to be alone with him. Dr. Boutros testified that he had “blocked her advances” and contacted her husband every time they were alone together.
(Tr. at 1043-1044, 1398)
116. Suzanne Watne stated that, on one occasion, she and Dr. Boutros had made arrangements for a lunch meeting. Instead, Dr. Boutros had taken her to the proposed site of his land-development venture. Ms. Watne stated that she had protested, but Dr. Boutros ignored her protest.
(St. Ex. 24)

117. Dr. Boutros acknowledged that the first time Ms. Watne asked him to take her back to Trinity, he had ignored it. However, Dr. Boutros stated that her first request was “not very much stressed.” He testified that, after Ms. Watne had asked a second time to return to Trinity, he had taken her back. (Tr. at 1054-1061, 1093)
118. Dr. Boutros testified that, on one occasion, they were sitting alone in a car, and he picked up the phone to notify her husband. He reported that Ms. Watne had stated to him: “Don’t you ever interrupt me. You interrupt me one more time, I’ll kill you.” Dr. Boutros opined that Ms. Watne did not like his calling her husband and that it had caused their relationship to deteriorate. (Tr. at 1043-1044, 1187, 1398-1400)
119. Dr. Boutros acknowledged that he “really had no basis” for his belief that Ms. Watne had been attracted to him. He further acknowledged that, although he said he had tried to avoid being alone with her, he had taken her on a drive outside of town to see the site of his intended land development. (Tr. at 1043-1044, 1187, 1398-1400)

Dr. Boutros’ Resignation on August 11, 2004

120. Suzanne Watne stated that, on August 11, 2004, she had a meeting with Dr. Boutros to discuss his lateness and his scheduling of patients without advising the clinic staff. She described Dr. Boutros’ reaction as follows:

He went off on me. He used terrible language and was just out of control. I did not want him screaming in the clinic using that kind of language with patients around so I told him I would not listen to him any further. He went off to find Paula and ended up meeting with Dr. Williams.

(St. Ex. 24)

121. Linda Guidinger testified that, on the afternoon of August 11, 2004, at 5:45 p.m., she had seen Dr. Boutros talking on a cell phone in the rain in a parking lot. She stated that he had been extremely angry and was gesturing in the air with his hand. Ms. Guidinger could not hear what Dr. Boutros said. Ms. Guidinger stated that she had thought his behavior odd because people “don’t act like that in public.” (Resp. Ex. QQ at 13-20; St. Ex. 35)
122. Tammi Fugere stated that, on August 11, 2004, she had had a discussion with Dr. Boutros and Ms. Wahl after Dr. Boutros returned from the parking lot. Dr. Boutros had used “loud and profane language” and had insisted that Ms. Watne “could not disrespect him” that way. She stated that he had used the “F” word repeatedly. Ms. Fugere also said that she had tried to calm him down. (Resp. Ex. PP at 7-8, 10)
123. Ms. Fugere described Dr. Boutros’ behavior as “very inappropriate and strange.” She said that, during the course of the conversation, his mood ranged from very upset to hugging and laughing. His “personality would change from one extreme to another.” Ms. Fugere stated that she had felt worried about Dr. Boutros, and thought he might need psychiatric help. (Resp. Ex. PP at 8-11)

124. Ms. Fugere testified that Paula Wahl subsequently informed her that Dr. Boutros had resigned. Ms. Fugere stated that Dr. Boutros had had a patient waiting at that time. (Resp. Ex. PP at 7)

125. Paula Wahl testified that, on August 11, 2004, she had been looking for Dr. Boutros after seeing him talking to Todd Grages on his cell phone. (St. Ex. 23)

[Dr. Boutros] was in Dr. Sanke's office with Doctors Sanke and Wolsky, very upset. He saw me and stated, "I just quit, I can't work with Suzanne, it's either her or me." He started walking out. I said, "Your patient is waiting," [and] he said, "Didn't you hear me, I said I quit."

I went to Dr. Wolsky and asked what to do. He said he would see the patient if they wanted him to. I went downstairs to talk with my nursing supervisor, Tammi. Told her what happened and asked if Dr. Wolsky could see the patient. We both agreed that Dr. Boutros was probably not in a good frame of mind to take care of the patient's needs at this time and to have Dr. Wolsky see the patient, as Dr. Boutros was in Dr. Williams' office.

Dr. Wolsky examined the patient * * *. As I was closing up the room Dr. Boutros came upstairs and said he was ready to see the patient. He angrily started telling me how he has been treated by Suzanne. My nursing supervisor then arrived and Dr. Boutros continued his anger.

(St. Ex. 23)

126. Dr. Sanke testified that he had not heard the confrontation between Dr. Boutros and Ms. Watne because he had been on a different floor when the incident occurred. He did state, however, that others had told him about Dr. Boutros "making noise." (Resp. Ex. AAA at 14)

127. Dr. Sanke stated that Dr. Boutros had come into his office, "raging about Suzanne Watne 'interfering with patient care.'" Dr. Sanke stated that Dr. Boutros "was again talking very rapidly with numerous thoughts interrupted at the same time and in an obvious rage." Dr. Sanke stated that Dr. Boutros was "barely making any sense." Dr. Sanke said that he had asked Dr. Boutros to take time to reflect and had cautioned him about abandoning a patient. Dr. Boutros had then accused Dr. Sanke of being "like the others" and stated that he was resigning. (St. Ex. 27)

128. Dr. Boutros testified that he had had an altercation with Suzanne Watne on August 11, 2004. He explained he had scheduled a patient for an emergency visit. The patient arrived at the clinic at about five o'clock in the afternoon. Dr. Boutros stated that Ms. Watne had contacted him at home and told him to come to the clinic immediately. Dr. Boutros asserted that, when he arrived at the clinic, he saw the patient wandering around and assistants standing around laughing. Dr. Boutros asked the assistants if they had taken care of the patient and they stated

that they had not. Dr. Boutros stated that he had asked the technicians to take care of the patient and went to talk to Ms. Watne. (Tr. at 1035-1037; St. Ex. 11)

129. Dr. Boutros testified that Ms. Watne had angrily confronted him about telling a patient to come in for a medical visit without telling her about it first. Dr. Boutros testified that he had recognized that his relationship with Ms. Watne had been deteriorating and that he had therefore chosen not to react. He told her that he did not know it was a policy that he must inform her before telling an emergency patient to come to the clinic. Dr. Boutros testified that Ms. Watne then stood up and said: "I don't like you. I don't like any---." Dr. Boutros reported that, at that point, he turned and left the building, intending to discuss Ms. Watne's behavior with Todd Grages. Dr. Boutros explained that he had gone to the parking lot to talk on his cell phone because he had no private office. (Tr. at 1037-1038)
130. Dr. Boutros testified that, during the conversation with Mr. Grages, he had resigned his position at Trinity. He also testified that, during the conversation, Mr. Grages had agreed that Ms. Watne's behavior was inappropriate. Dr. Boutros stated that this conversation had lasted only about ten minutes. He also stated that, when he returned to the clinic, he discovered that another physician had seen the patient and that the patient had left. (Tr. at 1038-1039; St. Ex. 11)
131. Dr. Boutros acknowledged that he had used loud and profane language, and had "made a big scene at Trinity." Dr. Boutros explained that he had been very upset that the staff had allowed another physician to see his patient without his permission. (Tr. at 1128, 1157-1158)

Events Following the Resignation

132. Dr. Boutros testified that he met with Mr. Grages on August 13, 2004. Dr. Boutros had expected Ms. Watne to be in attendance, but she was not. Dr. Boutros stated that Mr. Grages had informed him that "the problem was not Suzanne, but you [Dr. Boutros]." Mr. Grages advised that he did not have concerns about Dr. Boutros' patient care but that most of the employees believed that Dr. Boutros was experiencing a mental illness and that he was manic. Mr. Grages also told Dr. Boutros that Trinity is a family and "you have to belong to the family." Dr. Boutros testified that Mr. Grages had then pleaded with him to stay and that he had relented and withdrawn his resignation. (Tr. at 1170, 1252, 1363-1364)
133. Dr. Boutros stated that, from August 16 through August 19, 2004, he had been at a conference in San Diego and had made a presentation on behalf of Trinity. He said that, on August 18, 2004, he had received a telephone call from Mr. Grages advising him that his employment was terminated. Mr. Grages further advised that Dr. Boutros was to have no further contact with Trinity employees. (Tr. at 1165-1169; St. Ex. 11)
134. When he returned to Minot, Dr. Boutros received a letter from Mr. Grages dated August 18, 2004, stating that Dr. Boutros had been terminated "for cause" under Section 6.4 of the employment agreement. The letter demanded a return of certain equipment and repayment of the \$120,000 loan that Trinity had given Dr. Boutros for his fellowship. [This termination of

employment was later found to have been without cause, pursuant to a labor arbitration, as discussed below.] (Resp. Ex. A)

Events Following the Termination of Employment

135. On August 25, 2004, the owner of the BP gas station filed a request with the City of Minot Police Department to enforce a no-trespassing law against Dr. Boutros. (St. Exs. 10, 11, 13; Resp. Ex. BB)

136. Dr. Boutros testified that, in early September 2004, he spent a week in Toronto. He stated that, while he was there, he had smoked marijuana. (Tr. at 1171-1172)

137. In a letter dated September 9, 2004, Trinity's attorney advised Dr. Boutros' attorney of the reasons that Trinity had discharged Dr. Boutros:

1. Dr. Boutros verbally abused and physically threatened the administrator of the Williams Eye Clinic, Sue Watne;
2. Although he was employed for a brief period of time, Dr. Boutros was habitually tardy for patient appointments. One incident he claimed that his arm was broken. A second he claimed to have car problems. He later admitted that he did not have a broken arm and that he did not have car problems. * * *
3. Dr. Boutros made racist remarks to a Native American patient that he was treating. * * * Dr. Boutros then told the patient that he heard 'real Indians' like to consume alcohol and fight and he wondered whether this patient fit into this category;
4. Dr. Boutros admitted to hiring a prostitute in Minneapolis and engaging in sexual relations with the prostitute. He also conveyed this information to a patient while treating the patient;³²
5. During office hours, Dr. Boutros invited a female staff member to view an instructional video related to a medical procedure that he stored on his laptop. In the middle of the instructional video, a pornographic video abruptly appeared and began to play;
6. During an exchange with another patient, Dr. Boutros showed the patient a ring that he apparently purchased. Dr. Boutros explained that he purchased the ring from a member of a violent street gang in Chicago. He told the patient that the gang member told him he used the ring to gouge out the eye of a rival gang member during a fight. The patient was disturbed by this exchange;
7. Dr. Boutros used loud, profane language, that was overheard by patients and staff on more than one occasion;

³²The Hearing Examiner notes that some of these allegations were exaggerated and/or inconsistent with the events as supported by the weight of reliable evidence.

8. Dr. Boutros refused to finish treating a patient during a scheduled appointment.

(St. Ex. P)

138. Dr. Boutros believed that the list was the product of Suzanne Watne. (Tr. at 1041, 1396)

139. On September 7, 2004, Terry G. Hoff, the President of Trinity, wrote to the North Dakota Board of Medical Examiners [North Dakota Board]. He advised that, although Trinity had “no diagnosis regarding the state of Dr. Boutros’ mental health,” it had “concluded he has an impairment which materially affects his ability to perform the duties of a physician.”

(St. Ex. 10)

140. On September 14, 2004, Dr. Boutros waited in the parking lot outside Matt Watne’s real estate office for Mr. Watne to come out. When Mr. Watne appeared, Dr. Boutros approached him and they spoke. Dr. Boutros testified that he told Mr. Watne that he would like to be his friend but that his wife’s lies were “in the way” and something had to be done about it. Mr. Watne responded that his wife did not lie. Dr. Boutros then told him that they could not be friends. Mr. Watne stated that, during this exchange, Dr. Boutros had told him “this is a life or death situation.” Mr. Watne stated that he had taken Dr. Boutros’ words as an “indirect threat.”³³ Later that day, Suzanne Watne contacted the Minot Police Department to file a complaint regarding Dr. Boutros. However, Dr. Boutros stated that he had approached Mr. Watne in a polite manner. (Tr. at 1177- 1178; St. Ex. 11; Resp. Ex. D-1 at 380-382; Resp. Ex. D-10 at 396-397, 399)

The Involuntary Psychiatric Commitment – September 14, 2004

141. Dr. Boutros testified that an attorney advised him to be evaluated by a psychiatrist in order to refute the allegations that Trinity had raised regarding his mental status. Dr. Boutros stated that he had contacted Madeline Free, M.D., a psychiatrist in Bismarck, North Dakota, but she was not available at that time. (Tr. at 1189-1190) On September 14, 2004, Dr. Boutros’ wife, Haifa Boutros, contacted Matthew Gomez, D.O., the on-call psychiatrist at Trinity, and asked for a consultation for Dr. Boutros. (St. Ex. 11; Resp. Ex. KK at 9-13)

142. In the meantime, Todd Grages had also contacted Dr. Gomez and asked to meet with him to discuss Dr. Boutros. Dr. Gomez agreed, and he met with Mr. Grages and David Hogue, a Trinity attorney. (Resp. Ex. KK at 8-26) At the meeting, Mr. Grages provided the following information to Dr. Gomez:

- Dr. Boutros had made a threat regarding Suzanne Watne to Matt Watne.
- Dr. Boutros had been making phone calls all night long, suggesting that he was not sleeping.
- Dr. Boutros had been going to a gas station at all hours of the night; and

³³ In a November 2004 letter, Dr. Boutros alleged that Matt Watne had asserted that Trinity’s president or his agents had lied when they stated, in papers filed with the court, that Dr. Boutros had made a threat. (St. Ex. 13) However, as set forth above, Mr. Watne himself stated that he had perceived a threat from Dr. Boutros.

- Dr. Boutros had been demonstrating rapid speech and hyperverboisity.

(Resp. Ex. KK at 8-11, 26) Dr. Gomez discussed with Mr. Grages and Mr. Hogue the psychiatric options available in managing Dr. Boutros. (Resp. Ex. KK)

143. Dr. Boutros testified that, on September 14, 2004, he called Dr. Gomez and agreed to meet him in the ED at Trinity. Dr. Gomez asked Dr. Boutros to bring an ID, and Dr. Boutros testified he wondered why he would need an ID. Feeling he should protect himself, Dr. Boutros decided to bring a tape recorder. (Tr. at 1191-1192)
144. According to Dr. Boutros, when he arrived at the ED on September 14, 2004, he was met by an ED physician, Dr. Olsen, who explained that Dr. Gomez had advised that Dr. Boutros was very ill with a mental disorder and needed to be taken to an ED room. When he heard this, Dr. Boutros left the ED. (Tr. at 1192; Resp. Ex. KK at 10-13)
145. Dr. Gomez testified that he arrived at the ED shortly after Dr. Boutros had left.³⁴ He said he discussed the matter with ED staff and learned that Dr. Boutros had been “acting very strange.” Dr. Gomez stated that he had concerns that Dr. Boutros might harm himself, so he contacted him by telephone, spoke with him for about seven minutes, and asked him to return to the ED. Dr. Boutros refused. Dr. Gomez then completed legal forms to have Dr. Boutros involuntarily committed to the psychiatric unit at Trinity. It appears that the forms were not filed with the court until the next day. (St. Ex. 12; Resp. Ex. KK at 13-17)
146. Sergeant Whitesell of the police department explained that an emergency involuntary commitment could be effected, without a court order, where a medical doctor or police officer determined that there is an immediate threat of danger or that the person requires treatment without delay. In addition, an involuntary commitment could be effected through a court proceeding. (Resp. Ex. E at 527-528)
147. That evening, three police cars arrived at Dr. Boutros’ home. Sergeant Whitesell,³⁵ Officer Mahoney, and Officer Dyke presented the commitment papers signed by Dr. Gomez. The officers entered Dr. Boutros’ home and conversed with him for a while. (Resp. Ex. E at 532-534)
148. Sgt. Whitesell testified that Dr. Boutros had presented no problems to the officers and had not exhibited behavior that would warrant an emergency involuntary commitment; Officer Maroney agreed that Dr. Boutros had not appeared to be a danger to himself or others. Officer Maroney stated that he had taken Dr. Boutros outside his home before placing him in handcuffs because he had not wanted the children to see it. Officer Maroney testified that he searched Dr. Boutros and turned his front pockets inside out. Officer Maroney put Dr. Boutros into his patrol car and transported him to the Trinity ED. Dr. Boutros asked the officers to stay with him, and they agreed, remaining in the ED for about two hours. Officer Maroney stated

³⁴ Dr. Gomez testified by deposition in connection with the 2005 arbitration. (Resp. Ex. KK)

³⁵ Sgt. Whitesell testified during the 2005 arbitration, as did Officer Maroney. (Resp. Exs. E, F)

that Dr. Gomez was present in the ED but did not go into Dr. Boutros' room.³⁶ (Resp. Ex. E at 535-536; Resp. Ex. F at 539-542, 545; Resp. Ex. R)

149. When ED personnel entered the room, Dr. Boutros told them that "this is a malpractice lawsuit in progress" and that he was tape recording them, and they left. (Resp. Ex. F at 541-542; St. Ex. 5 at 8) After two hours in the ED, Dr. Boutros was transported to the psychiatric unit at Trinity. Officers Maroney and Dyke accompanied him, remaining for another fifteen minutes. (Resp. Ex. Ex. F at 543-544)
150. After Officer Maroney left the hospital, he received a call that a patient in the psychiatric unit at Trinity had been found with drugs. When he returned to the hospital, staff showed him a large marijuana cigarette in a plastic baggie. At first, citing patient confidentiality, hospital staff refused to reveal the name of the patient who had had the marijuana. Eventually, they reported that they had found the marijuana in Dr. Boutros' front pants pocket. (Resp. Ex. F at 545-548, 556; Resp. Ex. R)
151. Officer Maroney testified that it was highly unlikely that the marijuana had been in Dr. Boutros' pocket, because he had checked the pockets. Second, the large marijuana cigarette was in good condition, but Officer Maroney believed that a cigarette in the pants pocket would have been damaged due to changes of position during the time that had elapsed. Finally, Officer Maroney testified that marijuana has a strong odor, but he had not smelled it during the three or more hours he had spent with Dr. Boutros. Accordingly, when Officer Maroney called the State Attorney's office and explained the events, the State Attorney's office had declined to prosecute Dr. Boutros. (Resp. Ex. F at 547-551; Resp. Ex. R)
152. Dr. Turk, a Trinity cardiologist and friend of Dr. Boutros, contacted another Trinity psychiatrist, Shamim Anwar, M.D. Dr. Turk asked Dr. Anwar to serve as Dr. Boutros' psychiatrist during the involuntary commitment. Dr. Anwar agreed and went to see Dr. Boutros while he was still in the ED. (Anwar Tr. at 14-17)
153. Dr. Boutros remained in the hospital for three days. He did not cooperate for the first twenty-four hours, refusing food, water, personal-hygiene items, and lab tests. He also refused to answer questions. Dr. Boutros also took staff members' names and threatened to report them to their respective licensing boards. Nursing notes described his speech as pressured and rapid.³⁷ (Resp. Exs. U, EEE)
154. The nursing notes include that Dr. Boutros stated he was "going to get Dr. Gomez, his wife, and children and dogs/cats for doing this to him and that he would torture him in front of his

³⁶ It is important to note that a labor arbitrator later determined that Trinity breached its employment contract with Dr. Boutros and acted wrongfully in effecting the involuntary commitment in Trinity's psychiatric ward. (See Resp. Ex. A)

³⁷ The Hearing Examiner did not give any significant weight to observations of rapid speech, suspiciousness, and irritation/anger during the period of Dr. Boutros' involuntary commitment. One can understand that Dr. Boutros, while undergoing that experience, would be under enormous pressure and a sense of injury. However, reports of other conduct during this period, such as threats and/or grandiosity, need not be discounted and were subject to consideration by the finder of fact.

family and do to his career and reputation like he had destroyed Dr. Boutros.” Dr. Boutros also stated that he wanted Dr. Gomez “burned at the stake.” (Resp. Ex. II at 16) However, other notes indicate that Dr. Boutros was pleasant and cooperative. (St. Ex. 12) A licensed social worker noted that, upon admission, Dr. Boutros had presented with pressured speech, grandiosity, and irritation. (St. Ex. 17)

155. Dr. Boutros later allowed laboratory testing and otherwise cooperated to some extent. He later explained that his friend Dr. Turk had visited him and told him that if he continued to behave that way he would make the case for Trinity that he was mentally ill. (Resp. Exs. T, U, V, W, FFF, II)
156. Laboratory testing showed that TSH was low (0.19 with a normal range of 0.35 to 5.50), but his T3 and T4 were within the normal range.³⁸ His urine toxicology screen was positive for THC at 177.6, and his blood alcohol was 0.01. (Resp. Exs. W, FFF)
157. On September 15, 2004, the Petition for Involuntary Commitment of Dr. Boutros was filed in the local court. (It was apparently the same document that was used to effect the commitment on an emergency basis on September 14, 2004) In the petition, Dr. Gomez advised that Dr. Boutros was:
 - “mentally ill and as a result of such condition there is a reasonable expectation of serious risk of harm if Respondent is not hospitalized”; and
 - “chemically dependent and as a result of such condition there is a reasonable expectation of serious risk of harm if Respondent is not hospitalized.”

Dr. Gomez also reported:

Dr. Boutros has been acting impulsively, has rapid speech, thoughts are racing between topics, has difficulty with being paranoid, has grandiose thinking, has made vague threat to employee’s husband in parking lot about life or death matter, has not been sleeping, harassing convenience store clerk and has several no trespassing warnings.³⁹

(St. Ex. 17)

158. Dr. Boutros testified that he believed that Todd Grages had provided all of the information to Dr. Gomez, but that it was Suzanne Watne who had “engineered the voluntary committal.” He further stated that, when it did not happen quickly enough to satisfy her, she had filed a complaint against him with the Minot Police Department claiming that she was afraid he might come after her. (Tr. at 1041, 1206-1207, 1396)
159. In subsequent arbitration proceedings between Dr. Boutros and Trinity, Dr. Gomez acknowledged that he had not prepared the petition himself. He stated that Mr. Hogue, the

³⁸ Dr. Boutros testified that, in March 2005, he was examined by an endocrinologist, and there was no diagnosis of a thyroid abnormality. (Tr. at 1321)

³⁹ The Hearing Examiner notes that the evidence reveals only that Dr. Boutros had received a no-trespassing letter from the BP station.

Trinity attorney, had presented Dr. Gomez with the completed petition and that he (Dr. Gomez) had signed it. Dr. Gomez stated that he had had no input regarding the details in the petition. Dr. Gomez further acknowledged that he had never spoken to Matt Watne, even though Mr. Watne was listed as a witness who had reported to Dr. Gomez. In addition, Dr. Gomez acknowledged that the only conversation he had had with Dr. Boutros was a brief telephone conversation on September 14, 2007. Dr. Gomez stated that he had observed Dr. Boutros as the police officers brought him into the ED, but did not speak to or examine Dr. Boutros at any time. Finally, Dr. Gomez could not explain why he had checked the “chemically dependent” box in the commitment paperwork. (Resp. Exs. KK at 13-17, 24-27)

160. Dr. Boutros testified that he had spoken to Dr. Gomez only by telephone and only twice during the commitment process. (Tr. at 1194)
161. Dr. Anwar examined Dr. Boutros at Trinity. He completed the court’s form Report of Examination, which was filed with the court on September 16, 2004. (Anwar Tr. at 28, 32; St. Ex. 19) Dr. Anwar’s handwritten statements in the report include the following:

* * * Mentally he [Dr. Boutros] appeared anguished and angry. He displayed racing thoughts and flight of ideas. He had pressured speech, was labile in affect and clearly very hypervigilant. His impulse control was tenuous and his insight was limited. There was evidence of grandiosity. Today he appeared calmer in the daytime and was more coherent. However when I visited with him in the evening he changed his mind quickly, was suspicious again, along [with] being argumentative and restarting to be somewhat agitated.

(St. Ex. 19) According to Dr. Anwar’s Report of Examination filed with the court, Dr. Boutros reported that he had experienced a previous episode of mania:

Pt. is currently unreliable as he vacillates in his decisions. (He gave me permission to talk to his wife, his friend Dr. Turk, Gary & Ms. Watne) then changed his mind & did not sign releases. He has had a previous episode of mania which he reports went untreated for he didn’t want treatment which [illegible] to his reportedly increasing significant debt.

(St. Ex. 19) In his report, Dr. Anwar concluded that Dr. Boutros was “an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations, and is a mentally ill person.” (St. Ex. 19; Anwar Tr. at 33-34)

162. Dr. Boutros appeared at the court hearing, and the court dismissed the action. Dr. Madeline Free reported that the petition for involuntary commitment was “dropped on the contingency that he would receive a psychiatric evaluation.” (Resp. Ex. DDD) Dr. Noffsinger reported that the court dismissed the civil-commitment action “on the condition that Dr. Boutros receive a psychiatric evaluation” and also upon the request of Dr. Gomez. (St. Ex. 5)

163. In his discharge summary, Dr. Anwar reported that Dr. Boutros “stated that he had a history of bipolar disorder, has had manic episodes before and has had depression before as well.” Dr. Anwar also noted that the court action had been dismissed and that Dr. Boutros had been discharged from the hospital. (Resp. Ex. FFF) Dr. Anwar’s diagnostic impression upon discharge was as follows:

Axis I: Bipolar disorder NOS, consider agitated depression. ? substance abuse mood disorder. ? marijuana abuse versus dependence. Consider acute stress reaction.

Axis II: Deferred

Axis III: None

Axis IV: Psychosocial stressors: Recent loss of job. Discord with employer.

Axis V: Current Global Assessment of Functioning: 45 to 50.

(Resp. Ex. FFF)

164. When cross-examined in 2007 with regard to his September 2004 report that Dr. Boutros had “stated that he had a history of bipolar disorder” and “had manic episodes before,” Dr. Anwar testified that this meant that Dr. Boutros himself had told Dr. Anwar that he had a history of bipolar disorder and had manic episodes before. When asked whether Dr. Boutros may have reported a previous episode of mania while being sarcastic, Dr. Answer responded that he did not know whether Dr. Boutros had made the statement about a previous manic episode in a period of sarcasm. Dr. Anwar testified that Dr. Boutros had exhibited symptoms of mania but conceded that he (Dr. Anwar) could not determine the “source or why he was experiencing these symptoms or displaying these symptoms.” Therefore, Dr. Anwar diagnosed Bipolar Disorder NOS rather than Bipolar I Disorder, Bipolar II Disorder, or a manic episode due to other factors. (Anwar Tr. at 36-37, 44, 77-78, 102-103, 105-106)

Events Following Release from Involuntary Commitment

Dr. Boutros’ Dispute with a Childhood Friend

165. Dr. Boutros testified that, in late September 2004, he traveled to Lebanon and asked Dr. Hakim, a childhood friend, to repay money that Dr. Boutros had previously loaned him. Dr. Boutros testified that he had asked for the money because he “did not like the way [Dr. Hakim] was behaving.” Dr. Boutros testified that he subsequently called Dr. Hakim on numerous occasions. (Tr. at 1322-1324)
166. Because of the repeated phone calls, Dr. Hakim contacted the Minot Police Department and filed charges of harassment against Dr. Boutros. Dr. Hakim also stated a desire that Dr. Boutros get psychiatric help. (Tr. at 1324-1326)
167. Dr. Boutros denied that Dr. Hakim would have been acting in Dr. Boutros’ best interest, stating that he and Dr. Hakim are too close for Dr. Hakim to be “objective.” (Tr. at 1325-1326) Nevertheless, Dr. Boutros stated that Dr. Hakim is no longer his friend. Dr. Boutros testified

that they had a “falling out” after they had had “intensive contact” in July and August 2004 in relation to an anorexic patient. (Tr. at 1322, 1324)

168. Detective Lieutenant Steven P. Kukowski testified that he had first become involved with Dr. Boutros in September or October 2004 with regard to an argument between Dr. Boutros and a friend, Dr. Hakim, who resides in Lebanon. Dr. Hakim complained that Dr. Boutros had been harassing him with phone calls and e-mails. (Resp. Ex. D-2 at 363-366; Resp. Ex. HH)

Bill Received from Trinity

169. On October 4, 2004, Dr. Boutros received a bill from Trinity for the involuntary hospitalization. On October 5, 2004, Dr. Boutros faxed an e-mail message to Todd Grages as follows [spelling and punctuation as in original]:

I received a bill from your hospital for the stay that you invited me to by force. I understand that I stayed there 3 nights, I refused food and water for 2 days, and i had a urinalysis, blood test, and an exam by a nurse practitioner. For that you charged blue cross almost \$5000. Now I have stayed in some really luxurious hotels, of course, not as luxurious as yours. I believe this is fraud. I have alerted Blue Cross and Blue shield and requested that thier fraud unit start an investigation. Todd, I told once and I will tell you for the last time...I am your friend, despite your unwanted invitation to stay at your jail house I propose we talk.. If you are smart and not rigid, you would be wise to pick up the phone and dial my number and start negotiating a peacefull resolution to this issue before it is too late.... You have one day. It ends on Oct 5 midnight...after that, I will not be your friend any more.

I tried to reach you anyway I can..I called you, I called your friend scott, I even pleaded with Jennifer to call Todd, the purpose is this...you have committed fraud on many fronts, and the investigations have started...I repeat
THE INVESTIGATIONS HAVE STARTED....If you are wise, you would call me and start talking about fraud, consequences, and resolutions...

your friend for only today, george

(St. Ex. 9) Dr. Boutros subsequently sent a copy of this email to Todd Grages by fax, with a large handwritten message added: “AttN: TODD iN REF TO F R A U D ! ! !”
(St. Ex. 9)

170. At the hearing, Dr. Boutros testified that, when he contacted Mr. Grages to discuss the bill, Mr. Grages had stated that he would have Dr. Boutros committed again. Thereafter, Dr. Boutros applied for a restraining order against Trinity, but the court denied it. (Tr. at 1238-1239)

Evaluation by Dr. Madeline Free

171. On September 20, 2004, Dr. Boutros consulted Madeline Free, M.D. She believed that he had sought the evaluation because his release from hospitalization was contingent on his being

evaluated. (Resp. Ex. H at 622, 630-632) Dr. Free issued a short “To Whom It May Concern” letter, as follows:

George Boutros, M.D. presented voluntarily for an evaluation on September 20, 2004 at Medcenter One. The undersigned did not find the patient either dangerous to himself or a threat to anyone else. The undersigned did not find the individual to have an elevated mood or grandiose ideas at this time. The patient accepted feedback and was able to identify goals for himself for the short-term future. The patient acknowledged multiple areas that were problematic for him at this time. He is making an effort to face the future optimistically.

(St. Ex. 15; Resp. Ex. Y)

172. On October 4, 2004, Dr. Free sent a letter to the North Dakota Board, expressing concerns about certain practices in the psychiatric unit at Trinity. (Resp. Ex. AA; Resp.Ex. H at 630-632)

173. However, Dr. Free later acknowledged that, as of October 4, 2004, she had gotten only “one side of the story,” the version of events provided by Dr. Boutros. She also noted that she had received a copy of the involuntary-commitment papers and some hospital records from Trinity at that time. (Resp. Ex. H at 622, 630-632)

Dr. Boutros’ Filing of Administrative Complaints and Court Actions

174. On October 20, 2004, Dr. Boutros filed an action in the county court in North Dakota against Trinity and various other individuals. He filed a twelve-page document entitled “Amended Complaint for Intentional and Negligent Misrepresentation, Intentional and Negligent Infliction of Emotional Distress, Intentional and Negligent Interference with Prospective Economic Advantage, Defamation, Breach of Contract, Malpractice and Discrimination.” (St. Ex. 42)

175. On October 22, 2004, the North Dakota Department of Labor advised Dr. Boutros that the Department would file a human rights complaint against the BP gas station based on Dr. Boutros’ complaint. (St. Ex. 18)

176. Dr. Boutros also filed an action against the owners of the BP gas station and Lee Jeannotte for discrimination. (Tr. at 1371-1372)

177. On November 9, 2004, Lori and Boyd Zavalney, the owners of the BP gas station, advised the North Dakota Board, in a letter on their attorney’s letterhead stationery, that the August 2004 letter of trespass had been obtained against Dr. Boutros “due to a miscommunication” between them and their employee. They further advised that they had apologized to Dr. Boutros and had asked the Minot Police Department to cancel the trespassing ban against him. Finally, they stated: “We wish to make it clear that the letter was not based on any criminal activity nor have we ever alleged Dr. Boutros to have committed any criminal activity.” (St. Ex. 13; Resp. Ex. BB)

178. Dr. Boutros acknowledged that the owners of the BP station had written the apology and withdrawn the letter of trespass only after Dr. Boutros had filed a lawsuit against them. (Tr. at 1397)
179. On October 25, 2004, Dr. Boutros notified the North Dakota Board that he had filed complaints against Trinity at various agencies, including the following:
- The North Dakota State Health Department
 - The FBI
 - The Criminal Bureau of Investigations in North Dakota
 - The US Department of Health and Human Services, Office of Civil Rights
 - The Justice Department, Community Relations Service
 - The Minot Police Department
 - The North Dakota State Attorney's Office
 - The North Dakota Department of Labor
 - The North Dakota Human Rights Commission
 - The North Dakota Equal Employment Commission
 - The Fraud Department of the North Dakota Blue Cross and Blue Shield
 - The North Dakota Insurance Commissioner
 - The Protective and Advocacy Programs in Minot and Bismarck, North Dakota
 - The Governor of North Dakota and North Dakota Senators

(St. Ex. 18) Dr. Boutros testified that he also filed a lawsuit against Lee Jeannotte, alleging discrimination. (Tr. at 1371)

Agreement with the North Dakota Board and Events in Bismarck

180. On December 17, 2004, Dr. Boutros entered into an agreement with the North Dakota Board. Dr. Boutros agreed to participate in an evaluation of his mental and physical health at Rush Behavioral Health Center in Oak Park, Illinois. Dr. Boutros further agreed that he would not practice medicine until the North Dakota Board "had an opportunity to act on the findings of this evaluation." (St. Ex. 9-A)
181. On December 20, 2004, the North Dakota Board advised Dr. Boutros that, in response to complaints filed by Dr. Boutros, the North Dakota Board had determined to issue a "letter of concern" to Dr. Gomez. However, Dr. Boutros' complaint against Dr. Anwar was dismissed. The North Dakota Board stated, among other things:

During the last few years, the North Dakota Board of Medical Examiners has maintained one of the highest rates of disciplinary action in the United States. Of course this does not mean that every complaint results in a formal action, but it does indicate that the Board is very active and that all complaints and investigations are treated very seriously. Thank you for bringing your concerns to our attention. It would be impossible for us to monitor the actions of North Dakota's physicians with the input of people like yourself who are willing to come forward with their concerns.

(Resp. Ex. EE)

182. Lynette McDonald, an administrative assistant for the North Dakota Board, stated that she had first become acquainted with Dr. Boutros in January 2002, when he applied for a North Dakota medical license.⁴⁰ Subsequently, she observed him in the office on two or three occasions, and had also spoken to him on the telephone at least two or three times. Ms. McDonald stated that she had noticed a distinct change in Dr. Boutros' mental state between 2002 and 2004. She stated that, in 2002, Dr. Boutros had spoken calmly and at a normal rate, and she had observed no behavior that was unusual. However, in October and November 2004, she found his speech to be "very, very rapid, that he jumps from topic to topic, and that his behavior seems to be bizarre." She commented that he was "much different" in 2004 than he had been in 2002. (St. Ex. 28)
183. Dr. Boutros denied that he had been at the offices of the North Dakota Board multiple times. Dr. Boutros testified that he had been at that board's offices "maybe once" and was not sure if he had been there at all.⁴¹ He added that he had called the North Dakota Board once to request an application. Therefore, Dr. Boutros concluded that Ms. McDonald's statement was erroneous. (Tr. at 1263-1264)
184. Rolf Sletten, Executive Secretary and Treasurer for the North Dakota Board, stated that he had met with Dr. Boutros on three occasions and had numerous telephone conversations with him.⁴² Mr. Sletten stated that he had found Dr. Boutros' behavior to be "bizarre" and that his speech was extremely rapid, intense, and pressured. Mr. Sletten further stated:

On the second occasion when Dr. Boutros presented himself in the Board of Medical Examiners office he brought with him his nine or ten-year-old daughter. He then asked me if I would give her a gift. He said that she wanted "the picture." This picture is a caricature of myself that the other members of the staff gave me as a gift several years ago. I told him that she could not have the picture. He said "something else then." I gave her a little wire figure that was sitting on my desk. He then said "now something for me."

* * *

On the third occasion when he came to the office he once again asked if his daughter could have the picture. I told him that she could not have it. At some point during the conversation he noticed my jacket lying on a chair in the office. He then asked me what he would have to do to get the jacket.

(St. Ex. 29)

⁴⁰ Ms. McDonald signed a sworn affidavit on November 24, 2004; she did not testify before the Ohio Board. (St. Ex. 28)

⁴¹ However, Dr. Boutros testified about being in the office of Mr. Sletten at the North Dakota Board and asking Mr. Sletten to give a gift to Dr. Boutros' daughter and then to give a gift to him (Dr. Boutros), asking for Mr. Sletten's art work and then his leather jacket as a gift. (See paragraph 186 below.)

⁴² Mr. Sletten signed a sworn statement on November 24, 2004, stating among other things that Dr. Boutros was in his office on three occasions. He testified in the North Dakota arbitration, but not before the Ohio Board. (St. Ex. 29; (Resp. Ex. VVV at 910)

185. Dr. Boutros explained that, at that time, he had been dealing with multiple state agencies and state departments, lawyers, and government legal advisers. He was spending a lot of time going to the Capitol Building in Bismarck. He stated that his daughter had been studying government in school, so he took her with him. In the Capitol Building, he was offered a photo opportunity with the Governor:

So we do the photo of the Governor. And I tell the Governor, "You know, I really would like a souvenir for this occasion." And he said, "Well, really I don't have anything to give you, George." I said, "Well, I like your tie." He said, "Yeah, but I have an occasion to go to. I can't go to an occasion without my tie."

I said, "How about I give you mine? You give me yours." He said, "Well, I like yours better. I think I'll win in this exchange." He took off his tie, gave me his tie. I gave him my tie. Well, I mean, you know, it was an interesting event, so to speak.

(Tr. at 1269-1270)

186. Dr. Boutros further testified that, after this experience with the Governor, he had gone to see Mr. Sletten. He stated that, with the same friendly attitude with which he had approached the Governor, he had asked Mr. Sletten to give him a gift for his daughter. Dr. Boutros acknowledged that he had also asked Mr. Sletten to give him his leather jacket as a souvenir. Dr. Boutros acknowledged, in retrospect, that his behavior had been "on a stupidity scale, pretty high." (Tr. at 1267-1272)
187. Dr. Boutros testified that, when he filed complaints with the North Dakota Board against Trinity and Dr. Gomez, he had been angry, upset, and excited. He acknowledged that his speech probably had been rapid. (Tr. at 1259)
188. On December 21, 2004, Dr. Boutros filed a complaint against the North Dakota Board with the North Dakota Department of Labor, alleging that the North Dakota Board had discriminated against him due to his disability. (St. Ex. 9-A, 10)

Assessment by Rush Behavioral Health Center

189. On December 22, 2004, Dr. Boutros reported to Rush University Medical Center, Rush Behavioral Health Center, in Chicago, Illinois [Rush], for an evaluation. The team of evaluators was headed by Stafford C. Henry, M.D., the Medical Director of the Multidisciplinary Assessment Program at Rush, and it included James E. Devine, Ph.D., a licensed clinical psychologist, and Amy Odgers, M.D. (St. Ex. 7)
190. In January 2005, the Rush evaluators issued a Multidisciplinary Assessment Program Summary [Rush report]. (St. Ex. 7 at 1) The Rush report included the following:

At the request of the North Dakota Board of Medical Examiners, beginning 22 December 2004, George Boutros, M.D., was evaluated at Rush Behavioral

Health. The purposes of the evaluation were to perform a general psychiatric examination, explore the circumstances surrounding a behavioral change reported and observed on Dr. Boutros' part, screen for the presence of substance abuse and/or dependence, conduct a fitness for duty evaluation, and if indicated, render treatment recommendations.

IDENTIFYING INFORMATION

George Boutros, M.D., is a 47-year-old married male of Middle Eastern descent, who for the last four months has been unemployed. In August 2004, Dr. Boutros' employment with Trinity Hospital was terminated. Dr. Boutros currently holds active and unrestricted licenses to practice medicine in the states of North Carolina, Ohio, Massachusetts, and Louisiana. His North Dakota license is active, but he is currently prohibited from seeing patients.

RECORDS REVIEWED

* * *

1. Information provided by Dr. Boutros. This included letters of recommendation from Michael Easterbrook, M.D., Filberto Altomare, M.D., letters of support from patients he has examined, pleadings he has filed in relation to civil litigation he has initiated and a letter from Frank Farfan.
2. Documents provided by the North Dakota Board of Medical Examiners. This included communication between the Board and Dr. Boutros, documents forwarded by Trinity Health Systems, reports and records forwarded by the City of Minot Police Department, communication between Dr. Boutros and Trinity Hospital, documents and pleadings pertaining to Dr. Boutros' September 2004 involuntary hospitalization, a psychiatric evaluation conducted by Madeline Freed, M.D., [sic] and other documents prepared and forwarded by Dr. Freed, and explanation of benefits provided by Blue Cross based on services received by Dr. Boutros, documents and progress notes relating to Dr. Boutros' September 2004 hospitalization, documents from an attorney representing a Minot, North Dakota gas station which Dr. Boutros frequented, telephone bills of Dr. Boutros, communication between Dr. Boutros and the North Dakota Department of Labor, documents, letters and affidavits from individuals who were in contact with Dr. Boutros during the relevant period, and letters from Matthew Gomez, D.O. and Shamim Anwar, M.D. based on their clinical contact with Dr. Boutros.
3. Summaries of telephonic conferences conducted by Reverend Carl Malin of Rush Behavioral Health with individuals both familiar and in contact with Dr. Boutros.
4. Results of laboratory analyses of blood and urine samples provided by Dr. Boutros during his Rush Behavioral Health assessment.

5. Computer-generated results of an MMPI, Millon and Quickview Social History based on information provided by Dr. Boutros during his Rush Behavioral Health assessment.
6. Summaries submitted by members of the Rush Behavioral Health assessment team based on our clinical contact with Dr. Boutros.

* * *

CONTACT WITH DR. BOUTROS

During the current evaluation, it was exceedingly difficult to keep Dr. Boutros on task. Dr. Boutros frequently spoke rapidly, was quite tangential and circumstantial in his speech and throughout the assessment, attempted to guide the interview. The following represents the salient features of the psychiatric portion of the evaluation:

Although exceedingly difficult to keep on track, Dr. Boutros represented that his contact with Trinity Hospital had been exceedingly problematic and contentious. Admittedly, “When I first joined Trinity, I had not operated in one year. I had lots of complications. They hired me without checking into my background. I thought they should have done more of a background check.”

Six months after arriving at Trinity Hospital, Dr. Boutros said that he approached several hospital officials and “told them I didn’t like this.” Reportedly, as the hospital was in need of a retina specialist, arrangements were then made for Dr. Boutros to receive specialty training in retina surgery in Toronto, Canada. Dr. Boutros said that he went along with this plan with the expectation that following his fellowship, he would be in charge of the hospital’s newly developed retina program.

In July 2004, Dr. Boutros returned to Trinity Hospital after successfully completing his retina fellowship. However, upon his return, he said there was “no office, no schedule, no patients and no equipment. I had nothing to do. I thought Trinity was having second thoughts about their commitment to a retinal program. I got concerned.”

Dr. Boutros went on to say that as he reportedly had no patients upon his return, he began to think of other ways of occupying his time. Dr. Boutros further said that he began “making phone calls to Lebanon” in an attempt to possibly find an employment position in his homeland. He also said that he began to seriously pursue a plan to develop a tract of land near Minot, North Dakota.

When asked to further elaborate on his land development plan, Dr. Boutros said he discovered “eighty acres” of land, near Minot, North Dakota which he planned to build a residential community centered around a recreational four-wheel driving track. Dr. Boutros said that his plan also included putting homes on the perimeter of the track and then using the interior for a host of outdoor recreational activities.

Dr. Boutros further said that both at the time and currently, his land development plan was both viable and potentially profitable. He then approached potential investors and collaborators both locally and in Canada. For example, Dr. Boutros said that he took a local real estate sales person to the property. When asked to discuss what happened when he conducted this site visit, Dr. Boutros said that he was actually performing a land canvas in his four-wheel drive vehicle. As he was driving up a number of steep hills and valleys, “Matt felt uncomfortable” and asked to be taken back.

We then continued to discuss how he approached soliciting potential investors for his land development deal. In response to this line of inquiry, Dr. Boutros said, “It’s very easy for me to be exuberant when I’m excited. I tend to blur boundaries.” When asked to specifically comment on his interaction with “Lee”, a local gas station attendant, Dr. Boutros first described how he came to be acquaintance with this individual.

In the weeks following his return to Minot, North Dakota, Dr. Boutros reiterated that he had “nothing to do.” As he reported being in contact with individuals in Lebanon, Dr. Boutros said that he had to shift his sleep schedule, as these contacts “are in a different time zone.” As a result, Dr. Boutros said that he found himself awake at “three, four, five, and seven a.m.” As he was frequently awake at these early hours, he would go to a local gas station to “buy Marlboros and a bottle of water.” As a result, Dr. Boutros said that he became familiar with Lee, the gas station clerk who worked this graveyard shift.

In the course of talking to Lee, Dr. Boutros not only told him about his land development deal, but over time learned that Lee was American Indian. Once he became aware of Lee’s ancestry, “I thought he could introduce me to his tribe. I wanted him to take me to his tribal council so I could start a surgical mission.”

In continuing to discuss his contact with Lee, Dr. Boutros acknowledged taking Lee to the area that he wanted to develop. Dr. Boutros also acknowledged “taking Lee to my home. I thought we were friends. I found out he was poor and I was thinking of ways to give him money.” When asked, during the current evaluation, if he believed either his contact with and gestures toward Lee were at all inappropriate, Dr. Boutros said that he did not.

In continuing to discuss his behavior at the local gas station, Dr. Boutros acknowledged that he would “often talk to people in the store including a Vietnam vet.” When asked if he believed he was ever inappropriate with respect to how he approached individuals at the gas station, Dr. Boutros said that he was not. At this point, he then launched into a somewhat rambling, difficult-to-follow account of how he had once “cleaned the windshield of an old lady” who was at the gas station.

We then discussed other stressors he was experiencing at the time. Dr. Boutros acknowledged that upon his return to Minot, he had an increasingly contentious

relationship with “Susan”, a facility manager at the Williams Eye Institute. Although he initially described her as “a friend” and an individual he also wanted to be a part of his “brilliant” land development deal, Dr. Boutros said that over time, he increasingly noticed that Susan was “very rude. There was lots of negativity. There was something weird going on.”

Dr. Boutros said he ultimately came to the opinion that upon his return, Susan had deliberately undermined his authority and effectiveness at the Williams Eye Institute. He further was of the opinion that Susan was personally responsible for sabotaging the retina program he was trying to establish. When asked, during the current evaluation, why he believed Susan had undertaken these reported nefarious gestures, Dr. Boutros surmised that she was acting as an agent for Trinity Hospital, a facility which he believed had come to realize they could not support a retina program.

When asked to discuss any other stressors he was experiencing at the time, Dr. Boutros said that in this same timeframe, he had come to realize that one of his nieces was suffering from anorexia nervosa. When he became aware of this condition, Dr. Boutros said that it became his “personal mission and personal calling” to contact “everyone who might be important to her. She needed intensive personal contact.”

When asked, during the current evaluation, if he currently believed it appropriate for him to engage in this “personal mission” (as opposed to, for example, her parents), Dr. Boutros replied, “Yes. I love her and I was afraid she would die.”

In further discussing significant events that preceded his Rush Behavioral Health evaluation, Dr. Boutros acknowledged that in September 2004, he was involuntarily hospitalized because he was believed at the time to be both Bipolar and dangerous. During the current evaluation, Dr. Boutros continued to insist that he is neither Bipolar nor dangerous. He described the actions and intent of Trinity Hospital, who he described as being central in organizing and facilitating his hospitalization as “fraudulent. The employer wanted to retaliate.”

We then discussed the circumstances surrounding his hospitalization. Reportedly, as a result of a confluence of a number of stressful events, in September 2004, Dr. Boutros’ wife “told me I needed to get help.” Reportedly, in effort to appease her, Dr. Boutros said that he contacted Trinity Hospital psychiatrist, Matthew Gomez, D.O. “I called him on the phone and told him I wanted the favor and privilege of meeting him. I told him if I was comfortable, then he would be my psychiatrist.” Dr. Boutros said that Dr. Gomez reportedly agreed to meet him at Trinity Hospital’s Emergency Room. Dr. Boutros said that Dr. Gomez also asked him to bring a piece of identification.

At approximately 3:15 p.m., immediately after speaking to Dr. Gomez, Dr. Boutros arrived at Trinity Hospital with both a piece of identification and a tape recorder.

When asked, during the current evaluation, why he brought a tape recorder, Dr. Boutros said, "I knew there was something wrong. I wanted to record everything."

When he arrived at the hospital, Dr. Boutros said he was greeted by the emergency room physician who told him that Dr. Gomez had arranged for his (Dr. Boutros') psychiatric admission to the hospital. Upon hearing this, Dr. Boutros said that his suspicions were confirmed and he then left the facility.

Approximately six hours later, Dr. Boutros said that members of the Minot Police Department forcibly entered his home and arranged for his transport to Trinity Hospital. Dr. Boutros said that although he was initially uncooperative on the psychiatric unit, he later changed his position. Several days later, he appeared before a local judge and subsequently released.

When asked to discuss significant events since his hospital discharge, Dr. Boutros said, "I have been fully invested in defending myself against Trinity Hospital." Dr. Boutros said that beginning at midnight each day, he does "legal research." He said that working during the early hours of the day allows him to work uninterrupted. "I do not want to be disturbed." At approximately six or seven in the morning, he then gets his children ready to school, "makes necessary phone calls", and then sleeps for several hours. He will then retrieve his children from school and at approximately four p.m., goes to sleep. Dr. Boutros said that he currently sleeps an average of eight to ten hours per day.

During the current evaluation, Dr. Boutros insisted that he has never been manic or hypomanic. Similarly, he denied ever experiencing a decreased need for sleep, or engaging in inappropriate spending sprees, having racing thoughts, or engaging in impulsive/erratic behavior (all symptoms of Bipolar disorder). During the current evaluation, Dr. Boutros continued to insist that his land development plan was both "brilliant" and one of tremendous potential.

When asked if he had ever engaged in other entrepreneurial projects, Dr. Boutros said that in July 2001, while living in San Diego, California, he secured an approximately \$1,000,000.00 loan to open a laser surgery center. Dr. Boutros said that after he secured the loan, he "rented space and hired a skeletal staff." However, following the tragic events of September 11th, he realized that the laser surgery center would not take off and he abandoned his plan.

When asked to discuss and reflect on the viability of this plan, Dr. Boutros said, "I believed I could provide a good service." Although he acknowledged the market was competitive and the profit margin slim (even before September 11th), Dr. Boutros said at the time he believed he had the capacity "to win."

We then discussed other behavior which might be reflective of a psychiatric illness. On direct inquiry, Dr. Boutros acknowledged that in the early 1980's, when he first arrived in the United States, he experienced a circumscribed period of depression. He described himself at the time, as being "extremely lonely" and experiencing

sadness, crying spells, social isolation, generally being “disinterested” and staying in bed. On direct inquiry, Dr. Boutros said that at the time, he did occasionally have some passive thoughts of suicide.

Dr. Boutros insisted that these depressive periods were primarily situational, time-limited and self-resolved “after several weeks.”

In continuing to discuss his psychiatric history, Dr. Boutros said that in the late 1980’s, he again experienced recurrent depressive symptoms when his practice in Washington State “never took off.” When asked to discuss his psychiatric symptoms at this time, Dr. Boutros said, “I had a gloomy attitude. I was pessimistic, and I didn’t want to do anything.” He again insisted that these episodes lasted “several weeks” and self resolved.

Dr. Boutros further acknowledged that when he was living in Kansas, he again experienced occasional episodes of depression.

During the current evaluation, Dr. Boutros insisted that he never experienced depressive episodes lasting several months. Similarly, he emphatically denied ever experiencing symptoms reflective of mania or hypomania. Dr. Boutros further denied ever experiencing symptoms reflective of a thought, anxiety, impulse-control, or developmental disorder.

With reference to his use of mood-altering substances, Dr. Boutros denied ever problematically or excessively using alcohol. He said that for most of his adult life, he has consumed “a couple of glasses of wine every two weeks.” Dr. Boutros denied ever experiencing alcohol-related blackouts, seizures or withdrawal symptoms. Similarly, he denied ever being arrested for driving while under the influence.

In continuing to discuss his use of substances, Dr. Boutros said that on approximately ten occasions, he has self-administered cannabis. In discussing his most recent use of the substance, Dr. Boutros said that he self-administered cannabis several weeks prior to his September 2004 hospitalization. He said that he had done so because he wanted to be “social.” Dr. Boutros denied ever self-administering cocaine, hallucinogens, amphetamines, inhalants, nonprescribed mood-altering substances, Ecstasy, Ketamine, or GHB.

Dr. Boutros was of the opinion he is currently appropriate to practice medicine with requisite competency, safety, and skill. He again vociferously denied ever being manic and insisted that the allegations that he was Bipolar had been falsely advanced by representatives of Trinity Hospital.

* * *

FAMILY PSYCHIATRIC HISTORY

Dr. Boutros’ mother was reported to suffer from a conversion disorder, a sister reported to suffer from major depressive disorder, and a niece, reported to suffer from anorexia nervosa.

MENTAL STATUS EXAMINATION

Mental status examination was remarkable for an alert, oriented, and relatively cooperative male of Middle Eastern descent, appearing approximately his stated age. He was engaged in the evaluation session and able to attend. Thought processes were at times somewhat disorganized. This was reflected in Dr. Boutros' sometimes rapid, circumstantial and tangential speech. Considerable effort was undertaken to keep him on task. Dr. Boutros did make attempts to guide the interview.

He was appropriately attired. At times, Dr. Boutros did not demonstrate appropriate appreciation of doctor/patient boundary. He maintained good eye contact. * * *

His mood was somewhat elevated and his affect (external expression of emotion) at times somewhat labile. He denied currently experiencing neurovegetative symptoms of depression, or those suggestive of mania, hypomania, or an anxiety disorder. Dr. Boutros denied currently experiencing suicidal or homicidal thoughts or plans. He denied currently experiencing auditory or visual hallucinations, paranoia, or other symptoms suggestive of a thought disorder.

There was no gross cognitive deficit. He was believed of at least estimated above-average intelligence. Long-term, short-range and intermediate memory was intact. Dr. Boutros was able to relate pertinent details of his past personal history. He was believed to have an above-average fund of knowledge.

DIAGNOSIS

Axis I: Bipolar disorder not otherwise specified/Rule-out Bipolar type II.

Axis II: Deferred.

Axis III: Deferred.

Axis IV: Occupational problems.
Economic problems.
Problems related to the primary support group.
Problems related to the social environment.
Other psychosocial and environmental problems.

Axis V: Current G.A.F.: 70
Highest and last year: Deferred.

OPINION

* * *

As a result of completing our clinical evaluation, reviewing all available data and conferring with collateral sources, we are of the opinion, to a reasonable degree of medical and psychiatric certainty, Dr. Boutros' psychiatric history is most consistent with a diagnosis of Bipolar disorder, not otherwise specified/rule out Bipolar type II. At the present time, Dr. Boutros is not believed to suffer symptoms of an anxiety,

thought, developmental, or cognitive disorder. Additionally, at the present time, there is no evidence Dr. Boutros is either abusive of, nor dependent on mood-altering substances.

As a class, Bipolar disorders entail mood disturbance. These conditions typically describe symptom sets of both elevated and depressed moods. When an individual is manic or hypomanic, they typically display symptoms of grandiosity, impulsivity, inappropriate elation, high energy, investment in goal-directed activity, impulsivity, poor judgment, racing thoughts and rapid speech. During the depressed phase of illness, these individuals are typically sad, melancholic, isolative, suicidal, have low energy and with sleep and appetite disturbance.

There are several types of bipolar disorder. The distinction between these conditions frequently lies in the severity and duration of the mood symptoms.

In making an accurate diagnosis, it is necessary to have a reliable informant, confirmatory collateral data and well based clinical suspicion. The challenge in making an accurate diagnosis, however, often lies in the patient's lack of insight, fear of being labeled mentally ill, and tendency of the individual to put a plausible spin on their past behavior.

During the current evaluation, Dr. Boutros vociferously denied ever being manic or hypomanic. He did describe, however, being "exuberant," convinced that Trinity Hospital was interested in backing out of their commitment, suspicious of the actions and intent of others, not consistently appreciative of boundaries and confident he could put together a group of investors to develop a plot of land outside of Minot, North Dakota.

As stated above, an accurate psychiatric diagnosis is often greatly assisted by the availability of collateral data. In this case, we had the benefit of reviewing the observations and perceptions of at least ten individuals who had interacted with Dr. Boutros during the relevant period. These included, but were not limited to: Paula Wahl, Brenda Willoughby, Robert Sanke, Rolf Sletten, Lynette MacDonald, Renee Peterson, Judy Erickson, Linda Guidinger, and Lana [sic]. This database was especially relevant as our review revealed a common theme; all of these individuals independently described a pattern of poor judgment, erratic behavior, poor boundaries, increase in goal-directed activity, rapid speech, and frequently, perceptions of grandiosity and/or paranoia. We are of the opinion, to a reasonable degree of medical and psychiatric certainty, these perceptions are all high suggestive of manic/hypomanic behavior or Dr. Boutros' part.

As further substantiation of our opinion Dr. Boutros suffers from a form of Bipolar disorder, he described for us, behavior highly suggestive of these sets of conditions. For example, Dr. Boutros described unreasonable and inappropriate investment in certain activities. These included his over-investment in rallying support for his niece and intensive involvement in his land development deal. Although Dr. Boutros attempted to portray his involvement in these activities as plausible and reasonable,

we are of the opinion, to a reasonable degree of medical and psychiatric certainty, they were in fact excessive and inappropriate.

As further substantiation of our opinion that Dr. Boutros suffers from a form of Bipolar disorder, it is clinically relevant that the mood symptoms appeared to have been manifested during a time of stress. It is our clinical experience that symptoms of Bipolar disorder (as well as other psychiatric illnesses) typically become prominent when a patient is under stress. In this case, Dr. Boutros clearly acknowledged that he believed that upon his return to Minot, Trinity Hospital was withdrawing their support and he felt obligated to both secure employment and engage in efforts to fill his time.

It is further our opinion, to a reasonable degree of medical and psychiatric certainty, symptoms of Bipolar disorder are typically circumscribed and spontaneously improve. This tendency would explain Dr. Boutros' ability to travel to Chicago, participate in the evaluation and attempt to make a reasonable presentation.

In taking his history, Dr. Boutros also appears to have experienced depressive periods. Although there might have been some effort to minimize the severity of these symptoms, it is clinically relevant that within the last twenty years, Dr. Boutros has found the need to engage in three separate courses of outpatient psychotherapy.

Finally, we would like to add that at the present time, we are of the opinion, to a reasonable degree of medical and psychiatric certainty, there is no evidence Dr. Boutros presents as a risk for dangerous behavior.

Taken together, as stated above, we are of the opinion, to a reasonable degree of medical and psychiatric certainty, Dr. Boutros' history is most suggestive of an atypical form of Bipolar disorder. As this condition is chronic and oftentimes progressive, we are of the opinion, to a reasonable degree of medical and psychiatric certainty, he would need to adhere to the following recommendations:

1. Dr. Boutros would be expected to immediately come under the monitoring/advocacy arm of the North Dakota Licensing Board. If Dr. Boutros decides to relocate to another state, then prior to starting a position, he would need to be under contract with the monitoring/advocacy organization in that particular state.
2. Prior to him initiating in patient contact, Dr. Boutros would need to have formally engaged in a treatment relationship with a psychiatrist approved by the monitoring arm/advocacy organization in which he is involved. This psychiatrist should have access to this report as well as the data provide to us by the North Dakota Medical Board. Additionally, for the duration of treatment, this psychiatrist would be asked to maintain contact with both a representative of the advocacy/monitoring group, as well as a representative of Dr. Boutros' employer.

Additionally, prior to initiating patient contact, this psychiatrist would need to confirm Dr. Boutros' compliance with treatment (i.e. attending psychotherapeutic sessions and providing laboratory results indicating therapeutic levels of mood-stabilizing agents).

3. For a period of at least two years, Dr. Boutros should be assigned a practice monitor/mentor. Further, under no circumstances should he be allowed to practice in a solo setting.
4. For routine health maintenance and management of his medication problems, Dr. Boutros would be expected to come under the care of a primary care physician. Dr. Boutros would be expected to adhere to all treatment recommendations of his treaters, including but not limited to, taking psychotropic medication.

(St. Ex. 7)

191. Dr. Boutros testified that he disagrees strongly with the conclusions in the Rush report. For example, Dr. Boutros stated that the statement that he blurs boundaries is erroneous. He explained that his nature is to be more casual than formal. He acknowledged that, although some people might question his relationship with Lee Jeannotte on the theory that doctors should not befriend gas-station attendants, it is his nature to do so. (Tr. at 1277-1280) Dr. Boutros also criticized the Rush report for failing to set forth a diagnosis with findings on all five axes. (Tr. at 1285-1286)
192. On January 27, 2005, Dr. Boutros entered into a further agreement with the North Dakota Board. In this agreement, Dr. Boutros agreed to enroll in the North Dakota Physicians Health Program. (St. Ex. 6) He further agreed that the following facts, among others, were true:
 - Dr. Boutros' license was under investigation by the North Dakota Board due to his alleged illness;
 - Dr. Boutros had been found to have bipolar disorder;
 - Dr. Boutros had voluntarily agreed to comply with the terms of the agreement; and
 - The North Dakota Board would not initiate disciplinary action against Dr. Boutros as long as he did not violate the terms of the agreement. (St. Ex. 6)
193. Moreover, in the 2005 Statement of Intent to Participate, Dr. Boutros agreed to the following terms:
 - A. If Dr. Boutros renewed his North Dakota license with the intention to return to practice in North Dakota, he would comply with the following:
 - Abstain from alcohol and mood-altering chemicals unless prescribed by a practitioner who was aware of his diagnosis and history;
 - Be evaluated and treated by a primary care physician approved by the North Dakota Board;
 - Meet with a psychiatrist approved by the North Dakota Board at least monthly, unless otherwise agreed;

- Refrain from practice until the North Dakota Board had evaluated the initial reports of the personal care physician and psychiatrist; and
 - Submit to random drug testing.
- B. Even if Dr. Boutros did not renew his North Dakota license or return to practice in North Dakota, he would comply with the following:
- Provide a copy of the Statement of Intent to Participate to any individual or organization with whom he had a practice relationship;
 - Keep the Physicians Health Program advised of his current practice associations and hospital privileges; and
 - Allow the Physicians Health Program to contact his current employer.

(St. Ex. 6)

194. Dr. Boutros testified that he had signed the North Dakota Agreement to Participate because he feared the destruction of his career should the North Dakota Board suspend his license to practice. Dr. Boutros further testified that, in signing the agreement, he was not acknowledging that he suffered from bipolar disease, but merely acknowledging that physicians at Rush had made that diagnosis. (Tr. at 1291-1292)
195. Dr. Boutros testified that, in his view, the North Dakota Board had not disciplined him or taken any formal action against him. Moreover, he stated that the North Dakota Board had not insisted on a diagnosis and had not required treatment. (Tr. at 1293)

Board-Ordered Evaluation in 2005 – Report of Dr. Noffsinger

196. In a letter dated February 24, 2005, the State Medical Board of Ohio [Board] notified Dr. Boutros that, based on the Rush evaluation and other factors, the Board had reason to believe that Dr. Boutros suffered from an impairment as defined in R.C. 4721.22(B)(19), and it ordered him to submit to a psychiatric evaluation to be conducted by Stephen Noffsinger, M.D. On March 24, 2005, Dr. Boutros attended the examination as instructed. (St. Ex. 1; St. Ex. 5 at 1; Tr. at 425-426)
197. Following the examination, Dr. Boutros submitted additional materials to Dr. Noffsinger. On March 10, 2006, Dr. Noffsinger issued his report. He listed the materials he had reviewed in preparing his report, including Dr. Boutros' responses to the Board's interrogatories, the documents provided by Dr. Boutros, documents from the North Dakota Board, the report prepared by the Rush Behavioral Health Center, and a March 2005 report prepared by Edward Kelly, M.D., J.D., a forensic psychiatrist consulted by Dr. Boutros.⁴³ (St. Ex. 5)
198. In his report (St. Ex. 5), Dr. Noffsinger stated as follows, in part

⁴³ Dr. Noffsinger also testified regarding the information he reviewed in forming his opinion. (Tr. at 35-257, 701-936) In addition, Dr. Noffsinger testified that he had made a typographical error in his report when he stated that Dr. Anwar had diagnosed Dr. Boutros with "Bipolar I Disorder NOS" when, in fact, Dr. Anwar had diagnosed Dr. Boutros with Bipolar Disorder NOS. Dr. Noffsinger noted that there is no such diagnosis as "Bipolar I Disorder NOS" in the DSM-IV. (Tr. at 191-192)

Social History:

Dr. Boutros was born in Lebanon. From his birth until age 24 he lived in Lebanon. At age 24 Boutros moved to Germany, and at age 26 he immigrated to America.

His mother and father, who were married and never divorced or separated, raised Dr. Boutros. Dr. Boutros told me that his father [name omitted] was 84 years old and lived in the Middle East, traveling between Lebanon and the United Arab Emirates. His father had been a high school math and science teacher, and had been retired for many years. Dr. Boutros indicated that his father was in good health, and they had a good relationship. Dr. Boutros told me his father was hardworking and committed, but was possibly overworked in the past.

Dr. Boutros indicated that mother [name omitted] was 82 years old and lived with his father. His mother was a retired elementary school teacher. His mother was in good health, and they had a good relationship. Dr. Boutros told me his mother had a “tough childhood” and she frequently needed attention. He estimated that that every six months during his childhood his mother had a “hysterical conversion reversion” in which she became suddenly shaky and required psychiatric medication.

Dr. Boutros told me he was never emotionally, physically or sexually, abused as a child. He described his parent’s marriage as “dysfunctional”, because it was an arranged marriage and his parents were not acquainted prior to their marriage. He reported that his parents frequently argued but never fought physically. Dr. Boutros told me that because his parents had six children they were very hard working. They provided well for their children, but he believed that he was emotionally neglected as a child.

Dr. Boutros was the fourth of six children. He had two brothers and three sisters. One sibling lived in America, and the others lived in the Middle East. Dr. Boutros told me that there was “a lot of rivalry” with his siblings during his childhood which persisted into adulthood; while he visited infrequently and talked with his siblings, they were not close.

Dr. Boutros has been married twice. He married his first wife at age 29, in 1985. The marriage lasted three years before ending in divorce. His first wife was of American descent, and had a doctorate degree. She was several years older than Dr. Boutros. Dr. Boutros told me that their divorce occurred because “it just wasn’t meant to be”, and their divorce was amicable. Upon inquiry, he responded that it was probably true that one reason he married his first wife was because he was having J-1 visa issues, and marriage to an American wife would allow him to stay in America.

Dr. Boutros married his current wife, Haifa, eleven years ago. Haifa is currently 47 years old, and has a doctorate degree from Case Western University in Information Systems and Public Health Administration. She is presently employed on the

faculty of Minot State University in North Dakota. Dr. Boutros told me his wife was in good health, and that they had a good relationship. [Personal information about their three children omitted.]

Dr. Boutros and his wife have a permanent residence in Minot, North Dakota. However, since 2/1/05 Dr. Boutros has lived in Chillicothe, Ohio, where he has been working as an ophthalmologist. He plans to move his family to Ohio once his employment situation becomes clarified. He has frequent visits and contact with his wife and children.

Educational and Occupational History Prior to 2002:

Dr. Boutros told me that he graduated from high school in Lebanon in 1973, when he was seventeen years old. He attended a private school with expensive tuition. He earned very good grades in school, and was advanced a grade in elementary school. There were no behavioral problems and he was not known as a fighter. He was never suspended or expelled from school. He did not participate in extracurricular activities due to a lack of money. There were no juvenile court charges.

Dr. Boutros took pre-medical college courses at the American University in Beirut for two years, from age seventeen to nineteen. He earned good grades. From 1975 to 1980 he attended medical school at the American University in Beirut, and earned good grades. He earned his MD degree in 1980.

From 1980 to 1982 Dr. Boutros lived in Bonn, Germany where he undertook a research fellowship in cataracts. He moved to America in 1982, and for the next three years undertook a residency in ophthalmology at Tulane University. He performed well during his residency. At the end of his residency Dr. Boutros faced a J-1 visa issue. He was uncertain how to address this issue, but later learned that he either had to leave the United States, or continue to remain in the U.S. but work in an underserved area. He did not want to return home to Lebanon at that time due to the civil war that was occurring in his home country, and so from 1985 to 1988 he worked a number of intermittent jobs at various locations across the United States (not in underserved areas). The Immigration and Naturalization Service did not track him down. He ultimately was able to fulfill his J-1 visa requirements.

From 1988 to 1989 Dr. Boutros worked as an ophthalmologist in Eastern Kentucky at the South Williamson Appalachian Regional Hospital. From 1989 until April 1990 he was in the solo private practice of ophthalmology in Washington State, which he closed when the practice did not perform well.

From 1990 until 2001 Dr. Boutros worked in Iola, Kansas, in the solo private practice of ophthalmology. He was initially recruited with hospital financial support, and later functioned independently. He married his second wife in 1991.

Toward the end of the 1990's Dr. Boutros gradually became disillusioned with the business aspects of running a private practice of ophthalmology. His wife, who by

the late 1990's had raised their children beyond early childhood, also desired to leave the area in order to work in her career. Dr. Boutros told me that he was frustrated with the practice of ophthalmology, because there was too much emphasis on advertising and business practices, and he was also bored with the procedures that an ophthalmologist routinely performed, including eye examinations, laser surgeries, and other surgical procedures.

At that point, Dr. Boutros received an offer from a businessman in San Diego, where his wife had family. Dr. Boutros moved to San Diego and for two months undertook training in Lasik surgery. Dr. Boutros had planned to open a Lasik surgery center with this business partner, but their plans dissolved when the business partner was implicated in a fraud scandal.

Dr. Boutros was determined to stay in San Diego and open up his own Lasik surgery center. He applied for and received a \$1,000,000 line of credit, and used approximately \$25,000 to begin to hire a staff and to build office spaces for his new practice. However, after the events of 9/11/01 Dr. Boutros and his business planner determined that the practice would not be financially viable, based on their belief that people were reducing the amount of elective surgeries they were undertaking. Dr. Boutros then pulled out of the plan to start a Lasik surgery practice, and paid back the \$25,000 bank loan.

* * *

Medical History:

Dr. Boutros * * * noted that when he was hospitalized at Trinity his blood tests might indicate a trend towards hyperthyroidism.

Current Medications:

None

Family Psychiatric History:

Dr. Boutros indicated that his mother had hysterical behavior and occasionally had a "conversion reaction" which was manifested by shaking. His niece has anorexia nervosa. Two sisters experienced depression and received antidepressant medication, but were never hospitalized. There was no family history of substance use problems.

Substance Use History:

Dr. Boutros told me he never had problems with alcohol or substance abuse. He began using alcohol at age nineteen, when he began drinking alcohol socially. He did not like its effects and suffered severe hangovers. For the past few years his alcohol use has consisted of drinking one glass of wine approximately every month. He used marijuana on an experimental basis years ago, but was never a regular marijuana user. He never used other drugs of abuse, and was never in substance use treatment.

Dr. Boutros' Account of his Occupational History since 2002:

Dr. Boutros said that he began looking for a job after 9/11/01. He believed that he was not an especially good applicant, based on his history of several recent job

changes. He found a job at Trinity Hospital in Minot, North Dakota. He began this position on 7/1/02, with a 24-month employment contract. The position was to be an employee of Minot Hospital, and to join a group practice of general ophthalmology.

Six months into his stay in Minot, Dr. Boutros was again frustrated and unhappy. He was frustrated with the “commercial medicine” that was being practiced, and again did not enjoy practicing general ophthalmology. Dr. Boutros told the hospital administrator of his plan to leave his position, because he was not feeling useful. The hospital responded by crafting an offer to Dr. Boutros, which included Dr. Boutros doing a fellowship in retinal surgery in Toronto. The hospital would loan Dr. Boutros \$120,000 to cover his expenses for the fellowship, and then he was to come back to Minot for a five-year employment contract. Dr. Boutros was very happy with this offer and accepted it.

From 7/03 to 6/04 Dr. Boutros undertook the fellowship in retinal surgery at St. Michael’s Hospital in Toronto. It was a hard year for him, because he worked twelve-hour days six days a week and was frequently on call. However, he was thrilled with the experience and was very interested in this new field of ophthalmology. He told me that he performed well in his fellowship. During the last few months of his fellowship he began to have dialogue with Suzanne Watne, the practice manager of his planned new retinal surgery practice in Minot, making plans to purchase equipment and hire staff for his new retinal surgery practice in Minot, North Dakota, which was to open on 7/1/04. Dr. Boutros was disturbed when he received an e-mail in May 2004, indicating that the hospital had not yet purchased the retinal surgery equipment, which was required for his practice.

In July 2004 Dr. Boutros moved back to Minot, North Dakota, and was thrilled to be back at Trinity Hospital. He was to be an employee of the hospital and was to earn \$350,000 annually. He was excited and exuberant about returning to Minot, and especially about starting his new retinal surgery practice. He perceived that “everybody was my friend, I was joking with everyone.” However, shortly after he returned to Minot “things began to fall apart.” He was dismayed to learn that on 7/1/04, when he planned to start his practice, that there was no office for him, no business cards, no surgical equipment and no patients. The hospital began paying him his salary on 7/1/04, but he did not have the ability to practice retinal surgery at that time.

Also in July 2004 Dr. Boutros learned that his niece had anorexia nervosa and weighed only 75 pounds. He consulted with a psychiatrist friend in Lebanon, who told Dr. Boutros that the only way to save his niece’s life was to get all of her family and friends to telephone her frequently and to offer their support. Dr. Boutros said, “That became my obsession” since he was not working. Due to the time zone difference he frequently stayed up all night telephone friends and family in Lebanon, asking them to contact his niece. He made many of the phone calls on the cellular phone that the hospital had issued to him. During this time he also began to look into another job opportunity in the Middle East.

Dr. Boutros told me that during this time he offered a proposal to a realtor to develop an 80 acre parcel of land, which had housing on the perimeter and an internal park system. After some investigation he determined that this was not a good project and dropped it.

Dr. Boutros indicated that practice manager Suzanne Watne's husband, Matt Watne, was a realtor. In the spring of 2004 a conflict erupted between Dr. Boutros and the Watnes. When they first moved to Minot Dr. Boutros and his wife had lived in an apartment, and had been shown many houses for sale by Mr. Watne. When they returned to Minot in the spring of 2004 the Boutros purchased a house that was listed for sale by owner, which had previously been listed by Mr. Watne. Watne was very upset with Dr. Boutros for buying the house and not paying Mr. Watne a commission. He told Dr. Boutros that he felt cheated, and Dr. Boutros perceived that this soured his relationship with Suzanne Watne.

When Dr. Boutros returned to Minot he perceived that Suzanne Watne had a changed demeanor toward him and was rude. Dr. Boutros and Ms. Watne frequently had meetings to discuss their practice, and Ms. Watne usually requested that they meet in private. Dr. Boutros was a bit uncomfortable meeting in private with Mr. Watne's wife; when Dr. Boutros and Ms. Watne met Dr. Boutros frequently telephoned Mr. Watne, just to let him know that he was meeting with Ms. Watne. On one occasion, after Dr. Boutros interrupted his conversation with Ms. Watne to telephone Mr. Watne, Suzanne Watne said, "don't you ever interrupt me again, or I will kill you."

Dr. Boutros indicated that, in hindsight, he now knows that other people were talking about him during this time, due to his change in demeanor. During his first period of employment in Minot he had been somewhat subdued due to his unhappiness with the practice. However, when he returned to Minot he was "ebullient." Also, because Dr. Boutros was staying up all night making phone calls, and because of his plans to develop land, people began to wonder whether he was mentally ill. During the same time Dr. Boutros began to work on a prototype surgical instrument with a colleague from Toronto, which also was perceived as odd by people in Minot.⁴⁴

Dr. Boutros said that on 8/1/04 he began to see patients in the retinal surgery practice. There was no surgical equipment yet, but he began to see patients. On 8/11/04 he received an urgent telephone call from a patient with an eye emergency. When Dr. Boutros went to meet the patient in the office, Suzanne Watne spoke to Dr. Boutros harshly, saying, "Come here right now... how dare you tell the patient to come here without consulting with me." Dr. Boutros was distressed by this conversation, so he telephone Suzanne Watne's supervisor, hospital vice president Todd Grages. Mr. Grages promised to schedule a meeting with Dr. Boutros in the next few days. When they met, Mr. Grages told Dr. Boutros that while his patient care had been very good, "everything else is poor ... everyone thinks that you are manic." A few days later, on 8/13/04, Dr. Boutros was terminated from the hospital with cause. Dr.

⁴⁴ Dr. Boutros testified that he had used the word "exuberant" rather than "ebullient." (Tr. at 1314)

Boutros told me that the hospital did not tell him what the cause was, but that he had to pay back the loan of \$120,000 for his fellowship.

Dr. Boutros was devastated. He asked the hospital to inform him of the cause for his termination, and to allow him a due process procedure. He sought out local counsel, but perceived that no local attorney would take on Trinity Hospital, since it was such a small town. He eventually consulted with an attorney friend from Washington State, and a few days later received a partial list of the accusations against him, which included unprofessional conduct, threatening Suzanne Watne, and multiple incidents with patients in which it was alleged that he had been insulting. Dr. Boutros denied many of the claims, and said that the other claims were frankly distorted.

Dr. Boutros reported that he frequently bought cigarettes at a gas station across the street from his home. He struck up friendly conversations and eventually a casual relationship with the clerk at the gas station, who was Native American. Dr. Boutros later said that the police came to his house and accused him of being anti-American, based on a report from someone at the gas station. The police searched his car, and told Dr. Boutros that he was not to set foot on the gas station in the future. In hindsight, Dr. Boutros believed that this was because he had unintentionally insulted the clerk by calling him a “warrior.” Dr. Boutros told me that he later spoke with the owner of the gas station and had the no trespass order lifted.

During the same time Dr. Boutros noticed that the hospital had been charging insurance companies for services that he had not provided, which he believed was fraudulent. On 9/14/04 Dr. Boutros received his official termination letter. Around the same time he visited with Craig Kramlich, a friend of Mr. Watne’s. Mr. Watne approached Dr. Boutros and Mr. Kramlich. Dr. Boutros told Mr. Watne, “Your wife’s lies are in the way. Can’t you make your wife realize that she is lying?” Mr. Watne replied, “My wife never lies.” Dr. Boutros said, “I will have to protect myself from you and her then.”

In mid-September, in response to the allegation that he had been manic, Dr. Boutros’ wife asked him to get a psychiatric evaluation in order to settle the issue. Dr. Boutros called a local psychiatrist, Dr. Gomez. Dr. Gomez told Dr. Boutros to meet him in the Trinity Hospital Emergency Department, and to bring along his driver’s license for identification. Dr. Boutros told Dr. Gomez that he was not permitted to be on the grounds of the hospital, due to his recent termination. Dr. Gomez told him to come to the hospital anyway. En route, Dr. Boutros became suspicious about why Dr. Gomez would want him to bring his identification. Dr. Boutros decided to tape record the meeting.

When Dr. Boutros entered the emergency room, he was greeted by emergency physician Dr. Olsen, who told Dr. Boutros that Dr. Gomez had telephoned the Emergency Department, saying that “Dr. Gomez said you were a dangerous Bipolar and to prep room nine for you.” (Room nine is for agitated patients). Dr. Boutros left the Emergency Department prior to being assessed. Dr. Gomez then telephoned Mrs. Boutros and said, “We need to commit your husband because he is

dangerous.” Dr. Boutros got on the line with Dr. Gomez and told him not to call back.

Approximately six hours later several police officers arrived at the Boutros’ residence, with orders to take Dr. Boutros to the hospital for an involuntary hospitalization. Dr. Gomez, who had never personally assessed Dr. Boutros, reportedly signed the orders. Dr. Boutros began to tape record his conversation with the police officers, and told them this was all just a labor dispute. He agreed to accompany them to the hospital.

Dr. Boutros arrived at the Trinity Hospital Emergency Department at 10:00 p.m. on 9/14/04. He told those who tried to talk to him that “this is a malpractice lawsuit in progress” and that he was tape recording them. He was not officially assessed. At midnight he was moved to the inpatient psychiatric unit, where he was hospitalized for the next three days. For the first two days Dr. Boutros did not eat, drink or cooperate with the assessment. He told his treaters that this was a kidnapping. He finally consented to a physical examination and blood tests. On the third day, Dr. Gomez, without seeing Dr. Boutros, asked the court to dismiss the action for civil commitment, and Dr. Boutros was discharged.

The next business day Dr. Boutros received a psychiatric evaluation that he personally arranged, by Dr. Free in Bismarck. Dr. Free reportedly concluded that Dr. Boutros was not mentally ill.

Dr. Boutros telephoned the North Dakota Medical Board and complained about Dr. Gomez’ actions. At the same time Trinity Hospital administration reported Dr. Boutros to the Medical Board because he had been terminated. Dr. Boutros spent the next few months looking for a new job. He perceived that there was much initial interest in him by potential employers, but when the potential employers received the unfavorable reference from Trinity Hospital he was not able to find a good position.

Dr. Boutros had difficulty finding an attorney. Acting as his own lawyer, he filed a lawsuit against Trinity Hospital, suing them for discrimination, false imprisonment, wrongful termination, malpractice and breach of contract. The North Dakota Medical Board reportedly admonished Dr. Gomez for his actions. The Medical Board also required Dr. Boutros to submit to a psychiatric evaluation at Rush Medical Center in Chicago, where it was concluded that he had Bipolar Disorder Not Otherwise Specified.

For the past few months Dr. Boutros has been working in Chillicothe, Ohio, under “extreme circumstances.” He has to pay all of his own expenses, and receives only 30% of his collections. He has very few patients.

Psychiatric History:

Dr. Boutros indicated that as a child and adolescent he was described as being “hyper” and talked fast, but that being hyperactive never impacted his functioning.

He was able to sit still in class and pay attention, and never received treatment for a mental illness during this time.

When Dr. Boutros moved to America in his twenties he had a hard time adjusting to the American culture and was lonely, but never received treatment for his symptoms. Dr. Boutros said that when he was divorced at age 32 he experienced transient symptoms of depression. He saw a psychiatrist on one occasion and received the antidepressant medication Wellbutrin for two weeks. He felt better in two weeks and stopped the medication. Although he was depressed, he had no difficulty with his appetite, sleep, levels of energy or other functioning.

In the late 1990's, when Dr. Boutros was frustrated with his practice in Kansas, he felt unhappy to the point of seeing a psychiatrist. He again received medication for two weeks, but then stopped it after he felt better.

Dr. Boutros told me that from 1991 to 1994 he saw Harold Both, MD, a psychiatric psychoanalyst. He saw Dr. Both every one or two weeks to deal with personality issues, such as his anxiety and his need for attention. He never received medications, and apparently was not diagnosed with a mental illness. Dr. Both is now deceased, and Dr. Boutros has been unable to locate Dr. Both or his records.

Dr. Boutros told me he never heard voices talking or saw visions. He never had bizarre beliefs. He never thought about suicide or made an attempt at suicide. Other than what is described above, he never received psychotropic medications or hospitalization. He told me that he never experienced a full depressive episode or a manic episode.

Summary of Current Symptoms and Treatment:

Dr. Boutros is not presently in any form of mental health treatment. He told me that he presently has no symptoms whatsoever of a mental illness.

Mental Status Examination on 3/24/05:

Dr. Boutros was present on time for the interview. He was dressed neatly in casual clothes with excellent hygiene. He was pleasant and cooperative. His level of physical activity was appropriate. He spoke in a normal volume and rate of speech. His mood was described as "discouraged" over his job problems, but otherwise good. His range of emotional expression was appropriate. Dr. Boutros' thoughts were well organized, and he did not express any unusual or bizarre thoughts. He was not hearing voices or seeing visions, and not thinking of harming himself or others. Dr. Boutros told me that he had no difficulty with his appetite, weight, sleep, levels of energy or self esteem.

Dr. Boutros knew his name, and the correct date and location. He recalled the past five presidents in order correctly. His concentration was good, based on spelling "world" backward and forward correctly, and by counting backward from 100 by

sevens six times correctly in eight attempts. His recent memory was good, based on recalling three objects at five minutes correctly.

Summary of Collateral Information:

In the letter dated 2/24/05 to Dr. Boutros from the State Medical Board of Ohio, Dr. Boutros was ordered to this psychiatric evaluation due to the following reasons:

1. On 1/21/05 Dr. Boutros reported that a psychiatric evaluation ordered by the North Dakota State Board of Medical Examiners indicated that Dr. Boutros had Bipolar Disorder, which Dr. Boutros disputed.
2. Dr. Boutros' employment with Trinity Health in Minot, North Dakota was terminated in August 2004. Trinity Health indicated that Dr. Boutros had an impairment that materially affected his ability to perform the duties of a physician. On 9/15/04 a petition for the involuntary commitment of Dr. Boutros was filed, asserting that Dr. Boutros was mentally ill and chemically dependent. Reasons for the commitment included impulsivity, rapid speech, racing thoughts, paranoia, grandiosity, vague threats, not sleeping, harassing a convenience store clerk and being the recipient of several no trespassing warnings. The petition was dismissed on the condition that Dr. Boutros receive a psychiatric evaluation, which occurred on 9/20/04 and indicated that Dr. Boutros was not dangerous and did not have an elevated mood or grandiose ideas at that time.
3. Multiple individuals reported that Dr. Boutros exhibited bizarre and erratic behavior, with rapid pressured speech, poor judgment, and a pattern of making statements to patients that made them uncomfortable.
4. In December 2004 Dr. Boutros was evaluated at Rush Behavioral Health, which resulted in the diagnosis of an atypical form of Bipolar Disorder.
5. Dr. Boutros indicated to the Board on 2/13/05 that he believed that he did not have Bipolar Disorder; that the petition for civil commitment was fraudulent; that the evaluation at Rush was flawed.

Documents from the North Dakota Board of Medical Examiners indicated the following:

1. Paula Wahl indicated that she worked with Dr. Boutros in his office from 8/2 to 8/13/04. On 8/2 Dr. Boutros showed Ms. Wahl a video on his laptop computer, which after five minutes became pornographic. Dr. Boutros arrived late at the clinic on many occasions or disappeared from the clinic. Dr. Boutros told inappropriate jokes to patients, including jokes about prostitutes.
2. On 8/16/04 Suzanne Watne wrote a detailed memo, indicating that Dr. Boutros had exhibited erratic behavior.
3. Robert Sanke, M.D. described Dr. Boutros' behavior in August 2004, which included "...rapid, intense and highly energetic speech with a flood of different ideas occurring almost simultaneously together... rapid disjointed speech, gross disrespect ... excitable ... thought patterns were unusual in content and crowded ... careless disregard for the time ... in an obvious rage ... rambling ... hostile ..."
4. Numerous other persons wrote letters indicating that Dr. Boutros had engaged in erratic behavior.

5. On 9/7/04 Terry Hoff, President of Trinity Health wrote to the North Dakota State Board of Medical Examiners, indicating that Dr. Boutros had been terminated for cause. Mr. Hoff also reported that the Minot Police Department had received information that Dr. Boutros had harassed individuals at a local Wal-Mart and a convenience store.
6. On 9/14/04 Dr. Gomez attempted to personally evaluate Dr. Boutros, but was only able to speak with him on the telephone several times. Dr. Gomez reported that Dr. Boutros exhibited an elevated mood and anger, and according to the recent history had been threatening.
7. On 9/15/04 a petition for civil commitment was filed, alleging that Dr. Boutros had acted impulsively and had exhibited rapid speech, racing thoughts, and paranoid/grandiose thinking. Dr. Boutros allegedly made a vague threat to Matthew Watne regarding his wife. Dr. Boutros also allegedly had not been sleeping, and had been harassing a convenience store clerk.
8. On 9/15/04 Christopher Carlson interviewed a clerk at the BP station, who indicated that beginning in July Dr. Boutros made several visits to the station, at times staying several hours and irritating customers. He appeared hyperactive, behaved erratically and made a number of unorthodox statements.
9. Dr. Boutros was hospitalized at Trinity Hospital from 9/14/04 to 9/17/04. During this hospitalization Dr. Boutros' toxicology screen was positive for marijuana, and he was diagnosed with Cannabis Abuse. Dr. Boutros was angry and uncooperative for most of his hospitalization. Shamim Anwar, M.D. reported in the Discharge Summary that Dr. Boutros psychiatric diagnosis was "Bipolar I Disorder NOS,⁴⁵ consider agitated depression. ? substance abuse mood disorder.? Marijuana abuse versus dependence. Consider acute stress reaction."
10. On 9/17/04 the District Court of North Dakota dismissed the Petition for Involuntary Commitment, at the request of Dr. Gomez.
11. On 9/20/04 Dr. Boutros was seen for a voluntary evaluation at Med Center One. Madeline Free, M.D. opined that Dr. Boutros was not dangerous to himself or others, and reported that Dr. Boutros did not have an elevated mood or grandiose ideas at that time. In a nine-page assessment Dr. Free opined that Dr. Boutros had the diagnosis of "Psychological Factors affecting physician condition."
12. On 11/9/04 attorneys for BP wrote to the North Dakota Board of Medical Examiners, indicating that the Letter of Trespass previously filed against Dr. Boutros was filed in error, due to a miscommunication between an employee and the BP attorneys. An apology was offered to Dr. Boutros.
13. A psychiatric evaluation of Dr. Boutros was conducted at Rush University Medical Center in December 2004. Stafford Henry, M.D. and James Devine, Ph.D. opined that Dr. Boutros had the diagnosis of "Bipolar Disorder not otherwise specified, rule out Bipolar type II." This was based on their personal observations of Dr. Boutros (who exhibited rapid speech, disorganized, tangential

⁴⁵Dr. Noffsinger subsequently corrected this statement, explaining that it was a typographical error and that Dr. Anwar had diagnosed Bipolar Disorder NOS. Dr. Noffsinger noted that there is no such diagnosis as "Bipolar I Disorder NOS" in the DSM-IV. (Tr. at 191-192)

and circumstantial thinking), the history provided by Dr. Boutros, and their review of the reports of at least ten individuals who had interacted with Dr. Boutros.

14. On 1/27/05 Dr. Boutros signed a Statement of Intent to Participate in the Physician Health Program.

15. Multiple documents to and from Dr. Boutros indicated that Dr. Boutros disputed that he was mentally ill, and that he believed that he had been the victim of discrimination and other civil wrongs.

Dr. Boutros provided a number of documents to the State Medical Board of Ohio (which included many of the documents already listed above) that included:

1. Dr. Boutros refuted many of the statements and opinions contained in his evaluation from Rush University Medical Center.
2. Multiple correspondences between Dr. Boutros and the North Dakota State Board of Medical Examiners.
3. Documentation from the North Dakota State Board of Medical Examiners that Dr. Gomez was issued a confidential letter of concern regarding his activities toward Dr. Boutros.
4. Several professional letters of reference for Dr. Boutros.
5. Deposition of Todd Grages (Vice President of Trinity Health) from *George Boutros, M.D. v. Trinity Hospital, et al.* Mr. Grages testified that he first became aware that Dr. Boutros may have been mentally ill in August 2004, based on reports from other physicians. Mr. Grages terminated Dr. Boutros due to unprofessional conduct, inappropriate behavior with patients and threatening to strike the office manager. Mr. Grages testified that sometime after August 13, 2004 he felt that Dr. Boutros had threatened Mr. Grages' children. Regarding Dr. Boutros' civil commitment, Mr. Grages contacted Dr. Gomez because he was the psychiatrist on call and he desired Dr. Gomez' opinion if the threat toward the Watnes was valid.
6. Deposition of Suzanne Watne from *George Boutros, M.D. v. Trinity Hospital, et al.* Ms. Watne testified that she first believed that Dr. Boutros was mentally ill in July 2004 due to behavioral issues. She observed Dr. Boutros to be increasingly disrespectful, and he was late getting to the office several times in early August. Ms. Watne testified that, at one point, Dr. Boutros threatened to slap her in a very animated fashion, wanted to show her a big business venture that he was into, spoke about not sleeping, and took her four-wheeling when he asked her to go to lunch (and stopped at a BP station and came out with water, saying this was lunch). Exhibit 1 from Ms. Watne's deposition was a letter dated 9/9/04 from David Hogue specifying the reasons for Dr. Boutros termination, which included:
 - a. Dr. Boutros verbally abused and threatened Sue Watne;
 - b. Dr. Boutros was habitually tardy for patient appointments. He offered as explanations that his arm was broken, car problems, being locked out of his home, and friends who kept him up all night. Dr. Boutros later recanted his statements about a broken arm and car problems;

- c. Dr. Boutros made racist comments toward a Native American patient, and told the patient he heard “real Indians” liked to consume alcohol and fight;
- d. Dr. Boutros told a patient that he hired a prostitute in Minneapolis and engaged in sexual relations with the prostitute;
- e. Dr. Boutros played an instructional video on his laptop computer for a female office staff member. A pornographic video abruptly began to play;
- f. Dr. Boutros told a patient he purchased a ring from a gang member in Chicago, and that the ring had been used to gouge out the eye of a rival gang member;
- g. Dr. Boutros used loud profane language that was overheard by patients and staff on more than one occasion;
- h. Dr. Boutros refused to finish treating a patient during a scheduled appointment.

7. Deposition of Matthew Watne from *George Boutros, M.D. v. Trinity Hospital, et al.* Mr. Watne testified that on 9/14/04 Dr. Boutros told him that there was a problem with Suzanne Watne (lies), and that it was a life and death situation. Dr. Boutros appeared animated and excited.

8. Deposition of Paula Wahl, L.P.N. from *George Boutros, M.D. v. Trinity Hospital, et al.* Ms. Wahl testified that she observed Dr. Boutros to be not focused on his work and his attitude was extremely high. She believed that Dr. Boutros needed help to control his anger, emotions and outbursts. Ms. Wahl corroborated that Dr. Boutros had shown a pornographic video clip and other reports of unusual behavior. She indicated that “At one point, he was extremely happy, extremely high, and at another point, he was extremely low and very depressed like...”

9. Deposition of Terry Hoff from *George Boutros, M.D. v. Trinity Hospital, et al.*

Edward Kelly, MD, JD, authored a report dated 3/30/05 in which he opined that Dr. Boutros had the diagnoses of Adjustment Disorder with Depressed Mood, History of Major Depressive Disorder, History of Cannabis Abuse, and Histrionic Personality Traits.⁴⁶

Diagnosis:

Bipolar I Disorder, Most Recent Episode Manic, in Full Remission 296.46

The diagnosis of Bipolar I Disorder is based on the manic episode Dr. Boutros experienced in July, August and September 2004, coupled with his past history of mild depressive symptoms. This based on the following:

1. Dr. Boutros told me that he experienced a distinct elevation in his mood in July and early August 2004, which was a change from his normal mood. Dr. Boutros told me that when he returned to Minot in July 2004 he was excited and exuberant about returning to Minot, to the point of “everybody was my friend, I was joking with everyone.” Dr. Boutros told me that his mood was “ebullient” during this

⁴⁶ Dr. Kelly’s report is quoted in part below.

time, and he acknowledged that others were talking about him due to his change in demeanor. This is evidence that Dr. Boutros had an elevated mood, for at least one week (per DSM-IV diagnostic criteria) and likely more, during July and August 2004.

2. Dr. Boutros' behavior in July and August 2004 indicates that he exhibited grandiose thinking, consistent with a manic episode. Taken collectively, his interests and actions in July and August 2004 indicated grandiose thinking. For example:
 - a. Dr. Boutros began working on a proposal to purchase and develop 80 acres of land for housing and an internal park system, despite having no experience or prior interest in this type of business.
 - b. Dr. Boutros told me that he began working on a prototype surgical instrument in July and August 2004, despite having no experience or prior interest in this area.⁴⁷
3. Dr. Boutros exhibited paranoid thinking, also consistent with a manic episode. Dr. Boutros said that after he was terminated from Trinity Hospital he personally requested that Dr. Gomez evaluate him. However, prior to meeting with Dr. Gomez, Dr. Boutros became suspicious about Dr. Gomez and decided to tape record their conversation.
4. On 9/15/04 psychiatrist Dr. Gomez filed a petition to civilly commit Dr. Boutros. Although Dr. Gomez did not speak with Dr. Boutros face-to-face, Dr. Gomez spoke with Dr. Boutros over the telephone and documented on the civil commitment paperwork that Dr. Boutros exhibited symptoms consistent with a manic episode, including impulsivity, rapid speech, racing thoughts, paranoia, and grandiosity. Also, according to documentation from the North Dakota Board of Medical Examiners, Dr. Gomez reported that Dr. Boutros exhibited an elevated mood, also consistent with a manic episode.⁴⁸
5. Multiple individuals reported that Dr. Boutros exhibited behaviors consistent with a manic episode in July, August and September 2004. Specifically:
 - a. Paula Wahl indicated that:

⁴⁷ Before Dr. Noffsinger testified at the Board hearing, Dr. Boutros provided information that he had in fact developed the instrument and obtained a patent. During his testimony, Dr. Noffsinger accepted this information and gave further reconsideration to the diagnosis. He concluded that the information regarding the patent did not change his opinion, and he explained why. (Tr. at 729-730)

⁴⁸ According to his report, Dr. Noffsinger was aware that the North Dakota Board had issued a letter of concern to Dr. Gomez regarding the Boutros matter and that the civil commitment has been dismissed at Dr. Gomez' request. However, at the hearing, Dr. Noffsinger was provided additional information: the decision of the labor arbitrator, in which it was determined that the termination of employment by Trinity was not based on good cause and that the involuntary commitment was wrongful. Dr. Noffsinger addressed this additional information in his testimony at the hearing in 2007. See, e.g., Tr. at 46-48, 163-166, 226, 234-236, 243, 256)

- On 8/2 Dr. Boutros showed Ms. Wahl a video on his laptop computer, which after five minutes became pornographic. This is evidence of hypersexuality, impulsivity and poor judgment.
 - Dr. Boutros arrived late at the clinic on many occasions or disappeared from the clinic.
 - Dr. Boutros told inappropriate jokes to patients, including jokes about prostitutes.
 - Dr. Boutros was not focused on his work and his attitude was extremely high. She believed that Dr. Boutros needed help to control his anger, emotions and outbursts.
 - At one point, Dr. Boutros "...was extremely happy, extremely high, and at another point, he was extremely low and very depressed..."
- b. Suzanne Watne observed that, beginning in July 2004 Dr. Boutros was increasingly disrespectful, and he was late getting to the office several times in early August. Ms. Watne testified that, at one point, Dr. Boutros threatened to slap her in a very animated fashion, wanted to show her a big business venture that he was into, spoke about not sleeping, and too, her four-wheeling when he asked her to go to lunch.
- c. Robert Sanke, M.D. described Dr. Boutros' behavior in August 2004, which included "...rapid, intense and highly energetic speech with a flood of different ideas occurring almost simultaneously together...rapid disjointed speech, gross disrespect...excitable...thought patterns were unusual in content and crowded...careless disregard for the time...in an obvious rage...rambling...hostile..."
- d. Numerous other individuals wrote to the North Dakota Board of Medical Examiners, indicating that Dr. Boutros had engaged in erratic behavior.
- e. On 9/15/04 Christopher Carlson interviewed a clerk at the BP station, who indicated that beginning in July Dr. Boutros made several visits to the station, at times staying several hours and irritating customers. Dr. Boutros appeared hyperactive, behaved erratically and made a number of unorthodox statements. Although BP officials later rescinded the Letter of Trespass, this does not reliably indicate that Dr. Boutros did not exhibit these symptoms – there are other possible and even likely reasons for rescinding the Letter of Trespass unrelated to any symptoms Dr. Boutros displayed.
- f. Dr. Boutros was hospitalized at Trinity Hospital from 9/14/04 to 9/17/04. Shamim Anwar, M.D. reported in the Discharge Summary that Dr. Boutros' psychiatric diagnosis was "Bipolar I Disorder NOS" and other possible mental disorders with a derangement of mood.⁴⁹
- g. A psychiatric evaluation of Dr. Boutros was conducted at Rush University Medical Center in December 2004. Stafford Henry, M.D. and James Devine, Ph.D. opined that Dr. Boutros had the diagnosis of "Bipolar Disorder not otherwise specified, rule out Bipolar type II." This was based on their personal observations of Dr. Boutros, which included rapid speech, disorganized, tangential and circumstantial thinking.

⁴⁹Dr. Noffsinger subsequently corrected this statement, explaining that Dr. Anwar had diagnosed Bipolar Disorder NOS.

- h. David Hogue wrote a letter dated 9/9/04 specifying the reasons for Dr. Boutros' termination, which included a number of behaviors consistent with manic episode:
 - Dr. Boutros verbally abused and threatened Sue Watne;
 - Dr. Boutros was habitually tardy for patient appointments. He offered as explanations that his arm was broken, car problems, being locked out of his home, and friends who kept him up all night. Dr. Boutros later recanted his statements about a broken arm and car problems;
 - Dr. Boutros made racist comments toward a Native American patient, and told the patient he heard "real Indians" liked to consume alcohol and fight;
 - Dr. Boutros told a patient that he hired a prostitute in Minneapolis and engaged in sexual relations with the prostitute;
 - Dr. Boutros played an instructional video on his laptop computer for a female office staff member. A pornographic video abruptly began to play;
 - Dr. Boutros told a patient he purchased a ring from a gang member in Chicago, and that the ring had been used to gouge out the eye of a rival gang member;
 - Dr. Boutros used loud profane language that was overheard by patients and staff on more than one occasion;
 - Dr. Boutros refused to finish treating a patient during a scheduled appointment.
 - i. Mr. Watne testified that on 9/14/04 Dr. Boutros told him that there was a problem with Suzanne Watne (lies), and that it was a life and death situation. Dr. Boutros appeared animated and excited.
6. Dr. Boutros acknowledged a past history of two mild depressive episodes, which further supports the diagnosis of Bipolar I Disorder:
- a. The first mild depressive episode occurred at age 32, which consisted of a depressed mood after his divorce. Dr. Boutros consulted with a psychiatrist during this time and received the antidepressant medication Wellbutrin for two weeks.
 - b. Toward the end of the 1990s Dr. Boutros became depressed over his practice, consulted with a psychiatrist and briefly received antidepressant medication.

Dr. Boutros' Bipolar I Disorder is now classified as Most Recent Manic, because his most recent mood episode was a manic episode that occurred in July, August and September 2004. His Bipolar I Disorder is now classified as in Full Remission, because for the past two months no signs or symptoms of his illness have been present.

I considered the issues that Dr. Kelly raised in his report, such as the impact of cultural issues, veracity and potential bias of some of the collateral informants, and his critique of the psychiatric evaluation completed at Rush University Medical Center, in forming my opinions. Despite these issues, I concluded with reasonable medical certainty that Dr. Boutros does have Bipolar I Disorder. While any single account of Dr. Boutros' erratic behavior may be explained away by cultural issues, erroneous

reporting by collateral informants, bias, etc., taken collectively, the many detailed accounts of Dr. Boutros' erratic behaviors (as well as the consistency among the reports) leads me to conclude that Dr. Boutros does have Bipolar I Disorder.

Opinion:

As described above, it is my opinion with reasonable medical certainty that Dr. Boutros suffers from the mental disorder of Bipolar I Disorder, Most Recent Episode Manic, in Full Remission.

It is my opinion with reasonable medical certainty that Dr. Boutros is presently capable of practicing medicine according to acceptable and prevailing standards of care, so long as appropriate treatment, monitoring and supervision are put into place as recommended below. This is based on the fact that his Bipolar I Disorder is now in Full Remission, and he does not exhibit any signs or symptoms of the disorder that would impair his ability to practice medicine.

It is my opinion with reasonable medical certainty that, due to his Bipolar I Disorder, Dr. Boutros was unable to practice medicine according to acceptable and prevailing standards of care during the manic episode that he experienced in July, August and September 2004. This is based on the following:

1. Dr. Boutros' elevated, ebullient mood impaired his professional relationships with others, including his office staff and patients. Dr. Boutros told me that he was joking with everyone during this time, which was consistent with the reports by others that Dr. Boutros behaved inappropriately with patients and staff.
2. Dr. Boutros' grandiosity, paranoia, impulsivity and poor judgment also substantially impaired his professional relationships with patients and staff.
3. Dr. Boutros' rapid speech and racing thoughts impaired his ability to interact appropriately with staff and patients. His disorganized thinking would make it unlikely that he could focus appropriately on patient care issues.
4. When manic, Dr. Boutros arrived late at the clinic on many occasions or disappeared from the clinic. He fabricated stories about his tardiness that he later recanted.
5. Dr. Boutros periodically had outbursts of hostile behavior coupled with an angry mood, which impaired his ability to interact appropriately with patients and staff.

It is my opinion with reasonable medical certainty that Dr. Boutros' Bipolar I Disorder is treatable. However, because Dr. Boutros is presently not receiving any form of treatment for his Bipolar I Disorder, it is my opinion with reasonable medical certainty that he remains at a substantial risk for another mood episode (manic or depressive) which would again make him unable to practice medicine according to acceptable and prevailing standards of care. Due to this, I recommend that the

following restrictions/conditions should be placed upon his practice in order that Dr. Boutros will be able to practice medicine according to acceptable and prevailing standards of care:

1. Dr. Boutros should receive outpatient psychiatric treatment by a board-approved psychiatrist. The treatment should consist of, at a minimum, one-half hour of medication management every two weeks. This will insure that Dr. Boutros is under the close observation of a psychiatrist, who will be able to detect and treat any symptoms should Dr. Boutros' mental illness worsen. This will also facilitate medication treatment to decrease the risk that Dr. Boutros will experience another manic episode.
2. Dr. Boutros should receive a mood-stabilizing medication (such as lithium, Depakote, Tegretol, Topamax, Neurontin, etc.) in order to prevent further mood episodes.
3. Dr. Boutros should comply with all other medications recommended and prescribed by his treating psychiatrist.
4. Dr. Boutros should periodically have his blood level of mood stabilizing medication checked (if he is prescribed lithium, Depakote or Tegretol), to insure continued compliance with his medications. This should be organized by his treating psychiatrist, who should provide documentation of these blood levels to the State Medical Board of Ohio.
5. Dr. Boutros should authorize the treating psychiatrist to submit regular written updates to the State Medical Board of Ohio.
6. Should Dr. Boutros experience another manic episode, he should agree to temporarily suspend his practice of medicine until the manic episode has fully resolved.
7. Dr. Boutros should agree to not use any illicit substances, and should agree to random urine toxicology screens as prescribed by his treating psychiatrist.

(St. Ex. 5 at 17-18)

Evaluation by Edward L. Kelly, M.D., J.D.

199. Dr. Boutros sought an evaluation by a forensic psychiatrist, Edward Leslie Kelly, J.D., M.D., who examined him in February 2005. (Resp. Ex. II at 4) In March 2005, Dr. Kelly issued his report of his examination of Dr. Boutros. (Resp. Ex. 11 at 1-28) Dr. Kelly also provided a critique of the evaluation provided by the Rush Behavioral Health Center, concluding that it was seriously flawed. (Resp. Ex. II at 29).

200. In his report, Dr. Kelly provided a lengthy list of the items he reviewed, including documents, articles, and his interviews.⁵⁰ Dr. Kelly stated in his written report that he had interviewed many

⁵⁰ The report includes the following list:

DATABASE:

1. Rush University Medical Center Multidisciplinary Assessment Program Summary report, dated January 02, 2006.
2. Psychological testing of Dr. George Boutros, including MMPI-2, MCMI-III and the Personality Self Portrait, which were administered and interpreted with the assistance of Kevin Schumacher, Ph.D.
3. Multiple interviews (in person and via phone) with Dr. George Boutros
4. Multiple telephone interviews with Haifa Boutros (Dr. Boutros' wife).
5. Williams Textbook of Endocrinology, 10th Edition.
6. "Bipolar Disorder," The New England Journal of Medicine (351:5 pp 476-486, July 29, 2004).
7. Letter by Rolf Sletten, Executive Secretary of the North Dakota Board of Medical Examiners indicating that a "confidential letter of concern" had been issued to Dr. Gomez, the Trinity psychiatrist who filed the petition of involuntary commitment on Dr. Boutros.
8. Letter dated 09-09-04 from attorney David Hogue explaining Dr. Boutros' termination of employment at Trinity and demanding payment of the fellowship loan.
9. Letter dated 09-07-04 from Terry Hoff, President of Trinity, to the North Dakota State Board of Medical Examiners.
10. Narrative report regarding police transport of Dr. Boutros to Trinity Hospital for involuntary commitment dated 11-26-04 by Sgt. Whitesell.
11. Case Narrative by Officer Maroney.
12. Case Narrative by Lt. Kukowski.
13. Transcript of audio-taped interview of Matthew Watne by Lt. Kukowski on 11-16-04.
14. Handwritten Petition for Involuntary Commitment of Dr. Boutros signed by Matthew Gomez, DO dated 9-14-04.
15. Typed Petition for Involuntary Commitment of Dr. Boutros signed by Matthew Gomez, DO dated 09-15-04.
16. Order authorizing transportation dated 09-15-04.
17. Order for Examination dated 09-15-04.
18. Treatment Order dated 09-15-04.
19. Memo To Whom It May Concern by Matthew Gomez dated 09-15-04.
20. Dismissal and Discharge Order (regarding involuntary commitment) dated 09-17-04.
21. Letter addressed To Whom It May Concern dated 09-20-04 by Madeline Free, MD.
22. Letter addressed to Rolf Sletten by Madeline Free, MD dated 11-04-04.
23. Medical records from Trinity emergency room 09-14-04 and Trinity Mental Health Services 09-15 to 09-17-04.
24. Official transcripts of depositions of Terry Hoff, Todd Grages, Paula Wahl, Matthew Watne, and Suzanne Watne.
25. Statement of Intent to Participate by Dr. Boutros in the NDSMB Impaired Physicians Program.
26. Affidavit of Jose Vega (patient).
27. Affidavit of SP (patient). [Name redacted by Hearing Examiner]
28. Letter from L & B Zavalney Inc. d/b/a BP Amoco dated 11-09-04.
29. Letter from Dr. Boutros to Terry Hoff dated 09-01-04.
30. Telephone interviews with⁵⁰
 - a. Rolf Sletten, Executive Director of the North Dakota State Board of Medical Examiners
 - b. Lynette MacDonald, secretary to Rolf Sletten
 - c. Todd Grages, Trinity Health (refused)
 - d. Debra Hoffarth, attorney with Pringle Law Firm representing Trinity
 - e. Bruce Schoenwald and Randy Stefanson, attorneys for Dr. Boutros

individuals not associated with Trinity Medical Center” by telephone, and that “a summary of each of those interviews is contained in Addendum C.” However, at the hearing, Dr. Kelly testified that there was no Addendum C attached to the report offered as evidence. (Tr. at 616)

201. Dr. Kelly set forth an evaluation of Dr. Boutros including the following:

SOCIAL AND OCCUPATIONAL HISTORY: George Boutros was born in Tripoli, Lebanon to parents who were teachers, his father a high school math and physics teacher and his mother a kindergarten teacher. He is the fourth of six children, and he (and his sister [name omitted] report considerable sibling rivalry. This sibling rivalry was most intense between George and two older sisters who were all placed in the same grade at one point (with George outshining his sisters). He reported that the parental relationship was stressed due to his mother’s hysterical personality, need for a lot of attention, and propensity to a convulsive conversion disorder. He reported that his mother was childish and not very “nourishing,” and that she engaged in emotional abuse of the children. He reported that he had a good relationship with his father, was favored by his father, but that he has had continuing resentment toward both parents due to pressure to become a medical doctor. His family was raised in multiple locations in Lebanon.

Dr. Boutros did very well academically, and reported that in high school his IQ was tested at 180.

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PAST MENTAL HEALTH HISTORY: Dr. Haifa Boutros, who has been married to and resided with Dr. George Boutros for the past 14 years, was questioned at length about her husband’s past mental health history. Whether George ever met the diagnostic criteria for mania and hypomania was carefully examined. Haifa explained that because he felt that he was about to embark on a new challenging

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- f. Sami Karaz, MD, a psychiatrist who is a Lebanese immigrant
 - g. [Name omitted] (Dr. Boutros’ sister and mother of the anorexic niece)
 - h. Samir Turk, MD
 - i. George Schwartz of Mergers & Acquisitions in Toronto
 - j. Dr. Roderick Hewlett, Dean, MSU College of Business
 - k. Fil Altamore, MD
 - l. Lt. Kukowski
 - m. Matthew Watne
 - n. Gary Kramlich, realtor in office of Matthew Watne
 - o. Moody Farhart, attorney friend of Dr. Boutros in Minot
 - p. Emerson Lynn, Associate Editor of the Iola (Kansas) Register
 - q. Micky Lynn, wife of Emerson Lynn
 - r. Bruce Symes, wire Editor of the Iola Register
 - s. Fred Works, attorney friend of Dr. Boutros in Kansas
 - t. Judy Erickson, Trinity Eye Care Nurse (refused).

⁵¹ Portions of the report are omitted regarding educational background, marriages, employment history, medical history, and laboratory tests reported by Rush and Trinity. (Resp. Ex. II) In addition, subsequent discussions of Dr. Boutros’ episodes of depression are also omitted, as these matters are presented elsewhere in this Summary.

medical practice in retina George was in a better mood when he returned to Minot from Toronto. However, this was only marginally different from George's usual personality and presentation. He did exhibit rapid speech and was more talkative, but only when excited and not continuously. He did have some increase in self-esteem but no grandiosity or irritability. His sleep pattern was at times altered to accommodate other demands, but he continued to obtain adequate sleep, at least five hours daily. There was no increase in goal-directed activity, and Haifa expressed agreement with George on his involvement with his family regarding the anorexic niece and his work on modifying surgical equipment for a clinical trial. Haifa also expressed her opinion that the land development proposal was reasonable and "not inappropriate," but that in her opinion it should have waited until later. Haifa indicated that George had not exhibited flight of ideas, distractibility or increased involvement in pleasurable or risky behaviors. Haifa indicated that George had never in the past exhibited multiple signs or symptoms of mania or hypomania. Interviews with Dr. Boutros' sister and with several close friends from Kansas, where he lived and worked for eleven years, and several individuals not associated with Trinity who knew Dr. Boutros in Minot, also indicate that Dr. Boutros never exhibited symptoms or signs of mania or hypomania other than frequent rapid speech when excited, some novelty seeking (not specifically associated with bipolar spectrum disorders), and the personality and cultural traits discussed elsewhere."⁵²

Mrs. Boutros said that when George was excited he always spoke rapidly. She described George as enthusiastic, very open, and very emotional. She described him as intelligent, not superficial but capable of being naïve. Haifa also said that George is a very caring, egalitarian and generous person who shares himself and is not afraid to get involved in issues that he feels strongly about. She reported that George has an unusual sense of humor and a tendency to lead people on in a way that could be "annoying."

* * *

Haifa reported that Dr. Boutros had never exhibited psychotic symptoms or paranoia, although he did eventually become suspicious of Trinity and their personnel after his employment with Trinity was terminated and after he was involuntarily committed.

* * *

Dr. Boutros also reports having engaged in psychoanalysis from 1991–1994 with Harold Voth, MD, a retired psychoanalyst from the Menninger Clinic who

⁵² Dr. Haifa Boutros gave similar statements and descriptions when she testified as a witness on behalf of her husband at the hearing. (Tr. at 265-305, 379-394) [To avoid confusion, the Hearing Examiner will refer to Haifa Boutros as "Mrs. Boutros" rather than "Dr. Boutros."] The Hearing Examiner found Mrs. Boutros to be a pleasant, intelligent, cooperative witness. Nevertheless, she was plainly very protective of her husband and concerned for him and their future. Based on careful observation at hearing, together with a review of all the evidence, the Hearing Examiner concluded that Mrs. Boutros was not a credible observer or reporter due to her strong (and very natural) bias and protectiveness. Accordingly, the Hearing Examiner rejected much of her testimony as lacking reliability.

practiced in Topeka, KS (and is now deceased). Dr. Boutros reported that he initiated psychoanalysis because of anxiety, but that the main issues that came out of analysis were Dr. Boutros' need for attention and 'immaturity.' He reports that Dr. Voth terminated the analysis because it was his opinion that his analysis was done. Dr. Boutros reported that Dr. Voth had told him that he did not believe that Dr. Boutros was mentally ill. Dr. Boutros reported that prior attempts to obtain records from Dr. Voth have been unsuccessful.

In screening possible personality disorders, Dr. Boutros did endorse meeting DSM-IV diagnostic criteria #'s 2 and 8, and possibly #'s 3 and 6 for histrionic personality, but no significant symptoms or traits of other personality disorders.

PAST SUBSTANCE USE: First used alcohol at age 18 or 19. Does not find drinking alcohol pleasurable and has only done so due to peer pressure at social occasions. Drinks a glass of wine once or twice a month. It has been a long time since he was last intoxicated. Experimented with marijuana at age 18 or 19, and has smoked small amounts rarely in social settings when out of the country (in Lebanon and Toronto). Experimented a few times with pills (he thinks they were "downers") when in college in Lebanon.

FAMILY MENTAL HEALTH HISTORY: Mother had a hysterical personality with a recurrent convulsive conversion disorder. Two sisters with a history of depression, and a niece who recently recovered from anorexia nervosa. No family history of bipolar disorder, schizophrenia or other thought disorder.

SUMMARY OF SIGNIFICANT & RELEVANT EVENTS INVOLVING DR. BOUTROS SINCE MOVING TO MINOT, NORTH DAKOTA:⁵³

* * *

Dr. Boutros also became involved in a possible land development proposal on the outskirts of Minot where home lots would be positioned on the periphery of rolling hills that would be utilized for cross-country skiing and four-wheeling, with a park-like section for children. He also considered the possibility of an Indian casino being located on this property. Dr. Boutros took this proposal to Dr. Roderic Hewlett, Dean of the Business College, at Minot State University. This examiner interviewed Dr. Hewlett, who verified that he had examined the development proposal put forth by Dr. Boutros and found it "very interesting," and "entrepreneurial," and that anything entrepreneurial was risky. He went on to say that there was not enough data to make a definite opinion, but that the proposal did warrant further evaluation to determine if it was feasible. Dr. Hewlett also indicated that he had received a call from a land developer who was interested in the proposal and wanted the Business College to put together a business plan for the development. Dr. Boutros also approached Mergers and

⁵³Dr. Kelly's report sets forth an extensive discussion of Dr. Boutros' first year at Trinity, his fellowship, and his return to Trinity, which includes many facts found elsewhere in the Summary of the Evidence. (Resp. Ex. II) Only portions of Dr. Kelly's discussion are quoted here.

Acquisitions, an investment marketing firm in Toronto, and made an initial investment himself with this company. This examiner interviewed George Schwartz from Mergers & Acquisitions, and he confirmed that his firm had consulted with Dr. Boutros and the proposal was “worth pursuing.” During the later part of July and into August Dr. Boutros would take his friends and other acquaintances out to view this property and his proposal. Later, after an attorney friend had made a compelling case that the land development proposal was not feasible in Minot but might be in a larger community, Dr. Boutros discontinued his efforts at developing this project.

Dr. Boutros went to the realty office and approached Matt Watne with a handshake and a joking reference to being “your worst enemy” and suggested that he could make up for the lost home sale by having Mr. Watne represent him in a possible purchase of the land for the development proposal. When Dr. Boutros was showing the property to Matt Watne he spoke on his cell phone with his attorney Moody Farhart about helping to resolve a domestic dispute between the house painter who had partially finished painting the Boutros’ home but was now in jail. Dr. Boutros explained to this examiner that the painter’s son had come to him and asked him to help, and that he had an interest in making sure the painting was completed. Attorney Farhart told this examiner that he had taken the case, eventually as pro bono, and that Dr. Boutros had not had any further involvement. Matt Watne, in his interview with Lt. Kukowski of the Minot Police Department, stated that from the portion of the conversation he overheard he had surmised that this might involve a domestic dispute between Dr. Boutros and his wife, and that he had informed his wife, Suzanne Watne, of Dr. Boutros consulting with an attorney about a domestic dispute.

Gary Kramlich, a real estate agent in the real estate firm owned by Matt Watne’s father, informed this examiner in an interview that he had conversations with Matt where Matt had implied that Dr. Boutros was from the Middle East and was dangerous. Gary Kramlich also stated that he thought Suzanne Watne had initially had an interest in Dr. Boutros that seemed to go beyond a professional interest, but that later she seemed to completely reverse this and to become antagonistic toward Dr. Boutros.

In July, 2004 Dr. Boutros learned that a 19-year-old niece who resided in Los Angeles with his sister had become severely anorexic. He also learned that the extended family, who still resided in Lebanon, were not aware of this. He consulted Dr. Maram Hakim, a physician friend who is also a psychologist, who advised him that he needed to get the extended family involved. On several days over a two or three week period, Dr. Boutros attempted to make telephone contact with the extended family in Lebanon, and this also required making calls in the early morning hours. The extended family did become involved, expressing their concern about obtaining immediate drastic assistance and expressing their love and support to the niece and her mother. In an interview with Dr. Boutros’ sister [name omitted], she stated that at the time in July 2004 the 5’2” niece weighed only 76

pounds, and that although she and the niece had opposed family involvement that it was actually what saved her, and grudgingly admitted that it had been the right thing for Dr. Boutros to do. The niece did commence and cooperate with treatment and now weighs 115 pounds. This examiner consulted with a national expert on eating disorders, who stated that family involvement is, “the number one predictor of recovery in anorexia.”

During July when he was making early morning phone calls to Lebanon, Dr. Boutros would also sleep during the day in addition to a few hours at night. Dr. Boutros’ altered sleep schedule was confirmed by both Dr. Boutros and his wife, including that he obtained at least five hours of sleep a day. During this time, when he was up in the early morning, Dr. Boutros would go to the convenience store across the street from the cul-de-sac where his home was, and he would purchase cigarettes and have a smoke there. He struck up a friendship with young male Native American who was the night clerk of this convenience store. At some point the clerk became upset at one of the questions or comments made by Dr. Boutros and had a no-trespassing notice issued by the local police department against Dr. Boutros. Subsequently the owner of the convenience store had this order dismissed, wrote a letter of apology to Dr. Boutros, and fired the clerk.

Both Dr. Boutros and his wife report that he had been unhappy with the employment situation at Trinity during his first year there. However, Dr. Boutros felt challenged and optimistic during and after his fellowship training, and he regained his usual energetic and enthusiastic personality. Dr. Boutros presented himself in a much different manner in the summer and fall of 2004, as discussed under “culture & personality” below.

* * *

RETROSPECTIVE MENTAL STATUS JULY – SEPTEMBER 2004: There is not one sentence in the medical record from 2004 that specifically mentions or identifies a report on Dr. Boutros’ mental status. In fact, Dr. Anwar is the only mental health clinician who even tried to undertake a face-to-face evaluation. No written mental status examination report from the emergency room physician was found in the record, although there were references of alleged verbal descriptions.

[Discussion of nurses’ notes omitted.] Reports from non-mental health individuals, including physicians, at times surmised based on their own observations, *but also fortified by similar reports from other non-mental health individuals*, that Dr. Boutros was “manic.” [Emphasis in original] There seemed to be some lay “inter-rater reliability,” but this does not prove “validity.” However, these reports seem to be based primarily on Dr. Boutros’ rapid speech at specific times when he was excited; and to some extent by assumptions that if he was up at night making phone calls or working that he was not sleeping much; assumptions that the projects he was involved in (surgical instrument, land

development proposal, involvement rallying his family to become involved with an anorexic niece) were inappropriate; misperceptions about what was intended (perhaps awkwardly and obtusely) by Dr. Boutros to have been humor: near-hysterical and exaggerated responses to Dr. Boutros' colorful language, verbal hyperbole, ethnic origin, and exuberance; differing standards on what is appropriate for a physician (social strata violations, cultural differences, opinions on what is appropriate conversational topics between physician and patient). Moreover, most of the observational reports were only finally formed and recorded *post hoc*, after a group consensus by non-mental health personnel that Dr. Boutros was manic and dangerous.

Any conclusions about Dr. Boutros' mental state during July–September must be considered unreliable since there are minimal observations by mental health personnel. The reports that do exist by nursing and medical personnel, as well as Drs. Anwar and Free's brief reports, strongly suggest that Dr. Boutros did not present with a consistent mood and affect, consistent rapid speech, consistent agitation, or with any thought disorder. The most likely possibility is that Dr. Boutros was presenting in July–September much like he did later in December and January.

MENTAL STATUS DECEMBER 2004 – JANUARY 2005: This examiner spoke via telephone with Dr. Boutros on three or four occasions during this period of time, during which Dr. Boutros was attempting to ascertain whether he should retain this examiner. * * * Dr. Boutros' speech demonstrated intermittent (but predominantly) rapid speech with a definite Arabic accent during these telephone conversations. He was able to slow down his speech when requested to do so. His thought was very goal directed and logical, but he did want to focus on what he saw as relevant and significant facts and issues. There was a tendency to over-inclusiveness, but not to tangential thought. Dr. Boutros was redirectable and would speak to questions and issues raised by this examiner. His affect was generally excited and consistent with his insistence that a gross miscarriage of justice had been carried out against him, but it was not labile, grandiose, or irritable. Thought content was appropriate with Dr. Boutros' primary concerns about his allegations of wrongful termination, an erroneous mental illness diagnosis, involuntary commitment, a pending medical licensing investigation, and potential jeopardy to his professional career and finances. Dr. Boutros' thought content did not evidence any paranoid ideation, delusions, or abnormal perceptions. Also during this time Dr. Boutros sent three emails that were concise, logical and appropriate.

This examiner's mental status observations would seem to be consistent (although with a somewhat different interpretation) with the mental status examination in late December, 2004, that was reported in the Rush report. The Rush report did not diagnose Dr. Boutros as either manic or hypomanic in late December, 2004, notwithstanding his excited affect and rapid speech at that time.

CURRENT MENTAL STATUS (FEBRUARY 2005): Dr. Boutros was interviewed formally on 02-21-05, and has been seen twice since then as well as phone interviews several times. Dr. Boutros' mental state has been consistent during all of these encounters. He presented as a late middle-aged Middle Eastern male wearing a suit and tie with good hygiene and grooming. He wore eyeglasses. He was alert and attentive and fully oriented. No motor abnormalities were noted, including no hyperactivity or motor retardation. Speech was of normal volume, rate and rhythm (although at times, particularly on the phone there was some rapidity of speech). Mood was said to be fairly good although distressed over his current multiple problems resulting from his termination, commitment, and the consequences thereof. He denied suicidal ideas or homicidal ideas. He reported that he had only once or twice in the remote past fleetingly contemplated suicide and never had made a plan. Affect showed considerable range but was not labile. Dr. Boutros at times would become excitable and animated, particularly regarding alleged injustices. At times he demonstrated a somewhat blunted affect (particularly when discussing the potential implications of his current problems). Dr. Boutros exhibited superior intelligence, although no formal intelligence testing was undertaken. Fund of knowledge was above average. Memory was intact in all spheres. Thought process was logical and goal oriented, but at times demonstrated overinclusiveness but no tangential thought or looseness of associations. Thought content was appropriate, with no paranoid or delusionary content. Dr. Boutros denied ever having experienced abnormal perceptions such as hallucinations or ideas of reference, and there was never any objective indication that he was experiencing such. Insight and judgment were intact. Dr. Boutros demonstrated no boundary violations, although he at times demonstrated making social assumptions that might be somewhat offending to some people. An example was Dr. Boutros' placing his roll-along suitcase utilized as a file for his documents on this examiner's leather couch without first inquiring whether that would be acceptable.

PSYCHOLOGICAL TESTING: [Dr. Kelly arranged for a licensed psychologist to administer the Minnesota Multiphasic Personality Inventory-2, the Millon Clinical Multiaxial Inventory-III, and the Personality Self-Portrait. According to Dr. Kelly, the relative elevation of the hysteria scale on the MMPI "may be more reflective of chronic personality traits," and the relative elevation on the paranoia scale may reflect Dr. Boutros' allegations, which may be accurate, that he was falsely accused, involuntarily committed, wrongfully terminated, and erroneously diagnosed. Dr. Kelly concluded that the test results suggest a defensive personality with histrionic traits, and were not consistent with a diagnosis of Bipolar Disorder.]

DIAGNOSTIC FORMULATION: The stereotype that middle easterners (including Arabs) are more emotional (as well as other ethnicities found around the Mediterranean) actually has some truth to it. Dr. Boutros emigrated to the U.S.

from Lebanon as an adult, and he resided in and completed his education through medical school in Lebanon. This examiner consulted with Dr. Sami Karaz, a psychiatrist who emigrated from Lebanon himself, and under which this examiner trained and for whom this examiner has the utmost respect. Dr. Karaz stated that even after many years of practicing in the U.S. he finds it difficult because of his own culturally-derived traits. These traits include presenting as excitable, high emotionally expressive, dramatic, and using a higher tone and louder volume of speech than is the norm in the U.S. Dr. Karaz explained that under stress this can even appear as “manicky” and that he had experienced this concern himself. And, the difference between this presentation and the majority population is nowhere more pronounced than in the Upper Midwest (including Minot) with its Northern European reserve.

Dr. Boutros’ psychological testing is consistent with his having significant histrionic traits. Interviews of individuals with long past associations with Dr. Boutros reveal that he has almost constantly presented with cultural and personality traits that are consistent with this, including intermittent rapid speech, excitability, exuberance, high energy, emotional expressiveness, a need for attention, and engaging in verbal hyperbole. In interviewing Dr. Boutros’ wife, she also endorsed Dr. Boutros as having these cultural and personality traits, and also that he sometimes misjudges the closeness of relationships with others and also will joke with people in a way that can be “annoying,” including leading them along in a story, what others would term “pulling a leg.”

The personality and cultural traits suggested by Dr. Boutros’ ethnic background, his psychological testing results, the self-reports of Dr. Boutros and his wife as well as independent observers, and the history of the focus of his psychoanalysis are all highly consistent and convergent.

It is quite possible that in a given context when excited, (including when under the stress of employment termination and involuntary psychiatric commitment, and the consequences of those), that Dr. Boutros could present as almost in a manic state, and it would take very careful analysis to determine if this truly represented a manic (or hypomanic) state or whether it was intermittent, situational, cultural and personality driven. Such an analysis is attempted below.

By definition Dr. Boutros’ low TSH level was abnormal. Rarely low TSH levels are found in psychosis and somewhat less rarely in depression, but are generally not as low as the level reported. The pattern of low TSH, normal free T3 and upper normal free T4 is suggestive of “Euthyroid” Graves’ disease, Subacute Thyroiditis, Thyrotoxicosis, or Subclinical Hyperthyroidism. ***It is possible*** that Dr. Boutros has also experienced a cyclical elevation of free (active) thyroid hormone. The DSM-IV criteria for a manic or hypomanic episode (necessary for any bipolar diagnosis) exclude such diagnosis if symptoms are due to a general medical condition, and explicitly identify hyperthyroidism as such a condition. An endocrinology consultation and further testing is indicated, and ***it is possible***

that some of Dr. Boutros' behavioral manifestation, such as a proclivity to rapid speech, **could be** related to a thyroid disorder.⁵⁴ (Emphasis added.)

Many people over many years have noticed that Dr. Boutros has almost consistently exhibited the cultural and personality traits discussed above, and there has been some intermittent concern among some individuals without a mental health background that he might possibly be manic. When this examiner spoke with Dr. Boutros on the phone in December and January the possibility of a manic state was immediately raised. However, on careful analysis, it was only the rapidity of speech and over-inclusiveness that appeared abnormal. Dr. Boutros did not exhibit grandiosity, irritability, or mood lability. While his speech was seemingly pressured, Dr. Boutros was able to be redirected and to listen, which is inconsistent with true pressured speech. Dr. Boutros did not exhibit distractibility but was instead highly focused. The mental status this examiner observed at that time seems to be quite consistent with that reported in the Rush report. It is notable that the Rush report apparently does not diagnosis a then-current manic or hypomanic state. These were apparently the first opportunities for mental health clinicians to directly evaluate the mental state of Dr. Boutros (Dr. Gomez and Dr. Anwar were unable to interview Dr. Boutros due to his unwillingness to cooperate). This raises the distinct possibility that what other (non-mental health) people have observed in the past, including in July through September of 2004, was exactly what was observed in December and January, which was not a diagnosable manic or hypomanic state.

Dr. Boutros' wife reports that he was excitable and exuberant, had a high level of energy, and would engage in rapid speech during this time. She reports that it was somewhat more than usual during this time, but that he had reason to be feeling good because he had just completed a sub-specialty fellowship and felt that he would be involved in a medical practice that was interesting and challenging. She also pointed out that Dr. Boutros had been more subdued during the first year they were in Minot because he was (in her opinion) still mildly depressed then, and that the difference in his presentation between the first year in Minot and after their return to Minot when Dr. Boutros completed his fellowship, was dramatic. However, Dr. Boutros' wife reported even July through September that he was not consistently like this, but was able to calm down and carry on a normal conversation and watch a movie.

Both Dr. Boutros and his wife report that he never had had an episode where he would sleep less than five hours during a 24-hour period for as long as four days or more, including in 2004. Mrs. Boutros explained that Dr. Boutros did partially change his sleep cycle in July because he was making calls in the early morning

⁵⁴When a physician testifies as an expert regarding a diagnosis, his expert opinion must ordinarily be based on a reasonable degree of medical certainty. Opinions regarding "possibilities" are speculative and do not constitute reliable, probative evidence. Further, Dr. Boutros testified that he had seen an endocrinologist in March 2005 and that there was no evidence of a thyroid abnormality. (Tr. at 1321)

hours (when people were awake in Lebanon), but that he would then sleep during the day as [he] did yet have a patient load. Mrs. Boutros reported that she did not feel that Dr. Boutros was grandiose or irritable during this period, or at any other time in the past. Mrs. Boutros reported that Dr. Boutros had not engaged in excessive pleasurable activities. Mrs. Boutros reported that she did not believe that the land development proposal was unreasonable, but that she did think and tell Dr. Boutros that he should not be involved in it when he was starting a new retina practice. Mrs. Boutros stated that she thought that Dr. Boutros' getting the family of his anorexic niece involved was highly appropriate, particularly as she understood that the mother (Dr. Boutros' sister) was hiding the niece's illness from other family members.

The diagnostic criteria for mania and hypomania, as well as for major depressive episodes and personality disorders, were carefully gone over with Mrs. Boutros. She consistently denied that Dr. Boutros had exhibited the criteria for mania or hypomania, but she did insist that he had exhibited a number of criteria for depression in the past (see past psychiatric history above). Based on the reports of Dr. Boutros, and his wife, there does not appear to be any basis for a diagnosis of a discrete episode of mania or hypomania at any time in the past, including in 2004.

In attempting to determine if Dr. Boutros was suffering from a manic or hypomanic state from July through September, it is important that such state is *persistent* and not intermittent. Records and collateral witnesses report that while Dr. Boutros was highly agitated during the first 24 hours he was involuntarily committed, that after Dr. Turk visited him and told him that if he continued to behave that way he "would make the case for them that he was mentally ill," Dr. Boutros changed his whole behavior and was calm and cooperative for over 24 hours the second and third days. Someone with a manic or hypomanic state cannot simply "turn off" that state. Furthermore, Dr. Boutros was calm and cooperative at the court hearing where the petition for involuntary commitment was dismissed. On the next day, a Saturday, he spent the whole day with attorney Moody Farhart and according to Mr. Farhart Dr. Boutros did not exhibit any manic symptoms. On the following Monday Dr. Boutros was evaluated by Dr. Free, who did not find that he was manic or hypomanic. Prior to being examined by Rush personnel or this examiner, in the late fall of 2004, Dr. Boutros was able to undertake a focused *pro se* effort to prepare for litigation, including depositions that were very well done (an opinion shared by his current attorneys), something that would be next to impossible by someone who was manic or hypomanic.

The evidence relied upon in the lay determinations of suspected mania were almost exclusively observations made by employees of Trinity. The affidavits and other materials obtained by the North Dakota board and the data submitted by Trinity were not available for review, but the documents that are in the possession of Dr. Boutros and were made available for review in the course of

this evaluation (including a number of documents and depositions from Trinity officials and personnel), likely reflect the other data. The concerns seem to have been initiated by individuals who may have had a personal agenda (Suzanne and Matt Watne). It appears that there may have been an element of hysteria, with overblown “indirect” concerns about Dr. Boutros physically attacking adults, being a danger to children, and perhaps of even being a terrorist. This hysteria is best indicated by the hasty involuntary commitment of Dr. Boutros without a psychiatric evaluation, and the equally rapid dismissal of that commitment with a letter of concern from the North Dakota board about it to the committing psychiatrist (Dr. Gomez). Finally, the motives and actions of Trinity must be questioned, as it is in the realm of possibility that Trinity officials may have been as much concerned about its reputation and economic concerns as the validity of the allegations and concerns raised against Dr. Boutros. It would seem that in assessing possible symptoms of mental illness manifested by Dr. Boutros that more credibility should be given to individuals who are not associated with Trinity. There does seem to be **a possibility** that there was (at least an unconscious) ganging up on Dr. Boutros, a sentiment that others in Minot have expressed. (Emphasis added.)

There was some concern raised by observers that Dr. Boutros was exhibiting paranoid symptoms. However, these concerns were raised *after* he had been summarily terminated (and involuntarily committed), and would seem to be situationally appropriate and not reflective of a psychotic state.

Based on all of the data available, there does not seem to be any basis to diagnose Dr. Boutros as ever having experienced a manic or hypomanic episode as described by the diagnostic criteria included in the DSM-IV. Therefore it would be erroneous to diagnose either a Bipolar I or Bipolar II disorder. And, in reviewing the DSM-IV diagnostic criteria for Bipolar Disorder Not Otherwise Specified, the examples given require meeting diagnostic criteria for hypomania or mania *except the duration requirement*, or lack of depressive episodes, or episodes that meet all diagnostic requirements but are superimposed on psychotic disorders, or where the diagnostic requirements are met but it is unclear if the cause is primarily psychiatric, medical, or substance induced. All of the examples of the diagnosis of Bipolar Disorder NOS require at least meeting the requirements for a hypomanic episode.

Review of the medical records reveal[s] that Dr. Boutros was not given a psychiatric diagnosis until the evaluation at Rush. No diagnosis was made at [the] Trinity emergency room or during Dr. Boutros’ brief involuntary committal. The Rush diagnosis was of Bipolar Disorder NOS and a “Rule Out” (indicating inadequate data to make the diagnosis) of Bipolar Disorder II. Bipolar Disorder II requires only a single hypomanic episode. Apparently the Rush clinicians could not even confirm that Dr. Boutros had experienced even a single hypomanic episode at any time in the past.

Many mental health clinicians fail to use rigor in their diagnosis, and may diagnose a bipolar disorder (and other disorders) even when DSM-IV criteria are not met. An excellent recent article in *The New England Journal of Medicine* (351:5 pp 476-486, July 29, 2004) discusses bipolar disorder for a general medical audience. Several important points relevant to the evaluation of Dr. Boutros are made. It is pointed out that, "A key point is that manic behavior is distinct from a patient's usual personality." Regarding the diagnosis of Bipolar II disorder (with only a hypomanic episode), it is pointed out that the reliability of this diagnosis is lower than Bipolar I (with a full-blown manic episode) and that drug response and family history do not convincingly support that Bipolar II is a milder form Bipolar I [*sic*]. It is also stated,

However, the use of the concept that bipolar illness covers a wide spectrum may result in labeling patients as having this disorder and may result in clinicians' overprescribing and framing psychosocial issues as medical.

Finally, at the end of the article it is noted that there is a new diagnostic tendency to view milder conditions as variants of bipolar illness but that this is unsupported by strong biologic or clinical data, and,

For this reason, clinicians should be careful to avoid misdiagnosing psychological or social phenomena as bipolar disorder.

This is even more pertinent when the putative diagnosis is one of an "atypical" bipolar disorder or one that is "not otherwise specified." In simple English, what these mean is that the signs and symptoms simply do not meet the acceptable diagnostic criteria found in DSM-IV. If there are questions, as suggested by the article above, regarding Bipolar II disorder, this is even more so at the far reaches of the bipolar 'spectrum' encompassed in "atypical" or "NOS" diagnosis."

* * *

The personality, psychological, and psychiatric profile of this individual is relatively benign, with no evidence of a major mental illness (other than mild depression) or severe personality problems. He has no chemical dependency issues. He seems to be well-adjusted and able to function personally, socially, and occupationally despite occasional episodes of a relatively mild depressed mood.⁵⁵ He is very intelligent and has exhibited good coping mechanisms even when under significant stress. He appears to have a good work ethic and to personally involve himself in social ethics and egalitarian ideals. He has excellent family and marital support. He has the ability to make and retain friendships, although his personality

⁵⁵The Hearing Examiner concludes that the reliable evidence shows that Dr. Boutros had repeated difficulties with social and professional interactions, as reported by numerous credible witnesses. Although the Hearing Examiner accepts that one or more Trinity executives disseminated inaccurate information about Dr. Boutros to Dr. Gomez and potentially in other situations as well, the Hearing Examiner found that the narratives of Trinity staff members were more credible than Dr. Boutros' testimony for the most part. (See Credibility Determinations, below.)

traits, intelligence, wit, and exuberance, optimism and energy set him apart as capable of being slightly eccentric and therefore more interesting to some people but conversely somewhat confusing and perhaps prone to misperception by others. The tendency for some to misperceive may be aided by Dr. Boutros' own mild naiveté in judging the extent of the intimacy and good will of some of the individuals he related to socially and professionally as well as his culturally derived tendency to at times engage in verbal hyperbole. Overall, Dr. Boutros should be considered to be within what is considered the normal spectrum of individuals, and without any disabling psychological pathology.

DSM-IV DIAGNOSIS:

- Axis I: Adjustment Disorder with Depressed Mood, Recurrent, Mild History of Major Depressive Disorder, Single Episode, Mild (2001 – 2002)
History of Cannabis Abuse, Mild
- Axis II: Histrionic Personality Traits
- Axis III: History of Subclinical Hyperthyroidism (Provisional)
- Axis IV: Stressors: Currently, Moderate – Severe. Recent Past, Severe:
(Cultural, Occupational, Legal, Professional, Financial)
- Axis V: Current Global Assessment of Functioning (GAF): 75 – 80
GAF July – December 2004: 60 – 70 (due to Adjustment Disorder)

* * *

RECOMMENDATIONS:

1. [In this section, Dr. Kelly set forth no recommendation for Dr. Boutros. Rather, Dr. Kelly stated his views on the process and methods that ought to be followed when determinations are being made regarding diagnosis, fitness for duty, competence to practice, etc.]
2. [Dr. Kelly recommended that Dr. Boutros obtain a thyroid consultation.]
3. Monthly clinical psychiatry outpatient monitoring by a psychiatrist mutually acceptable to both Dr. Boutros and the medical board(s) of any state Dr. Boutros is at that time employed in as a physician. Such psychiatrist should be provided with all evaluation reports, but should not be expected to review supporting documents. Monitoring should be limited to two years unless the psychiatrist determines that monitoring be continued. Dr. Boutros has experienced depressive symptoms in the past, which would warrant such psychiatric monitoring, and psychiatric monitoring would also be in his best interest to help answer the concerns that have recently been raised.
4. No sanctions or restrictions should be imposed on Dr. Boutros unless there is evidence that he has an actual impairment impacting (or potentially impacting) patient care.

(Resp. Ex. II)

March 2005 - Thyroid Abnormality Ruled Out

202. Dr. Boutros testified that he was examined by an endocrinologist in March 2005 and that there was no evidence of a thyroid abnormality. (Tr. at 1321)

March 2006 – Decision of the Labor Arbitrator in Dr. Boutros’ Lawsuit Against Trinity Hospital

203. After Dr. Boutros filed a lawsuit against Trinity Hospital and others in a North Dakota court, the action was referred to arbitration. Five days of hearing were held in November and December of 2005. (Resp. Ex. A) The issues for determination by the labor arbitrator were:

1. Whether Trinity breached the Physician Services Agreement by terminating Dr. Boutros for cause under Section 6.2.
2. Whether Trinity discriminated against Dr. Boutros on the basis of a perceived disability
3. Whether Trinity violated public policy by terminating Dr. Boutros’ staff privileges without a due process hearing
4. Whether Trinity acted in bad faith in filing a Complaint against Dr. Boutros with the North Dakota Board of Medical Examiners
5. Whether Trinity is liable for wrongful incarceration of Dr. Boutros;
6. Whether Trinity is liable for defamation and tortious [tortious] interference with prospective future employment
7. Whether Dr. Boutros is liable for repayment of the Loan
8. Whether Dr. Boutros is liable for the value of the instruments
9. The damages arising out of these claims.

(Resp. Ex. A)

204. In March 2006, the arbitrator issued a decision titled “Interim Award of Arbitrator.” This decision sets forth a lengthy, detailed statement of the factual background leading up to Dr. Boutros’ termination of employment. These facts are set forth elsewhere in the present summary of the evidence and are not repeated here.

205. The arbitrator found in favor of Dr. Boutros regarding the wrongfulness of the involuntary commitment by Trinity and regarding Dr. Boutros’ claim of breach of the employment contract. The arbitrator denied Dr. Boutros’ claims for disability discrimination and for bad-faith reporting by Trinity to the North Dakota Board, and did not find overt acts to defame or interfere with future employment prospects. The arbitrator explained, in part:

The situation is far different when Trinity took active steps to have Dr. Boutros incarcerated in their own psychiatric facility. The degree of care in reporting [to the medical board] a physician who “may have committed” an act which needs to be investigated by the medical board and actually taking away someone’s freedom and locking them up in a psychiatric facility cannot be compared. The North Dakota Supreme Court describes involuntary commitment as a “massive curtailment of liberty” requiring compliance with statutory requirements.

The evidence presented during the Arbitration was shocking as to how Trinity orchestrated its power and influence to deprive Dr. Boutros of his civil rights. Trinity, acting through its employee and agent, Dr. Gomez, had insufficient grounds to commit Dr. Boutros using the Form 1 proceeding. After reviewing the documentary evidence and weighing the testimony of Dr. Boutros, Dr. Anwar, Matthew and Suzanne Watne, the deposition of Dr. Gomez and Todd Ganges, the experts and the extremely credible testimony of the Police Officers, the clear and convincing evidence is that neither Trinity nor their agent Dr. Gomez had reasonable cause to believe Dr. Boutros was a “person requiring treatment” or that he posed a serious risk of harm to himself or others. Furthermore, Dr. Gomez did not meet the standard of care by his negligent error in checking ‘chemical dependency’ on the form. Additionally, it is hard to understand how he met the standard of care when he could have made a simple phone call to Matthew Watne as opposed to accepting triple hearsay that a ‘threat’ was made or jumping to conclusions over a phone record. The overwhelming impression is that Dr. Gomez was called into the office of his employer and he carried out what he was either told to do or assumed his employer wanted him to do. His lack of concern for Dr. Boutros was highlighted by the fact that he put little or no effort into independently evaluating the situation. He did not even come over and speak to Dr. Boutros when they were in the emergency room at the same time. This lack of care for Dr. Boutros also extends to Trinity agent Dr. Olsen who tells Dr. Boutros that Dr. Gomez has diagnosed him as manic and a room is being prepared when Dr. Boutros thought he was meeting Dr. Gomez to establish a physician patient relationship. It is understandable how Dr. Boutros panics and thereafter refuses to cooperate or trust anyone related to Trinity. His lack of trust was well founded since the overwhelming evidence is that Dr. Boutros did not enter that Emergency Room with marijuana in the pocket Officer Maroney searched and turned inside out before transporting Dr. Boutros.

In conclusion Dr. Boutros has established by clear and convincing evidence that Trinity through its agent Dr. Gomez, did not act in good faith and negligently failed to follow the appropriate standard of care. The acts of Trinity and its agents were oppressive, extreme and outrageous. Accordingly, Dr. Boutros is entitled to recover damages including as part of his economic damages award his attorney fees * * * in connection with securing his release and non-economic damages for emotional distress in connection with his claim for wrongful incarceration.

(Resp. Ex. A)⁵⁶

⁵⁶ The arbitrator decided only the issues referred to arbitration. (See page 90 above.) The arbitrator’s opinion was persuasive with regard to Trinity’s conduct in obtaining the commitment, in that, although Dr. Boutros had been exhibiting very questionable behaviors indicative of a serious problem, he had *not* demonstrated that he was a significant and immediate danger to himself or others. However, the arbitration issues did *not* include whether Dr. Boutros suffers from a psychiatric disorder, and, if so, the nature of the psychiatric disorder. That is, the arbitrator did not attempt to determine what diagnosis, if any, was appropriate for Dr. Boutros. The arbitrator concluded, under disability-discrimination law, that Dr. Boutros was not disabled by a psychiatric disorder. (Resp. Ex. A) The arbitrator did not and could not determine whether Dr. Boutros is impaired as defined under Ohio Revised Code 4731.22(B)(19). The wrongfulness of the commitment is separate and distinct from the question of whether Dr. Boutros suffers from a psychiatric disorder. Dr. Kelly noted in his supplemental report on behalf of Dr. Boutros: “Clearly a medical board is not bound by an arbitrator’s findings regarding whether a practitioner has any condition or impairment that might have implications for future patient care.” (Resp. Ex. HHH)

206. The arbitrator awarded substantial damages to Dr. Boutros:

- Non-economic damages of \$300,000 for suffering, mental anguish, emotional distress and humiliation arising out of the wrongful incarceration.
- Punitive/exemplary damages in the amount of \$500,000 due to Trinity's "reprehensible" conduct and "misuse of power."
- Economic damages of \$33,122 (damages of \$160,296 reduced by the \$120,000 loan and \$7,174 in equipment).
- \$13,500.00 in fees/expenses of the American Arbitration Association and \$26,928.43 in fees/expenses of the arbitrator (\$20,307 of which was to be reimbursed to Dr. Boutros, who had paid part of these fees/expenses)

(Resp. Exs. A, B and C)

207. Dr. Boutros asserted at hearing that, in the arbitration decision, the arbitrator had determined that he has no mental impairment. (Tr. at 1407-1408)

Supplemental Report from Dr. Noffsinger

208. In June 2005, Dr. Noffsinger received additional materials from the Board, which it had received from Dr. Boutros' attorney in North Dakota. (Tr. at 46-47, 157)

209. In July 2006, Dr. Noffsinger provided a supplemental report regarding these materials.

I have reviewed the additional material submitted by Dr. Boutros:

1. Report dated 5/25/06 by psychiatrist Oscar Pakier, M.D.
2. Records by Dr. Pakier dated 7/18/05 and 8/15/05.
3. Letter dated 4/10/06 from Dr. Boutros' attorney, Bruce Schoenwald, Esq.
4. Interim Award of Arbitrator dated 3/15/06 in the matter of Dr. Boutros and Trinity Hospital.
5. Dr. Boutros' responses dated 5/22/06 to Second Set of Interrogatories from the State Medical Board of Ohio.

The additional materials do not change the diagnosis made in my report. As I stated in my report: ". . . I concluded with reasonable medical certainty that Dr. Boutros does have Bipolar I Disorder. While any single account of Dr. Boutros' erratic behavior may be explained away by cultural issues, erroneous reporting by collateral informants, bias, etc., taken collectively, the many detailed accounts of Dr. Boutros' erratic behaviors (as well as the consistency among the reports) leads me to conclude that Dr. Boutros does have Bipolar I Disorder."

The additional materials do not change the recommendations regarding treatment and monitoring.

(Resp. Ex. JJJ)

210. Dr. Noffsinger subsequently testified extensively at the Board hearing in 2007, appearing for examination on three days. His testimony is described, in part, below.

Supplemental Report from Dr. Kelly

211. On February 25, 2007, Dr. Kelly issued a Supplemental Forensic Psychiatry Report in which he provided further discussion and opinions, following his review of additional materials. These additional materials including the arbitration materials and decision, the report of Dr. Noffsinger, and reports from Dr. Anwar. (Resp. Ex. HHH)

Testimony of Expert Witnesses at Hearing: Drs. Noffsinger & Kelly

Testimony of Dr. Noffsinger

212. Dr. Noffsinger testified regarding the content of his report and the basis of his opinions. He opined that the information he reviewed supported a conclusion that, in the summer of 2004, Dr. Boutros had experienced a manic phase of Bipolar I Disorder in accordance with the DSM-IV(TR) criteria for that diagnosis. (Tr. at 64-65, 94-151) Dr. Noffsinger further concluded that, so long as Dr. Boutros received treatment and monitoring, he would be capable of practicing medicine. (Tr. at 85) Dr. Noffsinger explained:

[B]ecause there is a substantial likelihood that he will have future manic episodes that would impair his ability to practice, he needs to be in treatment with a psychiatrist, qualified psychiatrist, who will be able to evaluate his symptoms, prescribe a mood-stabilizing medication, which will lower the risk of future manic episodes, and then also be able to monitor him for a return of his symptoms.

(Tr. at 85-86)

213. In his testimony, Dr. Noffsinger reviewed the criteria for diagnosing Bipolar I Disorder as set forth in the DSM-IV. He also described how Dr. Boutros' behavior during the summer of 2004 fit these criteria. (Tr. at 94-135)
214. Dr. Noffsinger explained that the first criterion, in Section A, is that the individual has experienced "A distinct period of abnormally and persistent elevated, expansive or irritable mood, lasting at least one week (or any duration if hospitalization is necessary)." Dr. Noffsinger explained that the mood can be in combinations of elevated, expansive, and irritable. (Tr. at 94, 99) Dr. Noffsinger cited examples of Dr. Boutros' behavior that fit this criterion. Dr. Noffsinger testified that Dr. Boutros reported that, upon his return to Minot in July 2004, he had experienced an elevated mood and felt that everyone was his friend. Paula

Wahl reported that Dr. Boutros had been “extremely high.” In addition, Dr. Sanke reported having witnessed Dr. Boutros in an extremely irritated mood and expressing rage, and others reported that he had used loud, profane language in the clinic. Finally, Dr. Anwar’s observations were noted. (Tr. at 98-99, 744)⁵⁷

215. Dr. Noffsinger explained that the second category of criteria, as set forth in Section B, requires that, during the period of mood disturbance, the individual must experience three or more of the following symptoms to a significant degree:

1. Inflated self-esteem or grandiosity,
2. Decreased need for sleep (e.g., feels rested after only 3 hours of sleep),
3. More talkative than usual or pressure to keep talking.
4. Flight of ideas or subjective experience that thoughts are racing,
5. Distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli),
6. Increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation, and
7. Excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g., engaging in unrestrained buying sprees, sexual indiscretions, or foolish business investments).

(Tr. at 94-95)

216. Dr. Noffsinger stated that Dr. Boutros’ behavior had demonstrated “inflated self-esteem or grandiosity” when he expended a significant amount of time and energy in the land development scheme and the development of a new surgical instrument, although he had no prior experience in those areas. When told of Dr. Boutros’ patent, Noffsinger accepted that information and gave consideration to it. However, he concluded that obtaining a patent for the development of a surgical instrument would not change his diagnosis. Dr. Noffsinger also noted that Dr. Gomez, Dr. Anwar, and Lee Jeannotte reported that Dr. Boutros had had exhibited grandiosity. In addition, Dr. Noffsinger testified that the use of loud and profane language and failure to be timely for appointments suggest inflated self-esteem or entitlement. (Tr. at 66-67, 100-102, 726-730)

217. Dr. Noffsinger also stated that Dr. Boutros’ behavior demonstrated a decreased need for sleep because he had been up throughout the night making telephone calls and visiting the BP Amoco station, and engaged in numerous activities during the day. (Tr. at 103, 705-710) Suzanne Watne stated that Dr. Boutros had told her that he had not slept. (St. Ex. 24; Tr. at 103, 1094)

218. Dr. Noffsinger acknowledged that Dr. Boutros did not state specifically that he had not been sleeping. Nevertheless, Dr. Boutros’ report of his activities during the night and day led

⁵⁷ Dr. Boutros criticized Dr. Noffsinger’s views, stating that Dr. Noffsinger had ignored a patient’s statement that Dr. Boutros had been kind and very professional. Dr. Boutros asserted that “Dr. Noffsinger says, in some testimony where he forgot how to keep his story professional, that kind and professional is against mania.” (Tr. at 1151-1152)

Dr. Noffsinger to conclude that Dr. Boutros had not been sleeping during that time period. In addition, Dr. Noffsinger stated that “a diurnal variation in sleep is an indicator of a mood disturbance.” (Tr. at 106-114, 606-709) Dr. Noffsinger acknowledged that the reports of Dr. Free, Dr. Kelly and Dr. Henry all state that, based on information provided by Dr. Boutros and his wife, they concluded that Dr. Boutros had been getting sufficient sleep during the summer of 2004. Dr. Noffsinger opined, however, that both Dr. Boutros’ and his wife’s reports that Dr. Boutros was sleeping during the day are questionable, since both have a personal interest in the outcome of these evaluations. Nevertheless, Dr. Noffsinger testified that the issue of sufficient sleep is not critical to the determination of whether Dr. Boutros had been experiencing a manic episode since there is other evidence to support that conclusion. (Tr. at 103-115, 706-709, 712-720)

219. Dr. Noffsinger stated that there was significant evidence that Dr. Boutros had been “more talkative than usual” or evidenced a “pressure to keep talking.” Dr. Noffsinger noted that Dr. Boutros had told him that, when he returned to North Dakota, he was more talkative than before, joking with everyone, and feeling euphoric. Dr. Sanke said that in August 2004 Dr. Boutros had “rapid, intense and highly energetic speech.” Other co-workers reported that Dr. Boutros had been using pressured or rapid speech. Dr. Gomez documented that, based on their telephone conversation, he noted that Dr. Boutros had exhibited rapid speech. In addition, Dr. Anwar described pressured speech. (Tr. at 67, 115-116, 744)
220. Dr. Noffsinger stated that Dr. Boutros demonstrated “a flight of ideas or subjective experience that thoughts are racing.” Dr. Noffsinger testified that Dr. Sanke had described Dr. Boutros’ speech pattern as a “flood of different ideas occurring almost simultaneously together, rapid, disjointed speech, rambling.” Dr. Sanke also reported that Dr. Boutros had “highly energetic speech,” a “careless disregard for time,” and “gross disrespect.” Drs. Henry and Devine at Rush noted that Dr. Boutros’ thinking was “disorganized, tangential and circumstantial” which, Dr. Noffsinger opined, are different ways of saying “flight of ideas.” Dr. Gomez reported rapid speech, racing thoughts, and Dr. Anwar also described racing thoughts and flight of ideas. (Tr. at 67, 70, 116,-117, 744)
221. In addition, Dr. Noffsinger testified that Dr. Boutros demonstrated “distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli),” as follows: Dr. Sanke described Dr. Boutros as distractible, excitable, with a flood of ideas and rambling thought patterns. Drs. Henry and Devine described him as disorganized. (Tr. at 128-129) Dr. Noffsinger also testified that Dr. Gomez and Paula Wahl described Dr. Boutros as “impulsive,” and opined that “impulsive and distractibility mean equivalent things.”⁵⁸
222. Dr. Noffsinger also testified that Dr. Boutros’ behavior met the criterion of “increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation.” As examples, Dr. Noffsinger cited Dr. Boutros’ initiating inappropriate discussions with patients and staff and his focus on the land development site and taking

⁵⁸ Dr. Noffsinger testified at the hearing: “Even though Dr. Gomez *did not* personally meet with Dr. Boutros face to face, they did have a telephone conversation. And as a result of that, Dr. Gomez documented it in the papers for civil commitment that Dr. Boutros had symptoms that would be consistent with mania.” (Tr. at 67, emphasis added)

people to see the land. Dr. Noffsinger further testified that there was testimony that Dr. Boutros appeared hyperactive, animated, and excited, which suggests psychomotor agitation. (Tr. at 129-130)

223. Dr. Noffsinger further testified that Dr. Boutros demonstrated “excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g., engaging in unrestrained buying sprees, sexual indiscretions, or foolish business investments).” Dr. Noffsinger noted Dr. Boutros’ telling stories about the prostitute and the pornography were examples of hypersexuality, impulsivity, and bad judgment. Dr. Noffsinger also referred to Dr. Anwar’s documentation that Dr. Boutros’ “impulse control was tenuous.” (Tr. at 68-69, 84, 200, 744)
224. Dr. Noffsinger explained that the fourth category of criteria, as set forth in Section D, requires that “The mood disturbance is sufficiently severe to cause marked impairment in occupational functioning or in usual social activities or relationships with others, or to necessitate hospitalization to prevent harm to self or others, or there are psychotic features.” In support of this criterion, Dr. Noffsinger cited Dr. Boutros’ inappropriate behavior with patients and staff which eventually resulted in his termination from Trinity. Dr. Noffsinger also cited Dr. Boutros’ inappropriate behavior in social relations which resulted in the order of trespass from the BP Amoco gas station. In addition, Dr. Noffsinger cited the involuntary commitment at Trinity. Finally, Dr. Noffsinger stated that Dr. Boutros’ grandiosity and paranoia were consistent with psychotic features. (Tr. at 133-134, 736-740, 861)
225. Dr. Noffsinger explained that the fifth category of criteria, as set forth in Section E, requires that “The symptoms are not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication, or other treatments) or a general medical condition (e.g., hyperthyroidism). Dr. Noffsinger opined that neither Dr. Boutros’ one-time use of marijuana or his low TSH would have caused a physiological effect sufficient to warrant a false diagnosis. (Tr. at 94-95, 134-137)
226. Dr. Noffsinger testified that the arbitrator’s decision did not cause him to change his opinion. Dr. Noffsinger explained that the arbitrator was not a mental health professional, and had no clear understanding of the purpose of civil commitment. Dr. Noffsinger concluded that the arbitrator’s decision is not relevant to the question of whether Dr. Boutros has a mental health diagnosis. (Tr. at 225-226) Dr. Noffsinger further advised that, having reviewed Dr. Boutros’ responses to the Second Set of Interrogatories, and additional documents from Dr. Pakier and Dr. Kelly, his opinion and recommendations did not change. (Tr. at 237)

Dr. Boutros’ Comments on Dr. Noffsinger’s Testimony

227. Dr. Boutros testified that he had been hurt by Dr. Noffsinger’s testimony that the showing of the pornographic video was evidence of hypersexuality. He stated that Dr. Noffsinger ignored his obvious embarrassment over the incident. Dr. Boutros testified that “for Dr. Noffsinger to ignore what was presented about the sex video and insist it was evidence of mania is malpractice.” (Tr. at 1146) He explained as follows:

[Dr. Noffsinger] testified that functioning as a professional doctor weighs against the diagnosis of mania. He testified that you cannot turn mania off voluntarily. He testified that the symptoms have to be persistent, present and severe. He testified that the sex video is evidence of mania, showed lack of responsibility and lack of, I guess, sexuality, as if I wanted to get some kind of a sexual satisfaction from showing the tape, like, as if I did it on purpose.

Ignored the apology. Ignored the shocked feeling. Ignored the humiliated feeling. Ignored the statements by two people from Trinity that I was working as a doctor all day long. I did that very well.

(Tr. at 1146-1147)

228. Dr. Boutros asserted that Dr. Noffsinger had mischaracterized what Dr. Boutros had said in his interview with Dr. Noffsinger:

Q. What is it in particular that disturbed you about his testimony?

A. It was obvious to me that he denied certain things I told him. He denied them in his May testimony and then he remembered certain things, supposedly, that I said in this testimony which he denied in May. I mean, it was just terrible. * * *

(Tr. at 969)

Dr. Kelly's Testimony

229. Dr. Kelly testified that Dr. Boutros' behavior during the summer of 2004 was not indicative of bipolar disorder, but was simply a reflection of his personality and culture. Dr. Kelly opined that, during the late summer of 2004, Dr. Boutros had not had an increase in goal-directed activity. Instead, his behavior suggested that he is "a highly energetic individual." In addition, Dr. Kelly testified that Dr. Boutros' interests in his niece, the land project, the new surgical instrument, and his new practice did not indicate that he had an excessive number of interests. Further, Dr. Kelly testified that Dr. Boutros had not demonstrated grandiosity; instead, his behavior was a reflection of histrionic personality traits and a Lebanese cultural background. Dr. Kelly concluded that the facts do not meet the diagnostic criteria for a diagnosis of Bipolar I disorder. (Tr. at 581-582, 588)

230. Dr. Kelly testified that the DSM-IV describes histrionic personality traits as:

A pervasive pattern of excessive emotionality and attention seeking, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

1. Is uncomfortable in situations in which he or she is not the center of attention;

2. Interaction with others is often characterized by inappropriate sexually seductive or provocative behavior;
3. Displays rapidly shifting and shallow expression of emotions;
4. Consistently uses physical appearance to draw attention to self;
5. Has a style of speech that is excessively impressionistic and lacking in detail;
6. Shows self-dramatization, theatricality, and exaggerated expression of emotion;
7. Is suggestible, i.e., easily influenced by others or circumstances; and
8. Considers relationships to be more intimate than they actually are.

(Tr. at 589-590) Dr. Kelly testified that Dr. Boutros met the criteria set forth in 2, 3, 6, and 8. (Tr. at 647)

231. Dr. Kelly testified that there is general agreement that, in individuals who are diagnosed with Bipolar II disorder, because they experience hypomanic rather than manic episodes, mood stabilizers should not be prescribed prophylactically. Mood-stabilizers are prescribed to these individuals only when they are in a hypomanic state and need to be brought “down.” When the hypomanic episode stops, the mood stabilizers are withdrawn. Dr. Kelly explained as follows:

And the reason for that is the mood stabilizers are very powerful drugs. And there are some nasty side effects. They can be lethal, first of all. They can cause a number of severe side effects, including the two that have been shown to be effective for prophylactic treatment of mania are something called Valproic Acid, also known as –the patent name is Depakote, and then Lithium. Both of those can cause tremors. And those tremors would probably be career ending for someone who is an ophthalmologic surgeon.

(Tr. at 556) Dr. Kelly testified that the only diagnosis that warrants mood stabilizers is Bipolar I. (Tr. at 577)

232. Dr. Kelly testified as follows regarding his recommendations for treatment and monitoring:

Q. Okay. At any point did you recommend treatment for Dr. Boutros?

A. I did not recommend treatment. I just recommended careful -- just some observation and some awareness of potential relapse of symptoms, and I discussed that and educated him and educated his wife. And I suggested that if there's any suggestion of any relapse of manic or hypomanic symptoms -- and I educated them regarding the early signs of that -- to immediately contact me or contact some other psychiatrist.

Q. Did you see any need for monitoring Dr. Boutros?

A. I did not see a need for regularly scheduled visits at the time of my evaluation. I just saw a need for him and his wife both to be aware of early signs of illness coming on and to pay attention to that. But I didn't see a need for regular visits. I felt that probably what would happen is they'd come in and say they're fine, so I just left it on an as-needed basis.

(Tr. at 456)

233. With regard to any need for ongoing monitoring, Dr. Kelly also stated:

I don't feel at this point that he does. In my original report, I indicated that monitoring for two years. It's now been more than two years. And he has had monitoring. I wasn't quite sure of the frequency that I had recommended. But he has not had any symptoms of either a depressive episode or manic episode or hypomanic episode in the two and a half years since this all occurred or in the two years—more than two years since I made that recommendation.

(Tr. at 649)

234. Dr. Kelly agreed that he had suggested monthly monitoring and acknowledged that Dr. Boutros probably had had less monitoring than that, but he believed that there had been some monitoring. (Tr. at 650-651) Nevertheless, Dr. Kelly testified that even if Dr. Boutros had had only one visit to a psychiatrist, one month after Dr. Kelly's evaluation, no additional monitoring is necessary. (Tr. at 654-656)

Additional Psychiatric Evaluations Requested by Dr. Boutros

Evaluation by Dr. Pakier

235. On July 18, 2005, Dr. Boutros consulted Oscar Pakier, M.D., a psychiatrist in Tarzana, California. In a report dated May 25, 2006, Dr. Pakier stated that Dr. Boutros had requested the evaluation "because of incidents that occurred while he was working at a hospital in North Dakota, which led to difficulty in obtaining medical licensing in California." Dr. Boutros wanted an assessment of whether there was any evidence of mental illness that might impair his ability to practice as a physician. (Tr. at 454-45, 469-470; Resp. Ex. EEE)

236. Dr. Pakier stated that, during their two sessions, Dr. Boutros was calm and his behavior was appropriate. There was no pressured speech. Nevertheless, Dr. Pakier suspected that Dr. Boutros might have had a manic or hypomanic episode in the past. He stated: "From what he [Dr. Boutros] described, he had some grandiose plans. * * * He described a situation where he had some dyscontrol of his anger. He described a situation where people were so frightened of him that he was hospitalized against his will. That made me suspicious at the time, but I couldn't say for sure what the diagnosis was at the time. * * *." At the time of his interviews with Dr. Boutros, however, Dr. Pakier saw no signs of bipolar disorder. (Tr. at 455-456, 470; Resp. Ex. EEE) Dr. Pakier concluded:

Based on the history I received, it would be very difficult for me to make a clear-cut diagnosis of his previous mental disturbances. It does appear that he has been subject to some periods of depression; however, the severity of which I cannot determine at this time. It is possible that he had some hypomanic behavior in 2004; however, it is not clear enough to me for me to make any type of a diagnosis. Certainly the history given to me by his wife does not suggest that that was present. Based on my evaluation I do not feel that I can clearly make the diagnosis of any type of a bipolar disorder. However, this is an extremely episodic disorder and follow up over a longer period time would be necessary to make a more complete diagnostic assessment.

* * * The only Axis I diagnosis I could clearly make was the Adjustment Disorder based on his stress at the time when I saw him. No Axis II diagnosis could be made. There was no Axis III diagnosis.

(Resp. Ex. EEE) Dr. Pakier stated that, based on his evaluation, he did not recommend any psychiatric treatment for Dr. Boutros. (Resp. Ex. EEE)

237. Dr. Pakier noted that an incorrect diagnosis of bipolar disorder can present problems. For example, there can be side effects from the medications used to treat bipolar disorder, such as tremors. (Tr. at 461-463)

Evaluation by Dr. Madeline Free

238. Dr. Free had evaluated Dr. Boutros on September 20, 2004, about one month after the involuntary commitment at Trinity Hospital. At Dr. Boutros' request, she provided a letter addressed "To Whom It May Concern," dated September 20, 2004. (Resp. Ex. Y, St. Ex. 15) (The letter is quoted above in its entirety, at page 44.)
239. On October 25, 2006, Dr. Free provided a lengthy report regarding the September 2004 consultation, noting that Dr. Boutros had requested the consultation because he had a previous "petition for involuntary commitment that was dropped on the contingency that he would receive a psychiatric evaluation." (Resp. Ex. DDD)
240. Dr. Free reported that Dr. Boutros had indicated that he had recently been terminated from his employment. He explained that he had approached his new work with "a great deal of enthusiasm" compared to his previous approach of "being rather mundane and routine about his work." Dr. Boutros said that he had talked about having a professor from Toronto come and use "some machine for the first time apparently in the world in Minot" and "had been talking about some very lucrative real estate investments to people," and this conduct "was misconstrued as being 'grandiose.'" He felt that his poor relationship with the clinic manager was the result of his not buying a house through the manager's husband "who was a real estate person." In addition, Dr. Boutros stated that he had a conversation with the husband, asking him "to get his wife to stop lying," which was not taken well and was misconstrued as threatening, or else the hospital vice-president had "misconstrued the data." Dr. Free further noted that Dr. Boutros was "slightly hypothyroid," as "his free T4 and T3 were within normal range" and "only" the low TSH was abnormal, although she stated on the following page that

the free T4 was abnormal as well. (Resp. Ex. DDD at 7-8) Dr. Free stated her “Impression” as follows:

AXIS I:

1. Psychological factors affecting physical conditions, 316.00.
2. Cannabis abuse, 305.20.
3. Nicotine dependence, 305.10.

AXIS II: Narcissistic traits.

* * *

AXIS IV:

1. Acute stressors: Recent termination from employment, altercations with clinic manager and clinic manager’s husband, recent cannabis abuse.
2. Chronic stressors: Fragile ego structure, poor conflict resolution.

AXIS V: Current Global Assessment of Functioning (GAF) is 91. Highest GAF in past year is 91.

(Resp. Ex. DDD at 7)

241. Dr. Free stated in her 2006 report that she had encouraged Dr. Boutros to work at conflict resolution and “perhaps filtering better what things he stated to staff and other people.” She noted that Dr. Boutros “admitted that commenting to someone that their wife was lying probably would not help that individual maintain a healthy relationship towards him.” She pointed out to him that “having discussions with patients about experiences that he had in their city was a boundary violation and not healthy,” and she concluded that “[c]ertainly, sharing with them a story about a prostitute being in his car could easily be misconstrued by anyone.” Dr. Free reported that Dr. Boutros had admitted that he had made “some poor judgment statements.” He also indicated willingness to have thyroid levels checked again, as his thyroid “may have been a small contributing factor” to his “poor judgments and high energy state.” Dr. Free advised Dr. Boutros against using marijuana, but she did not ask him if he had been using marijuana for the year he lived in Toronto, as it “possibly was the expected norm.” (Resp. Ex. DDD at 7-8)
242. When she testified by telephone at the Board hearing, Dr. Free acknowledged that Dr. Boutros did not tell her about witnessing pornography on his computer or discussing the gang-member ring with a patient. She was aware that Dr. Boutros had been involved in a land-development investment, but did not recall that it involved plans for a four-wheeling park. Further, Dr. Boutros did not tell her that he frequently visited a convenience store in the middle of the night. She was aware that he had made frequent calls to Lebanon, but did not realize that the calls had been made in the middle of the night. Finally, Dr. Free was aware that Dr. Boutros’ co-workers had accused him of having grandiose ideas, but believed that the source of the accusations was that Dr. Boutros had had great plans for the eye clinic. (Tr. at 347-352)
243. At the hearing, Dr. Free testified that the purpose of the September 2004 evaluation was to determine if Dr. Boutros was a danger to himself or others and to try to formulate a diagnostic impression. She stated that he was very cooperative with her and she did not witness anything that would suggest a bipolar individual. She did, however, see a number of stress factors and

“cultural aspects figuring into his reactions to some things.” (Tr. at 312-314, 343) Dr. Free stated that she did not believe “Dr. Boutros presented symptoms that would support a DSM-IV diagnosis of bipolar disorder.” (Tr. at 325)

244. Dr. Free testified that individuals experiencing manic episodes, when not treated, will escalate in their mania “until they start to deteriorate, and then they will plummet into depression.” In addition, stress can escalate or cause manic episodes. Nevertheless, when Dr. Free saw Dr. Boutros shortly after his civil commitment, he was experiencing a great deal of stress and she saw no signs of mania. (Tr. at 327-328)

245. Dr. Free testified that it would be inappropriate to require Dr. Boutros to take mood-stabilizing drugs because he does not exhibit bipolar symptoms and because the drugs may affect his overall functioning and concentration. The side effects “would make his work inaccurate and could be devastating in terms of patient outcomes.” (Tr. at 332-333) Dr. Free explained that the three drugs that are prescribed to treat bipolar disorder are Lithium, Depakote and Tegretol. She explained that Lithium and Depakote can cause tremors. Lithium can cause kidney disease, Depakote can cause a decrease in coagulation studies, and Tegretol can cause aplastic anemia. (Tr. at 333-334)

Additional Testimony Regarding Dr. Boutros in California after May 2005

246. Dr. Boutros testified that he worked in Ohio from February 2005 to May 2005. He relocated to California when he received an employment offer. (Tr. at 1296)

247. Dr. Boutros testified that he had advised the California Medical Board of the events in North Dakota. When asked if he was being investigated in California at the time of the hearing, Dr. Boutros said he did not know. He stated that the California Board had investigated him regarding the events in North Dakota, but he did not know the status of that investigation at the time of hearing. (Tr. at 1297)

248. However, one of Dr. Boutros’ exhibits at the hearing was a January 2007 letter from the California Board advising him that it had concluded its investigation of his case and was referring the matter to the Office of the Attorney General. (Resp. Ex. PPP)⁵⁹

Dr. Brinkenhoff

249. Michael Brinkenhoff, M.D., testified by telephone on behalf of Dr. Boutros.⁶⁰ He stated that Dr. Boutros had worked for him from June 2005 through June 2006 and that he had found Dr. Boutros through a recruiter. (Tr. at 366, 374)

250. Dr. Brinkenhoff testified that he had been aware of the problems in North Dakota although he could not recall the allegations. Dr. Brinkenhoff testified that, due to the allegations, he had watched Dr. Boutros closely but had not observed any signs of mental illness.

⁵⁹ The ultimate resolution, following that referral to the California Attorney General, was not provided during the hearing, nor has the record been supplemented post-hearing.

⁶⁰ Dr. Brinkenhoff testified that he is a board-certified ophthalmologist in Ventura, California. (Tr. at 363-366)

Dr. Brinkenhoff testified that Dr. Boutros had left his employment because he had received a better offer. (Tr. at 368-370, 378) However, in his testimony during the arbitration proceedings, Dr. Brinkenhoff testified that Dr. Boutros had left the practice because Dr. Brinkenhoff executed a termination clause in Dr. Boutros' employment contract. (Resp. Ex. I at 654-655)

251. Dr. Boutros stated that Dr. Brinkenhoff had met with a hospital staff member who had advised that there were problems with Dr. Boutros' application for hospital privileges. Dr. Boutros testified that Dr. Brinkenhoff could not wait for Dr. Boutros to obtain privileges because he needed a physician who could perform surgery. (Tr. at 1348-1351)

Dr. Niswonger

252. Jerome Niswonger, M.D., testified by telephone on behalf of Dr. Boutros.⁶¹ He stated that Dr. Boutros has been working with him on a full-time basis since August 2006 and had performed locum tenens work before that. (Tr. at 400-403, 415)
253. Dr. Niswonger testified that they had worked together closely at the beginning. He opined that Dr. Boutros is an excellent surgeon, very bright, and treats patients well. He stated that he had never observed Dr. Boutros demonstrate any signs of mental disease. (Tr. at 400-403, 415)
254. Dr. Niswonger testified that he had been aware of Dr. Boutros' problems in North Dakota when he hired Dr. Boutros. Dr. Niswonger stated that he had understood that Trinity wanted to break its contract with Dr. Boutros and had therefore placed him in the psychiatric unit for 3 days "without any cause at all." (Tr. at 405-406) Dr. Niswonger testified that it was his belief that Dr. Boutros has been "cleared from any significant mental health problems." (Tr. at 412)

Other Evidence

255. Dr. Boutros stated that he had asked patients for supportive letters, which he presented at the hearing. The letters indicate that the patients were pleased with the services that Dr. Boutros provided. (Resp. Exs. Z, RRR) He explained that he solicited these letters from patients he had seen in 2004 from August 2 through August 11 to show that he had practiced medicine well throughout that time period. When asked why one patient had stated that he had heard that Dr. Boutros had been fired because he was a terrible doctor, Dr. Boutros testified that he had probably told the patients that he had been fired by the hospital because the hospital thought he was "a terrible guy." (Tr. at 1384-1387; Resp. Exs. Z, RRR)
256. Dr. Boutros testified that he tends to be "a little hyper." He stated that, when he is not paying attention, it is easy for him "to go on a fast track." (Tr. at 988-989) He further testified that he often speaks quickly and gets excited, but he is able to control both. Dr. Boutros said that it is easy for him to get passionate about things. He explained that it is part of the Lebanese culture to exaggerate, to use hyperbole, and to use one's hands when talking. (Tr. at 989-991)

⁶¹ Dr. Niswonger testified that he is a board-certified ophthalmologist in Paradise, California. (Tr. at 397-400, 408-409).

257. Dr. Boutros explained that things he says are often taken out of context. For example, Dr. Boutros stated that he had described himself as “manic” but he simply meant that he is a “hyper” person and talks quickly. (Tr. at 992-993)
258. Dr. Boutros further testified that his “sense of humor” may come across in ways that he does not intend. He attributes his sense of humor to a need for attention. (Tr. at 998-999)
259. Dr. Boutros also explained his views regarding what is at stake in the present proceedings:

Because I have to defend my right not to be labeled as mentally ill in a public format before due process is consummated. I have to defend the right that I can get a second opinion if somebody comes in and smacks me with a very serious diagnosis coupled with a dangerous recommendation to be committed for the rest my life.

I have to fight for the right that I shouldn't accept a wrong diagnosis if the evaluation was faulty.

I think the hearing is a good vehicle to explain to a Medical Board that forcing, dictating, dangerous recommendations on a person who is not living in the state, who doesn't hold a licensing in the state, who is living in California, based on a two-and-a-half year-old evaluation, which could be faulty, which is not consistent with four or five other evaluations done around the same time that did not come up with the same diagnosis, in my opinion, is strictly against the ethics of practicing medicine.

(Tr. at 983)

DISCUSSION

Credibility Determinations

After observing Dr. Boutros over the course of six days of hearing, and giving careful attention to his demeanor during his testimony as well as considering his testimony in the context of all the other evidence, the Hearing Examiner concluded that Dr. Boutros was not a reliable witness with regard to his disputed behaviors in 2004. First, the Hearing Examiner believes that Dr. Boutros drastically minimized the degree, intensity, and extent of certain behaviors in July 2004 through mid-September 2004. Second, Dr. Boutros attempted to characterize certain behaviors as “jokes” that were misunderstood by people with different senses of humor. Third, Dr. Boutros tried to establish that his conduct was misinterpreted because he is Lebanese and has a different cultural background.

The Hearing Examiner did not find Dr. Boutros' explanations to be persuasive. With respect to his descriptions of his own conduct, the Hearing Examiner found that Dr. Boutros was not a credible witness. For example, with regard to Dr. Boutros' sleeping patterns during the relevant period of time, the Hearing Examiner is convinced that Dr. Boutros significantly minimized the amount of

time that he stayed awake and increased the amount of time that he slept.⁶² Likewise, the Hearing Examiner believes that Dr. Boutros significantly minimized the intensity of the energy and exuberance he had poured into the real-estate venture and other ventures, and the extreme enthusiasm he displayed to others. He also minimized his excessive sociability, which was described by multiple witnesses and which included his excessive social overtures with people at the gas station and his excited overtures with a variety of people across a variety of topics. Further, Dr. Boutros minimized or completely dismissed the inappropriate aspects of his storytelling in professional settings, when he told stories about things such as pornography, an incident involving a prostitute, his knowledge of a murder for profit, and his ownership of a ring used for gang-fight mutilation. The Hearing Examiner accepts that many professionals might share a personal story, or a news item with sensational aspects, with co-workers they know fairly well; but Dr. Boutros was setting up a new practice and seeing new patients, and he told these stories to people he did not know well and in a manner that startled or unsettled a number of them.

Further, his testimony regarding other incidents was not believable. For example, when Dr. Boutros attempted during the hearing to discredit the two women who had heard him describe pornography at an anesthesiology meeting, his testimony was particularly weak. Dr. Boutros' voice and the look on his face indicated that he knew he had done exactly what the witnesses said he had done, but that he was trying to say something to minimize their testimony.

Similarly, Dr. Boutros acknowledges that he waited in Mr. Watne's parking lot for him to come out, and approached him as soon as he entered the parking lot. Dr. Boutros told Mr. Watne that his wife was lying and something had to be done about it, and that it was "a life and death matter." However, Dr. Boutros insists that he was "polite" in his manner and that there was no reason for the Watnes to feel threatened. The Hearing Examiner, however, having observed Dr. Boutros for many days of hearing and having reviewed the evidence, rejected the testimony that Dr. Boutros was polite or congenial in this encounter.

Also, Dr. Boutros' versions of events were internally inconsistent at times. For example, Dr. Boutros' regarding the potential Lasik clinic in San Diego contained contradictions. In addition, Dr. Boutros stated that he believed that Suzanne Watne was making improper advances to him and that he had taken great care to avoid compromising situations, such as being alone with her; nonetheless, he also stated that he had taken her four-wheeling in the countryside instead of completing a business lunch in town, and he admitted that he had refused to take her back to the clinic when she first asked him to do so, and that she had been obliged to ask a second time to be taken back.

Similarly, Dr. Boutros expressed shock and dismay when a pornographic video played on his laptop computer when he was training Ms. Wahl, and he apologized. This testimony showed that he knew that exposure to pornographic material in a work setting would be viewed by most staff members as shocking, strange, and/or offensive. Nevertheless, he then deliberately imposed a description of this pornography on two other female staff members at a business meeting.

⁶²Dr. Boutros and his wife asserted that he had obtained sufficient sleep during the summer of 2004, but also testified that they are not really sure how much sleep he had during that period. Moreover, neither was a credible witness on this issue.

In addition, Dr. Boutros asserted that he had personally found the incident with the prostitute to be shocking and disgusting, but he admitted he had shared the incident with a patient and a staff member. His explanation, that an acquaintance had thought it was funny, was not believable. These credibility findings are based on observation of Dr. Boutros during the hearing as well as the inconsistencies of his testimony.

Even if one discounts one incident or another as harmless or trivial, the cumulative effect is significant. During this period of time, Dr. Boutros clearly sought the thrill and shock value of telling unsavory stories to people. He had reason to know that hearers might be shocked, even if some later said they had not been offended.

Similarly, with regard to Dr. Boutros' activities regarding his niece, the Hearing Examiner understands that family members naturally tend to want to help each other, and understands that activities to rally support for an ailing relative can have important value. Nonetheless, Dr. Boutros' explanation for his nights awake on the telephone and his frequent visits to the gas station in the early hours of the morning—that he was obliged to make calls overseas to save his niece—did not sound believable. His insistence that he had been exhorted by a doctor to undertake these activities came across as trying to justify excessive behavior. It is noteworthy that the hearing record includes no letter, affidavit, or testimony from the person who allegedly urged Dr. Boutros to engage in these activities. Further, the Hearing Examiner questioned how many hours, over how many nights, were really needed to contact friends and family to ask them to give the niece support. In addition, there was other evidence that formed a context for Dr. Boutros' campaign to save his niece. For example, the niece was receiving medical care in a Los Angeles hospital, which suggests that she was receiving professional care and that appropriate avenues of treatment would be pursued. Further, it was credibly reported that Dr. Boutros was upset that he was not permitted to see her and that he was convinced that he could cure her immediately. The Hearing Examiner, listening to Dr. Boutros testify and observing him, became convinced that he downplayed the intensity of his activities and that he exaggerated the pressing encouragement he had received to take the actions he took.

Another example of testimony that was not found believable was the explanation given for the "broken arm" incident. According to Dr. Boutros, the reason that the secretary reported that Dr. Boutros had broken his arm and would be late was that she had joined him in playing a joke on the staff in retaliation for their previous jokes on her. His testimony was not credible. Dr. Boutros' demeanor and tone while testifying about this event indicated that he was grasping at a story to explain an odd behavior for a mature physician in a position of authority.

Further, the Hearing Examiner found the descriptions by Lee Jeannotte, as reported to the North Dakota Board, to be persuasive for several reasons. First, his descriptions were consistent with the descriptions given by Trinity staff. In addition, Dr. Boutros confirmed most of the incidents but simply put a different interpretation on them. The fact that the owners of the BP gas station apologized after being sued does not conclusively establish that Mr. Jeannotte's descriptions of conduct at the gas station were inaccurate.

The Hearing Examiner recognizes that the record also includes testimony suggesting that Dr. Boutros' behavior was within reasonable boundaries. With regard to the stories told to staff and patients, two patients testified that Dr. Boutros' stories had not really bothered them. Nonetheless, the Hearing Examiner concludes that a reasonable person could conclude, based on all the evidence, that Dr. Boutros' conduct showed excessive expansiveness in his interaction with staff and patients. Further, the report that Dr. Boutros' sister allegedly admitted that his activities concerning his niece had been helpful, reported as hearsay (statements outside the hearing room and not documented by the speaker herself) does not change the conclusion that Dr. Boutros' testimony was not reliable with regard to whether he had engaged in abnormally intensive, goal-directed activities.

Moreover, Dr. Boutros' tendency to exaggerate and misrepresent facts was demonstrated at the hearing. For example, Dr. Boutros testified that, in the present proceedings, he is defending the right to get a second opinion if someone smacks him with "a dangerous recommendation to be committed for the rest of [his] life." The Hearing Examiner is aware of no recommendation by any physician that Dr. Boutros should be committed for the rest of his life. Further, in the notice of opportunity for hearing, the Board did not propose that Dr. Boutros should be committed for the rest of his life.

Third, with regard to cultural differences, the Hearing Examiner is aware that, in some instances, significant misunderstandings can arise due to differences in cultural background. Conduct that is accepted, esteemed, or neutral in one culture may be strongly disapproved or misinterpreted in another culture. Nonetheless, during the hearing and upon review of the evidence, the Hearing Examiner became convinced that Dr. Boutros' problems with social and professional interactions were not a result of cultural differences—or that only a very small percentage of them were caused by cultural diversity. There are several reasons for this conclusion. First and foremost, Dr. Boutros had lived in Europe for two years and had then lived in the United States for more than 20 years before he took the job at Trinity. By the time he relocated to North Dakota, Dr. Boutros had completed three years of residency in Louisiana and had lived and worked in Kentucky, California, Kansas (in a small town for more than ten years), and Washington State. The Hearing Examiner is convinced that, during 20 years in the United States, Dr. Boutros had gained a sufficient familiarity with social norms and culture to avoid significant cultural clashes if he wished to do so, or was able to do so. In addition, the Hearing Examiner finds no evidence in the record to establish that most of the physicians, nurses, and other professionals in Minot, North Dakota, had such a limited knowledge of Mediterranean cultures that they could not recognize or comprehend a cultural style that is different from their regional style and is more expressive, dramatic and voluble. Further, even if cultural ignorance were to explain some of the negative reports regarding Dr. Boutros' behavior, it does not satisfactorily explain the multiplicity of reports regarding unusual behavior.⁶³

Fourth, Dr. Boutros' accusations that witnesses were unduly biased against him is accepted only in part. The Hearing Examiner recognizes that certain employees of Trinity were not fully reliable in certain descriptions, particularly the Trinity executives who pursued the involuntary commitment. They either failed to do an adequate investigation or they misrepresented facts.

⁶³In addition, Dr. Noffsinger acknowledged that Dr. Boutros' baseline may be somewhat hyper, talkative, and in need of attention. Nevertheless, he concluded that Dr. Boutros had experienced a manic episode in the summer of 2004. *E.g.*, Tr. at 581-583, 879-880.

However, that circumstance does not mean that every staff member at Trinity gave untrustworthy information. To the contrary, the Hearing Examiner, after many days of hearing testimony as well as reviewing the arbitration materials and other evidence, found that the reports of the Trinity staff members were more credible on the whole than Dr. Boutros' testimony with regard to behaviors and incidents that the diagnosing psychiatrists discussed. The sum total of testimony by many witnesses cannot be discounted. Too many people described similar events. Moreover, Dr. Boutros himself corroborated many of the events in large part, simply ascribing a different interpretation or characterization to his behaviors.

For example, Dr. Boutros did not convincingly explain away the specific reports of witnesses such as Paula Wahl, Tammi Fugere, Lana Parisek, Renee Peterson, Evlyne Kindy, Denise Dahl, Dawn Albertson, Linda Guidinger, Shirley Isla, Rose Ulland, Jill Radekopp, Cheryl Holcomb, Judith Erickson, Lee Jeannotte, Brenda Willoughby, and others. The Hearing Examiner is convinced that many of the reports made by Dr. Boutros' co-workers and acquaintances regarding his actions and statements were accurate and truthful reports. Further, even with regard to Ms. Watne's reports, several of her narratives were believable, such as her report regarding the lunch meeting that turned into a four-wheeling tour of the site for his proposed theme park, which was an incident that Dr. Boutros himself confirmed, although he gave a different characterization to the events.

Expert Witnesses

With regard to the reports of the two expert witnesses, the Hearing Examiner found that both experts (Drs. Kelly and Noffsinger) were qualified to render expert psychiatric opinions. However, both written reports had weaknesses. Some of the information on which Dr. Noffsinger initially relied lacked a firm factual foundation, and he was then obliged to address new information during the hearing.⁶⁴ However, on the whole, the Hearing Examiner found Dr. Noffsinger's evaluation and expert opinion to be more reliable and persuasive. Not only was his overall presentation convincing, but, in addition, his assessment of Dr. Boutros' credibility and his assessment of the underlying documentation was consistent with the assessments made by the Hearing Examiner. Much of Dr. Boutros' criticism of Dr. Noffsinger's opinion focused on Dr. Noffsinger's acceptance of reported incidents that Boutros denied happened, or that Dr. Boutros asserted had been misinterpreted. However, the Hearing Examiner did not accept Dr. Boutros' version of these incidents, as explained above. Further, although Dr. Boutros attacked the foundation of Dr. Noffsinger's opinions and his credibility, the Hearing Examiner found Dr. Noffsinger to be a truthful and credible witness, with no improper bias for or against either party. In addition, the Hearing Examiner found that there is a sufficient foundation of factual material in the hearing record to support his opinion regarding medical diagnosis.

Dr. Kelly's evaluation was not found to be persuasive for a variety of reasons. First, in forming his opinions, he accepted statements as true that the Hearing Examiner rejected as unreliable. He also

⁶⁴ For example, Dr. Noffsinger had not known of the patent at the time he provided his written reports. However, the Hearing Examiner finds that Dr. Noffsinger ultimately considered all the evidence, including the arbitrator's review of events, and provided a reasonable explanation for his opinions.

discounted statements that the Hearing Examiner found to be trustworthy. For example, Dr. Kelly accepted as true practically all the statements and descriptions given by Dr. Boutros and his wife, who had hired him, but he rejected the statements of numerous other witnesses because he viewed them as having self-interest and bias. Second, Dr. Kelly relied heavily on statements made to him directly, which the Hearing Examiner did not have the opportunity to review. With regard to the interviews he conducted, there were no written statements, affidavits, or transcripts of the alleged statements of these witnesses.⁶⁵ Third, during his testimony, Dr. Kelly was simply not as persuasive and believable as Dr. Noffsinger. Dr. Kelly appeared to be less objective in his approach.

Although the Hearing Examiner found the conclusions and opinions of Dr. Noffsinger to be more persuasive on the whole, it is important for the Board to exercise its own collective medical expertise in determining the appropriate diagnosis based on the evidence and in determining whether Dr. Boutros is unable to practice according to acceptable and prevailing standards of care by reason of a medical condition unless he receives treatment, monitoring, and supervision. The Board is *not* precluded, as a matter of law, from agreeing with either of the expert witnesses. If the Board finds that the diagnosis reached by Dr. Noffsinger is reliable, based on the evidence and on its own medical expertise, the Board may agree with his diagnosis. Likewise, there is nothing in Dr. Kelly's report and testimony that, as a matter of law, would preclude the Board from relying on his opinion.

Additional Discussion: Evidence Relating to the Diagnostic Criteria Listed Above, and Whether There is a Sufficient Quantum of Evidence to Support the Diagnosis of Bipolar I Disorder

Dr. Boutros has argued that the diagnosis of Bipolar I Disorder lacks a sufficient factual foundation in the record, in that there is insufficient evidence to support a medical opinion that a period of mania occurred. The DSM-IV criteria for diagnosing Bipolar I Disorder are set forth above, and that diagnostic manual indicates that not all the listed criteria must be present. With regard to the factual foundation, the Hearing Examiner provides the following discussion.

1. There were numerous persuasive reports that, in the summer of 2004, Dr. Boutros behaved in a manner that was markedly different from his behavior before the fellowship in Canada. Dr. Boutros reported that his mood was exuberant and that he believed everyone was his friend. There were also reports that Dr. Boutros was not only effusively friendly in a new way but that he was also more irritable and tended to drive recklessly and to use loud and profane language.

For example, Tammi Fugere stated Dr. Boutros' behavior was "very inappropriate and strange." She said that, during the course of one conversation, his mood ranged from very upset to "hugging and laughing." His "personality would change from one extreme to another." Ms. Fugere stated that she had worried about Dr. Boutros, and thought he might need psychiatric help. Her statements were found persuasive.

⁶⁵ The Hearing Examiner understands that forensic psychiatrists obtain information from sources other than the individual examined, and may conduct interviews. In this discussion, the Hearing Examiner does not intend to suggest that Dr. Kelly should not have conducted interviews, but finds only that his strong reliance on certain interviews made his opinions less persuasive to this finder of fact.

Similarly, Linda Guidinger stated that, when Dr. Boutros returned from Toronto, he was “overly friendly” and “hyper.” Evelyne Kindy stated that Dr. Boutros was a “different man” than the person she had known a year earlier and that, when he returned, he was “loud,” “strange,” and “very happy.” Paula Wahl described his mood as “cycling between highs and lows” and unfocused. He had been unable to follow a time schedule. Shirley Isla described Dr. Boutros as “very excited,” unusually sociable on multiple occasions, and “extraordinarily happy.” These statements were found to be more reliable than Dr. Boutros’ statements regarding his behavior and mood.

In addition, Lee Jeannotte stated that Dr. Boutros had been “like an Amway dealer on crack-cocaine” and provided numerous details. Even if one discounts Mr. Jeannotte’s colorful characterization, Mr. Jeannotte described events that were convincing: that Dr. Boutros charged up to him and insisted on shaking hands and talking, despite other customers in line; that Dr. Boutros was regularly at the store in the middle of the night; that Dr. Boutros asked to take a customer’s dog for a ride in Dr. Boutros’ car; that he sprayed the clerk with water on impulse; and took the clerk home with him in the early morning, excited for his children to meet a real “Indian.” Also, Mr. Jeannotte’s descriptions indicate that Dr. Boutros plunged into a relatively intense connection with the store clerk, such as offering to buy a house to rent to the clerk. Even if Mr. Jeannotte’s statements were not viewed as 100% reliable in all respects, a telling fact is that, after a physician befriends him and offers to help him get a better job and better place to live, Mr. Jeannotte became so troubled by the physician’s behavior that he took action to get a no-trespass order to stop Dr. Boutros from coming into the store.

Mr. Jeannotte’s statements were corroborated by Dr. Boutros’ own statements to a large extent. For example, Dr. Boutros acknowledged many of the events reported by Mr. Jeannotte, but he simply placed a different interpretation or emphasis on them. The Hearing Examiner found the overall picture painted by Mr. Jeannotte to be convincing, and consistent with the testimony of other witnesses.

In addition, Dr. Boutros engaged in unusual overtures in meetings with the Governor of North Dakota and a chief officer of the North Dakota Board of Medical Examiners. Upon meeting the governor, Dr. Boutros asked to have the governor’s tie. (The fact that a politician took this in stride and did not rebuff the overture does not change the conclusion that Dr. Boutros’ conduct was not within normal boundaries, especially when viewed in the context of other incidents. In isolation, this incident can be viewed as relatively insignificant.) In addition, Dr. Boutros confirmed that, in a meeting at the North Dakota Board, he begged for an item of artwork from the official’s office “as a souvenir” and, when denied, then asked for the man’s leather jacket. At the hearing, Dr. Boutros dismissed this conduct as merely “stupid,” but the cumulative effect of the incidents of Dr. Boutros’ conduct could reasonably be viewed by the Rush team and by Dr. Noffsinger as showing an abnormally expansive or elevated mood and/or indicating an inflated sense of self-esteem.

2. *The reports of Dr. Free, Dr. Packer, Dr. Anwar, and the Rush team (Drs. Henry, Odgers, and Devine) on whether a manic episode had been established*

Dr. Free examined Dr. Boutros on September 20, 2004, and she did not find symptoms of mania. However, the Hearing Examiner did not find her to be a convincing witness. She acknowledged that Dr. Boutros did not tell her about numerous events and incidents, and the Hearing Examiner found the omissions to be significant. Further, although the Hearing Examiner recognizes that a physician need not be board-certified in his or her practice specialty in order to make an accurate diagnosis, Dr. Free's five unsuccessful attempts to pass the board-certification examination affected the Hearing Examiner's assessment of the weight and persuasiveness of her opinion, when compared with the opinions of other physicians.

Dr. Anwar diagnosed Bipolar Disorder NOS rather than Bipolar I Disorder. He testified that Dr. Boutros' presentation was consistent with a bipolar disorder but not necessarily Bipolar I, which requires a distinct period of mania. Nevertheless, Dr. Anwar stated that he could not be sure of the cause of Dr. Boutros' manic behavior and suggested that a more thorough examination would be in order.

Similarly, the Rush team of evaluators did not find Dr. Boutros to be manic or hypomanic at the time of their evaluation in December 2004. Nevertheless, the Rush evaluators noted that Dr. Boutros was not consistently appreciative of boundaries and that he had shown confidence that he could put together a group of investors to develop a large entertainment park outside of Minot, North Dakota. In addition, they noted that Dr. Boutros had described himself as being exuberant in July 2004. Further, the Rush evaluators noted that the reports of individuals interacting with Dr. Boutros were consistent in describing "a pattern of poor judgment, erratic behavior, poor boundaries, increase in goal-directed activity, rapid speech, and frequently, perceptions of grandiosity and/or paranoia." The Rush evaluators concluded that these reports were "highly suggestive" of manic/hypomanic behavior by Dr. Boutros during the summer of 2004.

3. Dr. Boutros argued that the Rush evaluators and Dr. Noffsinger were irreparably tainted and prejudiced in several ways and that, therefore, their assessments cannot constitute evidence on which the Board may rely. Dr. Boutros argues that Trinity's report to the North Dakota Board regarding Dr. Boutros, which triggered that board's investigation, was made in bad faith, to discredit him. In addition, Dr. Boutros argues that the Rush evaluators and Dr. Noffsinger were given false information, such as Dr. Gomez' medical opinion, and false and/or biased reports from Trinity executives and staff members, and other unreliable information.

First, the Hearing Examiner is unwilling to assume, without evidence, that the North Dakota Board would fail to do a thorough and independent investigation after receiving a report about a physician. Investigative bodies tend to become aware that false reports and malicious reports can be made, and medical boards are likely to be familiar with circumstances in which accusations can fly when hospital politics become heated. The evidence provided in this record does not establish that the North Dakota Board failed to proceed reasonably and fairly after receiving Trinity's report about Dr. Boutros. Indeed, the evidence suggests that the North

Dakota Board examines each case on its merits, regardless of the source of the initial complaint: the North Dakota Board investigated Dr. Boutros' complaints against two physicians and found merit in one of his complaints.

Second, the evidence does not establish that the Rush evaluators failed to do a thorough review of all the information available. On the contrary, the Rush evaluators reviewed a wide range of information, as set forth in their report, including: the written report of Dr. Free as well as "other documents prepared and forwarded by" Dr. Free (as described in the Rush report), recommendation letters provided by Dr. Boutros, letters of support from patients, pleadings he filed contesting actions taken by Trinity and others, and communications between Dr. Boutros and the North Dakota Department of Labor. Further, the Rush evaluators interviewed Dr. Boutros extensively, providing him the opportunity to provide full information regarding the events at Trinity. They also administered tests such as the MMPI and others. Thus, although the Rush evaluators had received some questionable information from Trinity, including information about the involuntary commitment, they also were aware of the ultimate resolution of that commitment. The Rush evaluators had substantial information from Dr. Free and others, and an extensive interview with Dr. Boutros, to balance the picture.

Third, with respect to Dr. Noffsinger, the Hearing Examiner notes that he reviewed and considered substantial supplemental information from Dr. Boutros. Dr. Noffsinger reviewed the reports of Drs. Free, Kelly, and Pakier, and also reviewed the arbitrator's decision. At the hearing, Dr. Boutros presented more information to Dr. Noffsinger, and Dr. Noffsinger considered that additional information as well, and testified regarding his assessment of the information provided. The Hearing Examiner has reviewed all the evidence and observed Dr. Noffsinger, who was present on several days during the hearing and testified for many hours. The Hearing Examiner believes that Dr. Noffsinger performed a competent psychiatric evaluation of Dr. Boutros in good faith, and rendered his ultimate opinion at the hearing based on a sufficient quantum of reliable information. One may disagree with Dr. Noffsinger's conclusions and opinions, but the Hearing Examiner rejects the assertion that the Board cannot agree with the diagnosis reached by Dr. Noffsinger on the grounds that he acted unprofessionally or unethically in his evaluation of Dr. Boutros.

4. Dr. Boutros argued that the evidence shows he was able to practice medicine competently and professionally on several documented occasions during July and August 2004, and that, therefore, he could not have been experiencing a manic episode. However, there was also testimony that an individual may experience periods of high functioning during a manic episode, as the disorder may fluctuate, and the Hearing Examiner found that testimony to be reliable. It is fair to conclude that the question of the *presence* of symptoms over a period of time, sufficient to diagnose a disorder, is separate from the question of whether the symptoms were uniform in severity over that period.
5. There was testimony from several physicians that it would be unusual to experience a first manic episode after the age of fifty. Nevertheless, all agreed that it would be inaccurate to state that an individual could not experience the first episode later in life. Further, there was no reliable evidence, one way or the other, regarding Dr. Boutros' mental status during the period before he moved to North Dakota. Dr. Anwar reported that Dr. Boutros acknowledged a prior

episode of mania, but Dr. Boutros has otherwise vehemently denied a history of manic behavior. Dr. Boutros' attorney in North Dakota suggested that, *if* Dr. Boutros said it, he was merely being sarcastic and his statement was misunderstood.

6. Dr. Kelly reported that Dr. Boutros was able to slow his speech when requested to do so, and was goal-directed, thoughtful, and logical in his conversation. The hearing transcript reflects similar behavior during the hearing, when Dr. Boutros could make a successful effort to control his speech when asked to do so and could present statements that appeared thoughtful and logical. Nevertheless, Dr. Boutros' ability to control his speech during an interview in 2005 and during a hearing in 2007 does not preclude the occurrence of a manic episode in the summer of 2004.

Numerous individuals reported that, when Dr. Boutros returned from Toronto, his speech would move quickly in flights of new thoughts at a rapid pace. Jill Martinson Radekopp, O.D., stated that "he would ask questions, and while you were trying to answer the questions, he would jump in with another train of thought or another question." Suzanne Watne stated that Dr. Boutros had been unable "to maintain logical conversation." Dr. Sanke noted "rapid, disjointed speech, rambling." Dr. Anwar noted racing thoughts and flight of ideas. The Rush evaluators noted that "Dr. Boutros' thinking was disorganized, tangential and circumstantial" which, Dr. Noffsinger testified, is a different way of saying "flight of ideas."

Dr. Noffsinger also testified that Dr. Boutros had told him that, when he returned to North Dakota, he was "more talkative" during the summer of 2004. Similarly, staff from the eye clinic described unusual talkativeness and rapidity of speech. Therefore, the Hearing Examiner is not persuaded by Dr. Kelly's opinion that, because Dr. Boutros is able to slow down his speech when requested to do so in 2005 and thereafter, his speech patterns were not abnormal during the summer of 2004.

7. Dr. Boutros and Dr. Kelly noted that, when a bipolar individual in a depressive phase is given antidepressants, a manic episode is usually triggered. Dr. Boutros stated that he was given antidepressant medication for depression on two occasions, but did not experience a manic episode either time. Nevertheless, Dr. Boutros testified that he had discontinued the antidepressants due to untoward side effects. He did not describe those side effects, and he did not introduce any records from treating physicians to corroborate his testimony. Therefore, his testimony on these events was not persuasive. As noted by the Rush evaluators, relying solely on reports from the individual being evaluated is problematic due to "the patient's lack of insight" and the fear of being labeled.
8. With regarding to inflated self-esteem or grandiosity, Dr. Boutros believed that he could accomplish a significant number of expansive and time-consuming tasks at the same time, including the following: successfully building a new practice in retinal surgery, developing a "brilliant" scheme for a theme park, marketing a new surgical instrument, saving the life of his niece, and writing a book on retinal surgery. His ideas and plans for the four-wheeling park included skiing and other winter sports, pools and water slides, a botanical garden, a fitness track, "expensive housing," fine dining, a hotel, trails for horses and several kinds of vehicles, renting horses and vehicles, and an "Indian/cowboy village with gambling and alcohol."

Notwithstanding the comments in the Kelly report, it is difficult to construe these plans as anything but grandiose. Further, the attainment of a goal (such as a patent) does not establish conclusively that the individual could not or did not engage in grandiose conduct with regard to that work. There was no expert testimony that a person suffering from Bipolar I Disorder, with grandiose ideas and excessive goal-directed activity, can never accomplish a goal.

Further evidence of grandiosity and inflated self-esteem during the summer of 2004 include his schemes for assisting Mr. Jeannotte and creating a volunteer clinic for Mr. Jeannotte's tribe, which indicated inflated views of his power and the grandness of his generosity. In addition, Dr. Boutros' conduct in being frequently late and using loud and profane language indicated inflated self-esteem or entitlement according to Dr. Noffsinger. Further, Dr. Boutros' statements regarding his fellowship professors, denigrating their abilities and attitudes, supports that he had grandiose views of himself.

9. With regard to "distractibility" and attention being too easily drawn to unimportant or irrelevant stimuli, numerous individuals reported that, when Dr. Boutros returned from Toronto, he had been unable to focus on a patient examination or on the organization of his retinal practice. Moreover, there was testimony that considerable effort was undertaken to keep him on task. Dr. Boutros frequently engaged in conversations that were irrelevant and inappropriate to the situation at hand.
10. With regard to the factor of "increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation," the Board may consider the testimony and evidence that Dr. Boutros expended significant time and energy in pursuit of his land development scheme and in his activities to save his niece. He discussed the theme park frequently with numerous individuals and persuaded a number of people to visit the land site, including Ms. Watne, who did not wish to go. Dr. Boutros also displayed strong goal-directed activities regarding Native Americans, such as taking a new Native-American acquaintance home with him at 7 a.m. to meet his wife and children, insisting on visiting the tribe, talking frequently of his desire to establish a volunteer clinic, and asking many questions of relative strangers. As noted by the Rush evaluators,

As further substantiation of our opinion Dr. Boutros suffers from a form of Bipolar disorder, he described for us behavior highly suggestive of these sets of conditions. For example, Dr. Boutros described unreasonable and inappropriate investment in certain activities. These included his over-investment in rallying support for his niece and intensive involvement in his land development deal. Although Dr. Boutros attempted to portray his involvement in these activities as plausible and reasonable, we are of the opinion, to a reasonable degree of medical and psychiatric certainty, they were in fact excessive and inappropriate.

11. With regard to "excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g., engaging in unrestrained buying sprees, sexual indiscretions, or foolish business investments)," Dr. Noffsinger opined that talking about the prostitute with a patient (even without having initiated sexual activity with the prostitute) is an indicator of hypersexuality and poor judgment. The record also reflects that Dr. Boutros liked to tell people

about exciting and shocking things (the pornography-on-the-computer story, the murder-for-profit story, the gang-member's mutilation-ring story, and the prostitute-grabbing-his-penis story), even when there was a clear potential for negative reactions. Similarly, he was described as laughing about his broken-arm joke and not caring that others viewed it negatively. Dr. Boutros himself described his pestering of an official at the North Dakota Board as "very high on a stupidity scale." Further, Ms. Fugere and Ms. Watne reported that Dr. Boutros' driving was excessively fast, erratic, and dangerous, and Ms. Watne reported that Dr. Boutros "would miss stop signs and even a red light." When Dr. Boutros took her four-wheeling instead of to lunch, he provided only a bottle of water and ignored her first request to go back to town, which indicated that Dr. Boutros' excitement about, and his confidence in the attractiveness of, his theme-park venture were so strong that he found it difficult to accommodate other's needs.

These activities may or may not rise to the level of dangerous pursuit of pleasure seen in many cases of Bipolar I Disorder, in that there is no evidence that Dr. Boutros sank large amounts of money into the theme-park venture or that he ever had a car accident during the summer of 2004. However, as noted in the DSM-IV, it is not necessary that every criterion be met.

12. With regard to whether the mood disturbance was "sufficiently severe to cause marked impairment in occupational functioning or in usual social activities or relationships with others, or to necessitate hospitalization to prevent harm to self or others, or there [were] psychotic features," the Hearing Examiner recommends that the hospitalization at Trinity should *not* be considered, because it was not based on a real need to prevent harm to Dr. Boutros or others. However, the Board may find that Dr. Boutros' inappropriate behavior led to the deterioration of his social relationship with Lee Jeannotte and his professional relationships with colleagues, subordinates, and other staff at eye clinic and at Trinity, such that they did not see him as maintaining a professional demeanor, were concerned about his mental health, and were concerned about his patients. Although Trinity executives seriously mishandled the situation regarding Dr. Boutros' emotional outbursts, poor judgment, and inappropriate conduct, that does not alter the fact that Dr. Boutros was engaging in behaviors that caused marked impairment in personal and professional relationships.

Some of the observations in the record regarding Dr. Boutros' paranoia were based on his having expressed suspicion in July 2004 that the lack of clinic readiness on July 1 was due to a plan by Trinity to dump the retina clinic and break their contract with him, and there is no reliable evidence to demonstrate that this fear had a reasonable foundation. However, the Hearing Examiner agrees that Dr. Boutros' suspicions with regard to the visit to the Trinity E.R. had a reasonable foundation.

13. With regard to the criterion that the "symptoms are not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication, or other treatments) or a general medical condition (e.g., hyperthyroidism)," the Hearing Examiner notes that there was no evidence that any of these factors were responsible for Dr. Boutros' symptoms. More specifically, there was no proof of drug use other than occasional marijuana use. In addition, there was no evidence of a medical condition sufficiently severe to cause a manic episode. Although Dr. Boutros had a

low TSH, his T3 and T4 were normal. Moreover, Dr. Boutros was seen by an endocrinologist in 2005 who advised that Dr. Boutros did not suffer from hyperthyroidism.

LEGAL ISSUES

Mootness

Dr. Boutros argued that the issues in the notice of opportunity for hearing have become moot because he did not renew his license in 2005 and his license has now expired by operation of law since he has not renewed it in more than two years. (Tr. at 1442)

According to the Ohio eLicense Center, Dr. Boutros allowed his certificate to expire on 07/01/2005. (See <<https://license.ohio.gov/lookup/default.asp?division=78>>, entry for “Boutros, George Jamil-Elias.”) Therefore, as of July 1, 2007, the two-year period had ended in which he could have renewed his license simply by completing a renewal form and submitting a late fee

However, pursuant to R.C. 4731.22(M)(3), the expiration or lapse of a certificate—that is, the failure of an individual to renew his certificate to practice—“shall not remove or limit the board’s jurisdiction to take any disciplinary action under this section against the individual.” Therefore, the Board has statutory authority to take action with regard to an expired/lapsed certificate if it chooses to do so. Therefore, the Board is *not* required to dismiss this action on grounds of mootness, although it has discretion to do so.

Motion to Dismiss

On May 4, 2007, the Respondent filed a prehearing “Motion to Dismiss and/or for Protection under the Americans with Disabilities Act.” The State filed a memorandum in opposition, and the Respondent filed a reply memorandum. However, as set forth in Rule 4731-13-03(E), the Hearing Examiner does not have the authority to grant a motion to dismiss. In a prehearing teleconference in May 2007, the Hearing Examiner explained to the parties that hearing examiners cannot grant a prehearing motion for dismissal, but that the legal issues raised in the motion would be addressed in the Report and Recommendation, and the Board could address the question of dismissal.

In his motion, Dr. Boutros presented several arguments for dismissal. First, he contended that allegations made to the North Dakota Board by Trinity Hospital were “exaggerated/misleading, or false,” and that, as a result, the North Dakota Board’s investigation was based on flawed and unreliable evidence and that, consequently, the mental-health evaluation by Rush Behavioral Health (at the request of the North Dakota Board), lacked a reasonable factual foundation.

Further, Dr. Boutros asserted that the medical evaluation by Dr. Stephen Noffsinger on behalf of the Ohio Medical Board also lacked a reasonable foundation because Dr. Noffsinger relied in part on the tainted Rush evaluation and on false allegations made about Dr. Boutros.

First, the Hearing Examiner concludes that the posture of the case in May 2006 and the status of the evidence and allegations would not have warranted a prehearing dismissal even if the Hearing Examiner had the power to grant one. At that time, there were many unresolved issues regarding the credibility of witnesses and the reliability and weight to be given to a variety of medical opinions, and these were

issues appropriately resolved by hearing and consideration by the Board upon all the evidence. At present, upon a full review of the evidence and arguments, the Board can now determine whether it finds that the testimony of witnesses and the opinions of medical evaluators constituted reliable and persuasive evidence on the question of Dr. Boutros' mental health. If it concludes that there is no impairment as defined in R.C. 4731.22(B)(19), the Board may dismiss this administrative action.

Second, Dr. Boutros argued in his motion to dismiss that, even if the opinions of Rush Behavioral Health and Dr. Noffsinger were deemed to be reliable and persuasive, neither evaluation indicates that Dr. Boutros is currently, actively, suffering from bipolar disorder. In making this argument, the Respondent relied on Dr. Noffsinger's opinion that Dr. Boutros' bipolar disorder is in full remission. Dr. Boutros argued that, because he is not *currently* experiencing the symptoms of mania or depression, he is not currently suffering an "inability to practice according to acceptable and prevailing standards of care by reasons of mental or physical illness" under R.C. 4731.22(B)(19). Dr. Boutros accordingly argued that as a matter of law he cannot be found to be impaired under R.C. 4731.22(B)(19) and that the administrative action must therefore be dismissed.

The Hearing Examiner rejects this argument. In its notice of opportunity for hearing, the Board alleged that, although the illness is in full remission at present and is amenable to treatment, Dr. Boutros remains at substantial risk of another episode of manic or depressive mood because he is not receiving any form of treatment. Dr. Noffsinger did *not* opine that, in Dr. Boutros' case, there is little or no chance of a recurrence of the disorder. On the contrary, he expressly recommended treatment for Dr. Boutros. Thus, Dr. Boutros is not entitled as a matter of law to a dismissal of this action based on the opinion of Dr. Noffsinger that the condition is currently in remission.

However, as indicated above, the Board, based on its own evaluation of the evidence presented during the hearing process, and based on its own medical expertise, may determine that a dismissal is appropriate if it concludes that there is no impairment under R.C. 4731.22(B)(19).

Third, Dr. Boutros argues in the alternative that, if the Board finds him impaired by a psychiatric disorder that requires treatment, then the Board's issuance of an order requiring that he obtain treatment would constitute "state discrimination against an otherwise qualified individual with a disability," which is prohibited by the American with Disabilities Act, 42 U.S.C. §§ 12131-12132. Dr. Boutros asserts that imposing treatment requirements on him "are not reasonable accommodations under the circumstances."

Dr. Boutros relies on 28 C.F.R. § 35.130(b), which provides in part:

(6) A public entity may not administer a licensing or certification program in a manner that subjects **qualified individuals** with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the

basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be **necessary** for the provision of the service, program, or activity being offered. (Emphasis added.)

The Hearing Examiner rejects the Respondent's argument that it would be unlawful discrimination for the Board to impose restrictions on a physician's certificate based on a mental or physical impairment under R.C. 4731.22(B)(19), for multiple reasons.

First, it is settled that an administrative proceeding is not the proper setting in which to raise a discrimination claim under the ADA. Such claims must be brought as civil actions. *Olynyk v. State Medical Board* (Sept. 27, 1996), Franklin Common Pleas No. 95CVF12-8850, fn.1 (declining to hear the respondent's claim that a Board action had violated her rights under the ADA, stating that "an administrative appeal is not the proper vehicle to raise such a claim" and that "discrimination claims must be brought in a civil action pursuant to the ADA").

Second, and in the alternative, the Hearing Examiner concludes that, even if Dr. Boutros could properly raise the issue in the present forum, his discrimination claims lack merit, for several distinct reasons:

1. It is well established that the Board's primary mission is to protect the public. When a physician is unable to practice medicine according to acceptable and prevailing standards of care by reason of a mental or physical illness under R.C. 4731.22(B)(19), the Board must take action to protect the public, limiting the medical license as necessary or otherwise imposing appropriate safeguards, which may include requirements for treatment and/or monitoring if the physician wishes to maintain his Ohio certificate. In other words, the Board's mission requires it to treat impaired physicians differently from *unimpaired* physicians, with regard to some matters.

The Board would be ignoring its statutory mandate if it were to impose no limitations or conditions on physicians who have been found unable to practice medicine according to acceptable and prevailing standards of care by reason of a mental or physical illness. When physicians suffer from illnesses that render them unable to practice medicine according to applicable standards, then the medical-licensing authority has a reasonable basis for treating them differently from other physicians and there is no unlawful discrimination.

2. In addition, the ADA prohibits discrimination only against "an otherwise qualified individual." By definition, a physician who suffers from an "*inability to practice*" as defined in R.C. 4731.22(B)(19) is an individual who is *not* "otherwise qualified" to practice medicine and surgery. When R.C. 4731.22(B)(19) applies, it means that the physician by definition is unable to practice medicine according to acceptable and prevailing standards of care by reasons of mental or physical illness, and, accordingly, that physician necessarily is not "otherwise qualified" to practice

medicine. Therefore, when the Board determines that a physician suffers from a mental or physical illness that renders him unable to practice according to acceptable and prevailing standards of care pursuant to R.C. 4731.22(B)(19), the ADA does not prohibit the Board from imposing limitations, terms, and/or conditions as appropriate to protect the public. See, generally, *Landefeld v. State Medical Board* (June 15, 2000), Franklin App. No. 99AP-612, at 28-29 (declining to accept the argument that the ADA protected the respondent physician from the Board's action based on his psychiatric disorder).

3. In addition and in the alternative, the Hearing Examiner relies on language in the ADA, quoted above, that a public entity may impose criteria for eligibility that are "necessary." The General Assembly of Ohio, in enacting R.C. 4731.22(B)(19), authorized the Board to take action against a certificate when the practitioner suffers from a mental or physical illness that causes an "inability to practice according to acceptable and prevailing standards of care." In its essence, the statute imposes a criterion for licensure: that physicians, in order to maintain full and unrestricted medical licenses in Ohio, cannot have certain levels/types of impairment, as defined. The Hearing Examiner concludes that the criterion for medical licensure incorporated in R.C. 4731.22(B)(19) is a "necessary" criterion as that term is used in the ADA.

4. In presenting his theory under the ADA, Dr. Boutros argued that it would be "more reasonable" to allow him to follow the recommendations of his California psychiatrist and to comply with the requirements, if any, imposed by the "California medical-licensing authority, which is currently investigating Dr. Boutros' mental health," rather than have the Ohio Board impose requirements for treatment and monitoring. Dr. Boutros commented that this is particularly true given that he "currently lives and practice[s] in California and given that California is where he intends to stay and deal with any mental-health issues that may exist." Dr. Boutros noted that, in fact, he "has allowed his Ohio license to become inactive and plans to allow his Ohio license to expire on July 1, 2007."⁶⁶

Dr. Boutros' argument is persuasive to this extent: the fact of his non-renewal of licensure and the expiration of the two-year period for late renewal means that the only terms and conditions that would be appropriate for the Board to impose would be terms and conditions applicable solely in the event that Dr. Boutros applies for restoration of his certificate.

In his reply memorandum, Dr. Boutros argues that, if the Board adopts Dr. Noffsinger's opinion and believes that treatment and monitoring should be required, "the only reasonable way to avoid state discrimination would be to follow the recommendations, if any, of the California medical-licensing authority. (Dr. Boutros does not explain how it would be lawful for the California Board to impose requirements based on a psychiatric disorder but that it would be unlawful discrimination for Ohio to do so. Further, the hearing record does not include the recommendations of the California Board other than its referral of Dr. Boutros' case to the California Attorney General's office.) Nonetheless, the Hearing Examiner agrees that,

⁶⁶ Pursuant to R.C. 4731.22(M)(3), the expiration or lapse of a certificate—that is, the failure of an individual to renew his certificate to practice—"shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual."

given that Dr. Boutros' certificate to practice medicine in Ohio has expired and is not subject to late renewal, and given that he would be required to file a restoration application if he should wish to practice medicine again in Ohio, the Board should do no more than set forth contingent requirements that would apply only if and when Dr. Boutros should seek to restore his Ohio certificate in the future.

FINDINGS OF FACT

1. By letter dated August 9, 2006, the Board notified George Jamil-Elias Boutros, M.D., of its determination that it had reason to believe that he was in violation of R.C. 4731.22(B)(19), and ordered that he submit to a psychiatric evaluation to be conducted by Stephen G. Noffsinger, M.D. The determination was based upon one or more reasons, including that Dr. Boutros had been evaluated in December 2004 at the request of the North Dakota State Board of Medical Examiners, by Rush Behavioral Health Center [Rush] in Oak Park, Illinois, and that the evaluators at Rush had opined, to a reasonable degree of medical and psychiatric certainty, that Dr. Boutros "psychiatric history is most consistent with a diagnosis of Bipolar disorder, not otherwise specified/rule out Bipolar type II." The evaluators at Rush had further opined that, because Dr. Boutros' psychiatric condition was chronic and frequently progressive, he needed to adhere to certain recommendations, including that he receive treatment from an approved psychiatrist, obtain a practice monitor/mentor, and enter into a contract with a monitoring/advocacy organization of the licensing board in the states where he practiced.
2. Dr. Boutros participated in the examination as ordered. Dr. Noffsinger determined, within a reasonable degree of medical certainty, that:
 - Dr. Boutros suffers from the mental disorder of Bipolar I Disorder, Most Recent Episode Manic, in Full Remission [bipolar disorder];
 - that Dr. Boutros is capable of practicing medicine according to acceptable and prevailing standards of care so long as he has appropriate treatment, monitoring and supervision for his bipolar disorder.
 - Dr. Boutros' bipolar disorder is amenable to treatment, but, because Dr. Boutros is not receiving any form of treatment for it, Dr. Boutros remains at a substantial risk for another mood episode (manic or depressive).
3. Dr. Noffsinger recommended that, in order for Dr. Boutros to be able to practice medicine according to acceptable and prevailing standards of care, certain restrictions and conditions should be placed on Dr. Boutros' practice, including that:
 - Dr. Boutros should receive outpatient psychiatric treatment by a board-approved psychiatrist. The treatment should consist of, at a minimum, one-half hour of medication management every two weeks, in order for the psychiatrist to be able to detect and treat any symptoms should Dr. Boutros experience a manic or depressive episode.
 - Dr. Boutros should take a mood-stabilizing medication.

- Dr. Boutros should comply with all other medications recommended and prescribed by his approved treating psychiatrist.
 - Dr. Boutros should periodically have his blood level of mood-stabilizing medication tested (if he is prescribed lithium, Depakote or Tegretol) to insure continued compliance with his medications.
 - Dr. Boutros should refrain from using any illicit substance, and he should submit to random urine toxicology screens as prescribed by his treating psychiatrist.
4. The certificate of George Jamil-Elias Boutros, M.D., expired due to nonrenewal in July 2005. His certificate has now been in inactive status for more than two years.

CONCLUSIONS OF LAW

1. The medical condition of George Jamil-Elias Boutros, M.D., as set forth above in the Findings of Fact 2 and 3, renders him “[unable] to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that language is used in R.C. 4731.22(B)(19).
2. Because the notice of opportunity for hearing does not include an allegation that Dr. Boutros has engaged in the habitual or excessive use or abuse of alcohol or drugs, or an allegation that he has otherwise experienced a problem with the use and/or abuse of any particular substance, the Board may not impose a requirement that Dr. Boutros must refrain from using any particular substance or that he must submit to random urine toxicology screens with respect to potential substance abuse. However, if the Board imposes a suspension or probation, the Board may include the standard requirement that the individual must obey all laws.

Rationale for Proposed Order

Because Dr. Boutros’ certificate to practice medicine and surgery has expired, and more than two years have passed since that expiration, Dr. Boutros cannot reinstate his certificate simply by submitting a renewal application and paying a late fee. To restore his Ohio certificate, he would be obliged to file an application for restoration. Thus, the proposed order provides only terms and conditions for restoration, with probationary terms upon restoration, if restoration should be sought and granted.

The proposed order does not require random urine-testing or monitoring related to substance use or abuse because the notice of opportunity for hearing did not include an allegation relating to substance use or abuse.

PROPOSED ORDER

It is ORDERED that:

- A. **CONDITIONS FOR RESTORATION:** The certificate of George Jamil-Elias Boutros, M.D., to practice medicine and surgery in the State of Ohio has EXPIRED, and has been in inactive status for more than two years. The Board shall not consider restoration of Dr. Boutros' certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Restoration:** Dr. Boutros shall submit an application for restoration, accompanied by appropriate fees, if any.
 2. **Psychiatric Assessment Evidencing Fitness to Practice; Recommended Limitations and/or Treatment Plan, If Any:**
 - a. Before submitting his application for restoration, Dr. Boutros shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist acceptable to Dr. Boutros. Upon approval by the Board, Dr. Boutros shall obtain from the approved psychiatrist an assessment of Dr. Boutros' current psychiatric status. The assessment shall take place no more than ninety days prior to the submission of the restoration application, unless otherwise approved by the Board.
 - b. Prior to the assessment, Dr. Boutros shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to that psychiatrist.
 - c. Upon completion of the assessment, Dr. Boutros shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:
 - i. A detailed report of the evaluation of Dr. Boutros' current psychiatric status and condition. This report shall include a history of Dr. Boutros' treatment by psychiatrists, psychologists, or other providers of mental-health care, if any, since August 2007;
 - ii. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Boutros' current needs;
 - iii. A statement regarding any recommended limitations upon his practice; and
 - iv. The basis for the treatment recommendation, including reports of physical examination and psychological or other testing.
 - d. Should the psychiatrist approved by the Board recommend psychiatric treatment, and upon approval of a psychiatric treatment plan by the Board, Dr. Boutros shall participate in such treatment, including but not limited to seeing his treating

psychiatrist at the recommended rate of visits or as otherwise directed by the Board. The treating psychiatrist, and any treating psychologist or other treating therapist, must be approved by the Board. Sessions shall be in person and may not be conducted by telephone or other electronic means. Dr. Boutros shall otherwise comply with his psychiatric treatment plan, which may include taking medications as prescribed, if any, and submitting to periodic tests of his blood level of required medication(s), if any.

3. **Certification of Compliance with Approved Treatment Plan:** If a psychiatric treatment plan is approved as described above, then, prior to restoration of the certificate, Dr. Boutros shall provide, from the treating psychiatrist approved by the Board, a certification acceptable to the Board that Dr. Boutros has been in full compliance with the treatment plan for a period of at least sixty days or other period approved by the Board. This certification of sixty days of compliance with the approved treatment plan must be received by the Board prior to the restoration of Dr. Boutros' certificate to practice in Ohio.
 4. **Practice Plan; Monitoring Physician:** Upon submission of his application for restoration, Dr. Boutros shall submit to the Board a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Boutros' activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. Dr. Boutros must receive the Board's approval for such a plan prior to restoration of his certificate to practice in Ohio.
 5. **Certification of Compliance with the Orders of Other Medical Boards:** At the time he submits his application for restoration, Dr. Boutros shall submit to the Board certification from other medical licensing boards, dated no earlier than sixty days prior to his application for restoration, that Dr. Boutros has maintained full compliance with any order of, or agreement with, any other medical licensing board.
 6. **Absence from Practice:** In the event that Dr. Boutros has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Boutros' fitness to resume practice.
- B. **PROBATIONARY CONDITIONS:** Upon restoration of his certificate to practice medicine and surgery in Ohio, Dr. Boutros' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten (10) years:
1. **Obey the Law:** Dr. Boutros shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
 2. **Personal Appearances:** Dr. Boutros shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every six months

thereafter, and/or as otherwise requested 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.

3. **Quarterly Declarations:** Dr. Boutros 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 this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Continued Compliance with Psychiatric Treatment Plan:** Dr. Boutros shall continue to comply with the approved psychiatric treatment plan, if any, until such time as the Board determines that no further treatment is necessary.

To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Boutros shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Boutros' responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Boutros' quarterly declaration. The psychiatric treatment plan, if any, may be modified by the Board during the probationary period. **Further, the treating psychiatrist shall report to the Board within 72 hours if he or she believes that Dr. Boutros is, or may be, experiencing a manic episode.** It shall be Dr. Boutros' responsibility to ensure that the Board is notified if a manic episode should occur.

5. **Comply with Practice Plan:** Dr. Boutros shall practice in accordance with the plan of practice approved by the Board prior to restoration of his certificate. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Boutros' activities will be directly supervised and overseen by a monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Boutros and provide the Board with reports on Dr. Boutros' progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Boutros' quarterly declaration. It shall be Dr. Boutros' responsibility to ensure that the reports are timely submitted.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Boutros shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Boutros shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Boutros shall ensure that the previously designated monitoring physician also notifies the Board directly of his or his inability to continue to serve and the reasons therefor.

Dr. Boutros shall obtain the Board's prior approval for any alteration to the practice plan that was approved by the Board prior to the restoration of his certificate.

6. **Absence from Ohio**: In the event that Dr. Boutros should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Boutros must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of the probationary period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 7. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Boutros 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.
- C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Boutros' certificate will be fully restored.
- D. **RELEASES**: Dr. Boutros shall provide the following to the Board, to treating and monitoring physicians, and to others involved in the monitoring process: continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Boutros' psychiatric condition and/or related conditions. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
- E. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER.**
1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Boutros shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Boutros provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Boutros shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting to Other Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Boutros shall provide a copy of this Order 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 Agency, through which he currently holds any license or certificate.

Dr. Boutros further shall provide a copy of this Order 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. This requirement shall continue until Dr. Boutros receives from the Board written notification of the successful completion of the probation.

3. **Required Documentation of the Reporting Required by Paragraph E:**

Dr. Boutros shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

F. **VIOLATION OF BOARD ORDER; DISCRETIONARY SANCTION IMPOSED:** If Dr. Boutros violates 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.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Patricia A. Davidson
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF AUGUST 12, 2009

REPORTS AND RECOMMENDATIONS, MOTIONS FOR RECONSIDERATION & PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Madia announced that the Board would now consider the Reports and Recommendations, the Motion for Reconsideration and the Proposed Findings And Proposed Order appearing on its agenda.

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of George Jamil-Elias Boutros, M.D.; Zuhayr T. Madhun, M.D.; and Matthew Reid Harris, D.O. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia 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:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia noted that, in accordance with the provision in Section 4731.22(F)(2), 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 these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.;

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

GEORGE JAMIL-ELIAS BOUTROS, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF GEORGE JAMIL ELIAS BOUTROS, M.D. DR. MAHAJAN SECONDED THE MOTION.

.....

A vote was taken on Dr. Stenbergh's motion to approve and confirm:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Varyani	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

August 9, 2006

George Jamil-Elias Boutros, M.D.
1201 3A Ave., SW # 110
Minot, ND 58701

Dear Doctor Boutros:

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 medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) By letter dated February 24, 2005, the Board notified you of its determination that it had reason to believe that you were in violation of Section 4731.22(B)(19), Ohio Revised Code, and ordered that you submit to a psychiatric evaluation to be conducted by Stephen Noffsinger, M.D. The determination was based upon one or more reasons outlined in such letter, including that you were previously evaluated in or about December 2004, at the request of the North Dakota State Board of Medical Examiners, at Rush Behavioral Health [Rush], a medical center in Oak Park, Illinois, and the evaluators at Rush opined, to a reasonable degree of medical and psychiatric certainty, that your "psychiatric history [was] most consistent with a diagnosis of Bipolar disorder, not otherwise specified/rule out Bipolar type II." The evaluators at Rush further opined that, since your psychiatric condition was chronic and frequently progressive, you needed to adhere to certain recommendations, including that you receive treatment from an approved psychiatrist, obtain a practice monitor/mentor, and enter into a contact with a monitoring/advocacy organization of the licensing board in the specific states where you practice. You reported to Dr. Noffsinger on or about March 24, 2005, for purposes of the examination.
- (2) By letter dated March 10, 2006, Dr. Noffsinger notified the Board that it was his opinion to a reasonable degree of medical certainty that you suffer from the mental disorder of Bipolar I Disorder, Most Recent Episode Manic, in Full Remission, and that you were presently capable of practicing medicine according to acceptable and prevailing standards of care, so long as appropriate treatment, monitoring and supervision are put in place. Dr. Noffsinger also opined with reasonable medical certainty that due to your Bipolar I Disorder, you were unable to practice medicine according to acceptable and prevailing standards of care during the manic episode

Mailed 8-10-06

that you experienced in July, August and September of 2004. Dr. Noffsinger further determined that your Bipolar I Disorder is amenable to treatment, but because you were not presently receiving any form of treatment for your disorder, it was his opinion with reasonable medical certainty that you remained at a substantial risk for another mood episode (manic or depressive). Dr. Noffsinger further recommended that in order for you to be able to practice medicine according to acceptable and prevailing standards of care, certain restrictions and conditions should be placed on your practice, including that you should receive outpatient psychiatric treatment by a psychiatrist approved by the Board; receive a mood stabilizing medication; periodically have your blood level of mood stabilizing medication checked to insure continued compliance with your medications; not use any illicit substances; and submit to random urine toxicology screens as prescribed by your treating psychiatrist.

On or about April 10, 2006, your attorney provided to the Board additional materials that he asserted, on your behalf, were pertinent to your evaluation at Rush. Said additional materials, as well as other additional pertinent records and documents, were provided to Dr. Noffsinger. By letter dated June 30, 2006, Dr. Noffsinger notified the Board that the additional materials did not change the diagnosis he made in his report dated March 10, 2006, and he further indicated that the additional materials did not change his recommendations regarding treatment and monitoring of your condition.

Your condition as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitutes “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that clause is used in Section 4731.22(B)(19), 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,

George Jamil-Elias Boutros, M.D.

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suspend, refuse to register or reinstate your certificate to practice 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,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4331 9250
RETURN RECEIPT REQUESTED

Duplicate mailing: George Jamil-Elias Boutros, M.D.
673 Via Ondulando
Ventura, California 93003

CERTIFIED MAIL # 7003 0500 0002 4331 9243
RETURN RECEIPT REQUESTED

cc: Bruce A. Schoenwald, Esq.
Stefanson, Plambeck & Foss
U.S. Bank Building
403 Center Avenue, Suite 302
P.O. Box 1287
Moorhead, Minnesota 56561-1287

CERTIFIED MAIL # 7003 0500 0002 4331 9236
RETURN RECEIPT REQUESTED