

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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FRANKLIN CO. OHIO
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Leonid Macheret, M.D., :
Appellant-Appellant, :
v. : No. 09AP-849
State Medical Board of Ohio, : (C.P.C. No. 09CVF01-660)
Appellee-Appellee. : (ACCELERATED CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on July 27, 2010, appellant's first and third assignments of error are overruled, and the second assignment of error is moot. It is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed.

KLATT, J., McGRATH & CONNOR, JJ.

By William A Klatt
Judge William A. Klatt

J. Sheeran ✓
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IN THE COURT OF APPEALS OF OHIO

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TENTH APPELLATE DISTRICT

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Leonid Macheret, M.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 09AP-849 (C.P.C. No. 09CVF01-660)
State Medical Board of Ohio,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 27, 2010

Collis, Smiles & Collis, LLC, and Elizabeth Y. Collis, for appellant.

Richard Cordray, Attorney General, and Melinda Snyder Osgood, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Appellant, Leonid Macheret, appeals from a judgment of the Franklin County Court of Common Pleas affirming the decision of appellee, the State Medical Board of Ohio ("Board"), to suspend Macheret's certificate to practice medicine and surgery for an indefinite period, but not less than one year. For the following reasons, we affirm.

{¶2} On August 9, 2007, the Board sent Macheret a notice of its intent to determine whether to take disciplinary action against him. The notice alleged that

Macheret had engaged in sexual contact with Patient 1¹ without first terminating the physician-patient relationship. Additionally, the notice alleged that Macheret had falsely stated in his deposition and in responses to interrogatories that he had terminated the physician-patient relationship before engaging in sexual contact with Patient 1. According to the notice, Macheret's conduct constituted: (1) "[m]aking a false, fraudulent, deceptive, or misleading statement * * * in relation to the practice of medicine and surgery" in violation of R.C. 4731.22(B)(5), (2) "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances" in violation of R.C. 4731.22(B)(6), (3) a "violation of any provision of a code of ethics of the American medical association" in violation of R.C. 4731.22(B)(18), and (4) a "[f]ailure to cooperate in an investigation conducted by the board * * *, including * * * failure to answer truthfully a question presented by the board at a deposition or in written interrogatories" in violation of R.C. 4731.22(B)(34).

{¶3} Macheret requested a hearing. During the two-day hearing, Patient 1 testified she sought treatment from Macheret for her insomnia, fatigue, and lower back pain. Macheret diagnosed Patient 1 with intermittent hypoglycemia, multiple food allergies and food sensitivities, as well as intestinal candida. To treat those conditions, Macheret prescribed a regimen of supplements and IV injections containing vitamins and minerals. From December 1999 through July 2000, Patient 1 visited Macheret's office approximately every other week to receive the IV injections.

¹ Throughout these proceedings, the pseudonym "Patient 1" has been used to preserve the privacy of the patient in question. We will continue that practice.

{¶4} Patient 1 fell in love with Macheret, and she confessed her feelings to him in late June 2000. Following this revelation, Patient 1 and Macheret met for coffee at a café. According to Macheret, during this meeting, he told Patient 1 that "[s]he was starting to come too close" to him and that he could no longer be her physician. (Tr. 53.) Macheret claimed that Patient 1 asked him to continue treating her for one month to give her time to find another physician. Patient 1 denied that this conversation ever occurred.

{¶5} Throughout July 2000, Patient 1 attended her regularly scheduled appointments with Macheret. After the July 26, 2000 appointment, Patient 1 and Macheret met at Macheret's house, and Patient 1 cooked him dinner. Later that night, Patient 1 and Macheret had sexual intercourse.

{¶6} On August 1, 2000, Patient 1 visited Macheret's office without an appointment. She received an IV injection and met with Macheret in an examining room.

{¶7} When Patient 1 and Macheret talked in subsequent telephone calls, Macheret was curt and distant. Patient 1 asked to him to meet with her, but he put off seeing her. Hurt by Macheret's apparent disinterest in her, Patient 1 called him and told him that she did not want to see him again.

{¶8} Despite Patient 1's resolve to end her relationship with Macheret, she saw him one last time. Patient 1 injured her back while exercising, and she recalled that Macheret had treated a prior back injury with an injection that had immediately relieved her pain. Patient 1 made an appointment with Macheret, and he gave her a spinal injection.

{¶9} Wracked with guilt, Patient 1 soon thereafter told her husband about her sexual encounter with Macheret. Patient 1's husband reported Macheret's conduct to the

Cincinnati Academy of Medicine, which referred the matter to the Board. During the Board's subsequent investigation, Macheret answered interrogatories and gave a deposition. In both, Macheret admitted that he and Patient 1 had engaged in sexual intercourse. Macheret, however, asserted that he had terminated the physician-patient relationship orally and in writing prior to having sex with Patient 1. At the hearing, Patient 1 disputed Macheret's assertion. She testified that Macheret never told her that he could no longer be her physician, and that she never received anything in writing that indicated that Macheret wanted to end the physician-patient relationship. According to Patient 1, she—not Macheret—terminated their physician-patient relationship.

{¶10} To support his version of the facts, Macheret called Cindy S. Hemme, his former medical assistant, to testify. Hemme recalled mailing Patient 1 two letters in which Macheret instructed Patient 1 to seek a new physician. Hemme said that she sent those letters in September or October 2000. However, Macheret's medical records for Patient 1 did not contain copies of either letter.

{¶11} In his report and recommendation, the hearing examiner found that Macheret was not credible when he testified that he had severed the physician-patient relationship prior to having sex with Patient 1. The hearing examiner believed, instead, Patient 1's testimony about the events surrounding the sexual encounter. Consequently, the hearing examiner concluded that Macheret engaged in the conduct alleged in the notice of intent, and that discipline was warranted under R.C. 4731.22(B)(5), (6), (18), and (34). The hearing examiner recommended that the Board: (1) permanently revoke Macheret's certificate to practice, but stay the revocation, and (2) suspend Macheret's certificate for an indefinite period, but not less than 180 days.

{¶12} At the December 10, 2008 Board meeting, the Board considered the hearing examiner's report and recommendation. After hearing from Macheret and discussing the matter, the Board amended the 180-day suspension period recommended by the hearing examiner to a minimum period of one year. In all other respects, the Board approved and confirmed the hearing examiner's report.

{¶13} Macheret appealed the Board's order to the trial court. On September 2, 2009, the trial court issued a judgment affirming the Board's order. Macheret now appeals to this court, and he assigns the following errors:

[1.] The Common Pleas Court erred in upholding the Medical Board Order, which was based on the Board's conclusions as to violations for which Dr. Macheret was not given notice or the right to a hearing.

[2.] The Medical Board's disciplinary guidelines did not limit the Medical Board's ability to suspend Dr. Macheret's medical license for less than one year.

[3.] The Medical Board cannot discipline Dr. Macheret for failing to terminate the physician-patient relationship in writing in 2000, when the rule requiring written termination did not take effect until 2006.

{¶14} Pursuant to R.C. 119.12, when a trial court reviews an order of an administrative agency, it must consider the entire record to determine if the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. If a party appeals the trial court's decision to affirm, reverse, vacate, or modify the agency's order, the appellate court must determine whether the trial court abused its discretion in its examination of the record for reliable, probative, and substantial evidence. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. On questions of law, an

appellate court's review is plenary. *Franklin Cty. Sheriff v. Frazier*, 174 Ohio App.3d 202, 2007-Ohio-7001, ¶17.

{¶15} By his first assignment of error, Macheret argues that the Board erred when it increased the sanction that the hearing examiner proposed based on conduct that was not included in the August 9, 2007 notice of intent. Macheret claims that the Board's consideration of uncharged conduct deprived him of his due process right to fair notice of all the charges against him. We disagree.

{¶16} The uncharged conduct at issue is Macheret's self-professed habit of exchanging hugs and/or air kisses with his patients. Macheret first admitted this conduct in his deposition. At the hearing, when asked whether he ever kissed Patient 1 in his office, Macheret stated:

It's like many times I have patients who come to me and we exchange hugs. Many times women or patients kiss me on the cheek usually; but it's like, you know, like air-type of a kiss.

(Tr. 39.) Macheret again mentioned hugging his patients when addressing the Board. As reflected in the Board minutes, Macheret stated that:

[H]e has always been a friendly and gregarious physician by training. He hugs his patients in a non-sexual way, and he asks them questions about their lives and their emotional wellbeing. He knows his patients in order to better help them.

{¶17} At the conclusion of Macheret's remarks to the Board, Dr. Nandlal Varyani, then Board President, asked Macheret how he greets his patients today. Macheret replied that, "it's the same as usual[;] [h]e still hugs them, and he asks them about their life." Varyani then asked if Macheret still kisses his patients. Macheret "stated that from time to time they exchange air kisses. It's the Italian or Russian culture."

{¶18} When Varyani opened the matter for the Board members to comment, Dr. Dalsukh Madia, then Board Vice President, stated that he believed that Patient 1 was still Macheret's patient when they had sex. Madia also stated that it bothered him that Macheret greets new patients with hugs and kisses. Madia "[didn't] feel that that [was] right, and it may give the wrong impression to some patients, although not to all patients."

{¶19} Dr. Carol Egner next spoke. Egner stated that she believed Macheret lied to the Board when he claimed to have terminated the physician-patient relationship with Patient 1 prior to having sex with her. Egner pointed out that Macheret had "messed up" Patient 1's life, and she had no confidence that Macheret would not engage in the same conduct with another patient. Egner also mentioned Macheret's practice of hugging and kissing his patients, stating:

He doesn't change his habits of how he deals with patients. He stated that he still hugs them and kisses them. Furthermore, he stated that it's a cultural thing, he's allowed to do it, and he doesn't have to abide by the Board's standards and rules.

{¶20} Agreeing with Egner's statements, Dr. Anita Steinbergh opined that Macheret was untruthful when he represented that he had severed the physician-patient relationship. She also stated that "the social thing about hugging and kissing a patient in your office is absolutely inappropriate." For her, the decision to hug a patient presented "a boundary issue," and she only hugged female patients if they were grieving or upset. Steinbergh was also disturbed that Macheret continued to provide care for Patient 1, even after he supposedly terminated the physician-patient relationship. Steinbergh concluded by proposing a minimum one-year suspension of Macheret's certificate to practice.

{¶21} Dr. Darshan Mahajan then stated that Macheret had exceeded the limits of the physician-patient relationship, and he agreed with the hearing examiner's recommendation. Next, Dr. Jack Amato and W. Frank Hairston both expressed approval of Steinbergh's proposal to increase the sanction to a minimum one-year suspension.

{¶22} Speaking last, Varyani strongly condemned Macheret's practice of hugging and kissing his patients. As reflected in the Board minutes:

[Varyani] stated that Ohio had sexual misconduct rules in 2003 and 2007. * * * Dr. Varyani stated that those rules may not apply in this case, but, Dr. Macheret admitted today that he still hugs and kisses patients today. Dr. Varyani stated that he doesn't like this idea. * * * [H]e doesn't know how the Board can be more explicit regarding sexual boundaries. Dr. Varyani stated that he would prefer to amend this order to permanent revocation, such revocation being stayed, and a suspension for an indefinite period but not less than one year.

{¶23} At the end of Varyani's comments, the Board voted to amend the suspension period the hearing examiner had recommended, extending it from a 180-day period to a minimum one-year period. The Board then voted to approve and confirm the hearing examiner's findings of fact, conclusions of law, and proposed order, as amended.

{¶24} Both the Fourteenth Amendment of the United States Constitution and Section 16, Article I, of the Ohio Constitution require that administrative proceedings comport with due process. *Mathews v. Eldridge* (1976), 424 U.S. 319, 96 S.Ct. 893 (considering whether a federal agency accorded an individual due process before depriving him of a private interest); *Doyle v. Ohio Bur. of Motor Vehicles* (1990), 51 Ohio St.3d 46 (considering whether a state agency complied with due process requirements).²

² The "due course of law" aspect of Section 16, Article I, is the equivalent of the Due Process Clause of the United States Constitution. *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶53.

Procedural due process requires administrative agencies to provide an individual with fair notice of the precise nature of the charges that the agency will pursue at a disciplinary hearing. *Applegate v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-78, 2007-Ohio-6384, ¶23; *Johnson v. State Med. Bd. of Ohio* (Sept. 28, 1999), 10th Dist. No. 98AP-1324; *In re Morgenstern* (May 28, 1992), 10th Dist. No. 91AP-1018.

{¶25} In *In the Matter of Ruffalo* (1968), 390 U.S. 544, 88 S.Ct. 1222, the United States Supreme Court held that the Supreme Court of Ohio had violated this fundamental aspect of due process when disbaring an attorney. There, the disciplinary board added a misconduct charge in the midst of the proceedings based on testimony the attorney gave during the disciplinary hearing. The Supreme Court of Ohio judged the evidence sufficient to sustain the additional charge, and it disbarred the attorney based on the misconduct underlying the charge. The United States Supreme Court found this order of events problematic, stating:

The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.

Id., 390 U.S. at 551, 88 S.Ct. at 1226. Consequently, the court held that the "absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived [the attorney] of procedural due process." *Id.*, 390 U.S. at 552, 88 S.Ct. at 1226. See also *Office of Disciplinary Counsel v. Simecek*, 83 Ohio St.3d 320, 322, 1998-Ohio-92 (holding that the addition of misconduct charges after the record is closed failed to pass the test of procedural due process).

{¶26} Macheret relies upon *Ruffalo* to argue that the Board deprived him of procedural due process. *Ruffalo*, however, does not apply here. Unlike the disciplinary board in *Ruffalo*, the Board did not amend the charges against Macheret to add a charge based on evidence adduced during the hearing. Although Board members criticized Macheret's practice of hugging and kissing his patients, the Board did not conclude that this uncharged conduct actually violated R.C. 4731.22(B) or Board rules. Instead, the Board found that the evidence substantiated the four charges contained in the notice of intent, and it disciplined Macheret solely for the misconduct alleged in the notice of intent.

{¶27} While the Board did not add charges, it did increase the severity of Macheret's sanction, at least in part, due to his practice of hugging and kissing his patients. However, a disciplinary body may consider aggravating circumstances, including uncharged misconduct, in determining the appropriate sanction for a member who violates the rules of practice. In *Columbus Bar Assn. v. Farmer*, 111 Ohio St.3d 137, 2006-Ohio-5342, the Columbus Bar Association charged an attorney with multiple violations of the Code of Professional Responsibility after he deceived a client. The complaint failed to charge the attorney with any violations arising from the misrepresentations he made to Disciplinary Counsel during an investigation of the complaint the client lodged against him. The Supreme Court of Ohio concluded that because the attorney did not receive prior notice, the misrepresentations to Disciplinary Counsel could not form the basis for finding a rule violation. *Id.* at ¶25. However, "even though due process preclude[d] finding a Disciplinary Rule violation on [the] basis" of the misrepresentations, the court considered the misrepresentations as an aggravating circumstance when deciding what sanction to impose. *Id.* at ¶49. See also *Disciplinary*

Counsel v. Cox, 113 Ohio St.3d 48, 2007-Ohio-979, ¶43 (considering uncharged misconduct, namely, submitting false statements during the disciplinary process, when enhancing the recommended sanction). Thus, due process does not preclude a disciplinary body from considering uncharged misconduct in determining a suitable sanction.

{¶28} Here, the Board complied with due process in disciplining Macheret only for the violations charged in the notice of intent. In setting the appropriate sanction for the violations alleged and proven, the Board may, as it did, take into account aggravating circumstances, including uncharged misconduct. Accordingly, we conclude that no due process violation occurred, and we overrule Macheret's first assignment of error.

{¶29} By his second assignment of error, Macheret argues that the trial court erred in relying on the Board's compliance with its disciplinary guidelines as a reason to reject his due process argument. Because we have overruled Macheret's due process argument on other grounds, the second assignment of error is moot, and we need not address it.

{¶30} By his third assignment of error, Macheret argues that the Board erred in retroactively applying Ohio Adm.Code 4731-27-01 to discipline him for prohibited conduct that occurred prior to the effective date of the rule. We disagree.

{¶31} Ohio Adm.Code 4731-27-01(A) lists the requirements a physician must follow in order to terminate a physician-patient relationship. In most circumstances, a physician must mail the patient a letter that includes a statement that the physician-patient relationship is terminated. Ohio Adm.Code 4731-27-01(A)(1). The rule also provides that:

A physician's termination of a physician-patient relationship other than in accordance with the provisions of this rule, as determined by the state medical board of Ohio, shall constitute "a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

Ohio Adm.Code 4731-27-01(E).

{¶32} Macheret allegedly terminated the physician-patient relationship with Patient 1 approximately six years before physicians licensed in Ohio became subject to the requirements of Ohio Adm.Code 4731-27-01. In this appeal, Macheret contends that the Board applied Ohio Adm.Code 4731-27-01 retroactively and disciplined him for failing to produce evidence that he severed the physician-patient relationship with Patient 1 in writing.

{¶33} Contrary to Macheret's contention, the Board disciplined him for his misrepresentations during the investigatory process, not his failure to follow Ohio Adm.Code 4731-27-01. Macheret stated in his deposition and answers to interrogatories that he terminated the physician-patient relationship in writing prior to engaging in sexual intercourse with Patient 1. The notice of intent alleged that these statements were false, and it charged Macheret with violations of R.C. 4722.31(B)(5) and (34) for giving the untruthful statements. The Board found that the evidence supported the charges, in part, because Macheret could not adduce any evidence of a written termination letter. Aside from his own repeated assertion that a written termination letter existed, Macheret could only produce the testimony of Hemme, his former medical assistant, to prove that his statements were truthful. However, Hemme testified that she mailed Patient 1 two termination letters in September or October 2000—two to three months *after* Macheret

X

and Patient 1 had sex. The Board appropriately considered the lack of a written termination letter and Hemme's testimony when gauging the credibility of Macheret's statements and finding that Macheret lied during the investigation process. Accordingly, we overrule Macheret's third assignment of error.

{¶34} For the foregoing reasons, we overrule Macheret's first and third assignments of error, and we find Macheret's second assignment of error moot. Consequently, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

McGRATH and CONNOR, JJ., concur.

**NOTICE OF APPEAL TO A COURT OF APPEALS
FROM A JUDGMENT OR APPEALABLE ORDER**

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

**Leonid Macheret, M.D.
10568 Stablehand Drive
Cincinnati, OH 45242,**

Appellant

v.

**State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, OH 43215-6127**

Appellee.

Case No.

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NOTICE OF APPEAL

Notice is hereby given that Leonid Macheret, M.D. ("Appellant"), hereby appeals to the Court of Appeals, Tenth Appellate District of Franklin County, Ohio, from the Decision and Entry entered in the Franklin County Court of Common Pleas on September 2, 2009 (copy attached).

09 A P E 09 0849

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been served via first class U.S. mail, postage prepaid, this 10th day of September, 2009, upon:

Barbara Pfeiffer, Esq.
Assistant Attorney General
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Counsel for Appellee, State Medical Board of Ohio


Elizabeth Y. Collis

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

LEONID MACHERET, M.D. :
Appellant, : CASE NO. 09 CVF 01 660
vs. : JUDGE SHEERAN
THE STATE MEDICAL BOARD :
OF OHIO :
Appellee. :

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**DECISION AND ENTRY AFFIRMING THE JANUARY 7, 2009
ORDER OF THE STATE MEDICAL BOARD OF OHIO**

Rendered this 2nd day of September 2009

SHEERAN, J.

This matter is before this Court pursuant to an R.C. 119.12 appeal filed by Appellant Leonid Macheret from a January 7, 2009 Order of the State Medical Board of Ohio ("Board"). The Board's January 7, 2009 Order stayed the permanent revocation of Appellant's medical license and imposed an indefinite suspension for "an indefinite period of time, but not less than one year." See January 7, 2009 Order. Likewise, the Board imposed conditions for reinstatement and restoration of Appellant's Ohio license, and upon successful reinstatement and restoration imposed probationary terms, conditions and limitations for a period of at least two years. See: January 7, 2009 Order. The Board also imposed a requirement of reporting, and documentation of that reporting, to all employers or entities with which Appellant is under contract to provide health care services, or is receiving training, and the Chief of Staff of each hospital where he has privileges or appointments, and such other entities as set forth in the Board's Order.

FACTS AND PROCEDURAL HISTORY

In an April 9, 2007 letter, the Board notified Appellant that it had proposed to take disciplinary action against his license to practice medicine and surgery in Ohio. The Board based this action on the allegations that Appellant had engaged in sexual intercourse with a patient, and that he provided false statements to the Board during its investigation of that matter. The Board further alleged that the conduct of Appellant constituted violations of R.C. 4731.22(B)(5), (6), (18), and (34). The Appellant submitted his request for a hearing in this matter on August 29, 2007. See State's Exhibits 8-A and 8-C.

The hearing in this matter took place on February 7 and 8, 2008. The hearing examiner issued his Report and Recommendation on November 12, 2008 and recommended that the Board permanently revoke Appellant's medical license, but that such revocation be stayed, and that his medical license be suspended for an indefinite period of time, but not less than 180 days. The Board, in modifying the recommendation of the hearing examiner issued its order on January 7, 2009 and suspended Appellant's license to practice medicine for one year, and imposed the recommended conditions and probation upon reinstatement.

As background, the record demonstrates that Appellant is the sole owner and practitioner in his practice, Partners in Wellness, Inc., which is located in Cincinnati, Ohio. The Appellant graduated from a medical school in Moscow, Russia and came to the United States in 1979. At the time of the hearing, the Appellant was licensed to practice medicine in the states of Ohio and Georgia. The Appellant testified that he

began treating Patient 1 in December 1999.¹ The only disputed facts are whether Appellant terminated the doctor/patient relationship prior to having sexual intercourse with Patient 1 at his home in July 2000, and if so, under what conditions he continued to treat Patient 1 after their sexual encounter.² The Hearing Examiner, R. Gregory Porter, set forth the following findings of fact in his Report and Recommendation:

1. On July 26, 2000, Leonid Macheret, M.D., engaged in sexual intercourse with Patient 1, a patient of his at the time. Dr. Macheret's attestations that he terminated the physician-patient relationship during the meeting at the café or otherwise prior to the occasion during which he engaged in sexual conduct with Patient 1 are not credible. On the other hand, Patient 1 is found to be a credible witness.
2. On October 3, 2006, Dr. Macheret was deposed by a representative of the Board. During the deposition, Dr. Macheret admitted that he had engaged in sexual intercourse with Patient 1. Nevertheless, Dr. Macheret avowed that he had first terminated the physician-patient relationship with Patient 1 both orally and in writing.

On July 24, 2006, Dr. Macheret submitted to the Board responses to a second set of Interrogatories. Dr. Macheret stated in the second set of Interrogatories and in his deposition that he had documented the termination of the physician-patient relationship in the Patient 1's medical record.

In fact, Dr. Macheret has not terminated the physician-patient relationship with Patient 1 before Dr. Macheret engaged in sexual contact with her. Dr. Macheret was unable to produce a copy of any letter or document that terminated the physician-patient relationship with the patient. In addition, Dr. Macheret's patient chart and billing records for the patient indicate that she received medical services at Dr. Macheret's office after the date on which Dr. Macheret asserted he had terminated the physician-patient relationship. Moreover, Ms. Hemme's testimony suggests that any such termination letters were sent after Dr. Macheret had engaged in sexual contact with Patient 1.

See Hearing Examiner's November 12, 2008 Report and Recommendation.

¹ Patient 1 is a female born in 1945 and is being referred to as "Patient 1" to protect her identity in this matter.

² O.A.C. 4731-27-01 was not in effect in 2000. This rule addresses the medical board termination of a doctor/patient relationship and allows a former physician to treat patients that have been terminated from their practice in cases of emergency. In this case, however, this Court concludes that the Board correctly concluded that Appellant did not terminate the doctor/patient prior to having sexual intercourse with Patient 1 in his home in July 2000.

STANDARD OF REVIEW

R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides in pertinent part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence as:

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

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

Once the common pleas court has determined that the administrative agency's order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute its judgment for the agency's decision where there is some evidence supporting the decision. See *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 579; see also *University of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108.

LAW AND ARGUMENT

Although Appellant does not set forth specific assignments of error, he argues in his brief as follows:

B. The Board's Order Is Not Supported By Reliable, Probative And Substantial Evidence.

1. No reliable, probative or substantial evidence was presented at the hearing to show that Patient #1 was a patient of Dr. Macheret's at the time of the sexual encounter.

- C. The Medical Board Erred As A Matter Of Law By Requiring Dr. Macheret To Send Patient #1 A Written Termination Letter When The Law Did Not Require Termination Be Done In Writing In 2000.
- D. The Medical Board Erred As A Matter Of Law And Violated Dr. Macheret's Right To Due Process Of Law By Extending The Proposed Suspension Time From 180 Days To One Year Based On Information Received By The Board After The Hearing Regarding Allegations That Were Not Included In The August 9, 2007 Notice Letter.
- E. No Evidence Was Presented At The Hearing To Show That Dr. Macheret Violated R.C. 4731.22(B)(34), Failure To Cooperate In A Medical Board Investigation.

The Appellant asserts four reasons that the Board's January 7, 2009 Order was not supported by reliable, probative and substantial. Each of these assertions will be addressed separately.

- 1. The Appellee presented reliable, probative and substantial evidence demonstrating that Patient 1 was a patient of Appellant's at the time of their sexual encounter in July 2000.**

Appellant asserts that he verbally terminated the doctor/patient relationship with Patient 1 when they went to the café prior to their sexual encounter at his home, although there is no documentation in Patient 1's records to substantiate this assertion. Tr. 32-34. Moreover, Appellant did not identify Patient 1 as being a "former" patient at the time of their sexual encounter in his first set interrogatories. See State's Exhibit 3, Interrogatories 16, 17 and 24. Moreover, Patient 1 gave the following answer to a question asked by Barbara Pfeiffer, Appellee's attorney:

Q. Well, one of the key issues in this case is whether and when he [Appellant] terminated his relationship with you as his doctor, with you as the patient. And I want to be real clear, and I want to be very clear to the Hearing Examiner and the Board. Did he at any time in any way indicate to you prior to your sexual relationship that he was terminating your treatment relationship, your doctor/patient relationship?

A. No.

Q. Who terminated the doctor/patient relationship between the two of you?

A. I did.

Tr. 111.

Having evaluated all of the testimony, the hearing examiner found as follows:

Appellant's "attestations that he had terminated the physician-patient relationship during the meeting at the café or otherwise prior to the occasion during which he engaged in sexual conduct with Patient 1 was not credible. On the other hand, Patient 1 is found to be a credible witness." See Report and Recommendation, p.16, Findings of Fact 1. In respect to each case, a hearing examiner weighs the credibility of each witness independently, judges the integrity of that person, and makes a decision as to whether that person's testimony is credible and can be relied upon. Hearing Examiner R. Gregory Porter was straightforward in his assessment that he found Patient 1's testimony to be credible as to the germane issues in this case, and did not believe the Appellant. See Report and Recommendation, p.16, Findings of Fact 1.

Patient 1's testimony regarding the timing of when the doctor/patient relationship terminated between her and Appellant was corroborated by the testimony of Appellant's employee, Cindy Hemme. Ms. Hemme testified that she worked for Appellant from February 1999 through August 2007. Tr. 164-165. She testified that she participated in issuing two termination or discharge letters to Patient 1 on behalf of Appellant. Although she did not remember the year in which the letters were issued, she did remember that they were sent in September or October. She stated that she remembered the time of year due to other events that occurred during the same time. Tr. 165-166, 172-173.

She testified that the first letter advised Patient 1 that she had 30 days to find another physician unless an emergency occurred. She testified that Patient 1 called the

office to make an appointment after the time period in which she should have received the termination letter. Ms. Hemme testified that she saw Patient 1 in the office shortly after Labor Day. She stated that she immediately sent Patient 1 a second copy of the termination letter and marked it, "second notice." Tr. 166-167, 169-170, 172-173.

Additionally, Appellant's own billing records reflect that Patient 1 was given an IV "vitamin" treatment on September 3, 2000, which clearly demonstrates that Patient 1 continued to be treated by Appellant for nearly six weeks after the sexual encounter took place in July 2000. Tr. 111; see also State's Exhibit 1, p. 74. Patient 1's records also demonstrate that Patient 1 visited Appellant's office for appointments on August 1, 2000 just a few days after the July 27, 2000 sexual encounter. See State's Exhibit 5. Neither the hearing examiner nor the Board found any of the Appellant's self-serving statements, that he ended the doctor/patient relationship prior to having sex with Patient 1, as credible. Accordingly, there was reliable, probative and substantial evidence demonstrating that Patient 1 was a patient of Appellant's at the time of their sexual encounter in July 2000.

2. The Board did not impose a requirement that Appellant send Patient 1 a written termination letter in 2000.

Appellant testified under oath in his deposition and in response to the Board's second set of interrogatories that he terminated his relationship with Patient 1 verbally and *in writing* prior to having sexual intercourse with her at his home. See State's Exhibit 9, p.32; State's Exhibit 4, Interrogatories 4 and 5, Tr. 34. As a result, the Board's August 2007 citation letter alleged as follows:

(1) In the course of an investigation by the Board, you were deposed by a representative of the Board on or about October 3, 2006. While you admitted during your deposition that you had engaged in sexual contact with a woman who you indicated was a former patient, you testified that

you had first terminated the physician-patient relationship. You also stated in your deposition and in your responses to the Board's second set of Interrogatories, which the Board received on or about July 24, 2006, that you had documented the termination of the physician-patient relationship in the patient's file, and that the termination was via a written letter.

In fact, Appellant had not terminated the doctor/patient relationship with Patient 1 prior to his sexual encounter with her. There is ample testimony by Patient 1 and Ms. Hemme, Patient 1's medical records and the discrepancies between Appellant's answers to the Appellee's first set of interrogatories, and the inconsistencies with the second set of interrogatories, in addition to his deposition testimony, to support the finding of fact that Appellant had not terminated the doctor/patient relationship with Patient 1 prior to his having sex with her in his home in July 2000.

Clearly, the Board did not impose a requirement upon Appellant that the termination of the doctor/patient relationship must be in writing. The Board charged the Appellant with violating R.C. 4731.22(B)(5) and (34). The basis for this charge was Appellant's assertion, under oath, that he had terminated the doctor/patient relationship with Patient 1 verbally and in writing prior to having sex with her in July 2000. The record is devoid of any documentation prior to August 2000 wherein Appellant severed the doctor/patient relationship with Patient 1.

The hearing examiner and the Board concluded that Appellant lied about this issue and thus, this *lie* served as the basis for the charge against Appellant that he violated R.C. 4731.22(B)(5) and (34). The record demonstrates that Appellant broached the issue of a written termination with Patient 1 when he lied in his deposition that he had sent her a written termination letter prior to having sexual intercourse with her in his home. Mr.

Blackmer, the investigator, asked Appellant the following question during the course of his investigation of Appellant on October 3, 2006:

Q. You're claiming that you terminated the doctor-patient, physician relationship before you had sexual intercourse with Patient [1]?

A. I don't claim. I know for sure. I was very clear to her verbally and in written form, and we send it to her and also—

* * *

Q. Do you have a copy of that letter?

A. Well, I --when Academy of Cincinnati brought this thing, I --I'm quite sure, because we send it—I don't know. I'll try to look through the pages.

Q. The reason I am asking you, Doctor, I've not seen that letter, and I've looked through that, too. That's how come, if there is such a letter and you have it, I need to see that, because that's very important in this case.

See State's Exhibit 9, p. 32.

Accordingly, there is reliable, probative and substantial evidence that Appellant not only lied about the written documentation of the termination with Patient 1, but also lied about the verbal termination of the doctor/patient relationship with Patient 1 prior to his having sex with her in his home in July 2000. The issue is whether there was any evidence of a termination, verbal or written, of the doctor/patient relationship between Appellant and Patient 1 prior to their sexual encounter in July 2000. Clearly, the record demonstrates that other than Appellant's self-serving statements, the only evidence of the termination of the doctor/patient relationship is Patient 1's testimony, which is corroborated by Ms. Hemme's testimony, Patient 1's medical records and other evidence.

- 3. The Board did not violate Appellant's rights to due process by modifying the 180 day suspension proposed by the hearing examiner to a suspension of one year.**

Appellant asserts that it was clear from the Board members' comments at the Board's December 10, 2008 meeting that the Board extended the recommendation of the hearing examiner of a 180 day suspension to a one-year suspension based on Appellant's admitted practice of hugging and air kissing patients when he greets them. Appellant asserts that he was not given notice pursuant to R.C. 119.07 that he would be disciplined for the manner in which he greets his patients.

R.C. 119.09 provides, in relevant part:

The recommendation of the referee or examiner may be approved, modified, or disapproved by the agency, and the order of the agency based on such report, recommendation, transcript of testimony and evidence, or objections of the parties and additional evidence shall have the same effect as if such hearing had been conducted by the agency. No such recommendation shall be final until confirmed and approved by the agency as indicated by the order entered on its record of proceedings, and if the agency modifies or disapproves the recommendation of the referee or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval.

The Board, as the ultimate decision maker, is not required to follow the recommendation of the hearing examiner. The hearing examiner's primary purpose is to serve as a fact finder for the Board. See *Steltzer v. State Bd. of Edn.*, (1991), 72 Ohio App. 3d 529, 531. The Board may independently review the evidence and make its own findings and draw its own conclusions, as it did in the matter herein. *In re Certificate of Need for Providence Hospital*, (1990), 67 Ohio App. 3d 391, 398.

A review of the Board members' comments, as set forth in the minutes of the Board's December 10, 2009, show a consensus that the Board viewed Appellant as a prevaricator, concluded that he had not terminated his relationship with Patient 1 when he had sex with her in July 2000, and that Appellant did not appreciate the harm that he

caused to Patient 1 based on his admitted error in judgment. Dr. Steinburgh noted that the "disciplinary guidelines call for a minimum of one-year suspension, and she's not going to agree to "no less than 180 days" in this type of case." See December 10, 2008 Board Minutes. She stated that she "agreed with the Proposed Order of permanent revocation with a stay, a suspension, but she disagrees with the 180 days, and feels that the Board ought to follow the minimal disciplinary guidelines for sexual misconduct within the practice, i.e. stayed permanent revocation, minimum one year suspension, conditions for reinstatement and probation." See December 10, 2008 Board Minutes.

Quite clearly, the Board's decision to impose a minimum one-year suspension, instead of the 180 days, was the minimal disciplinary practice as set forth in the disciplinary guidelines for sexual misconduct. Thus, Appellant was disciplined in accordance within the minimal disciplinary guidelines in such cases. The minutes reflect that Ms. DeBolt clarified that the sexual misconduct rules did not apply to Appellant's case since this incident occurred prior to those rules. She clarified that "[T]his is strictly under the A.M.A." See December 10, 2008 Board Minutes.

It was Appellant who first broached the subject the he "hugs his patients in a non-sexual way" and "from time to time they exchange air kisses" in his statement to the Board. See December 10, 2008 Board Minutes. Several of the Board's members (Dr. Madia, Dr. Suppan, Dr. Egner, Dr. Steinbergh, and Dr. Varyani) were concerned about this practice and voiced their opinions. Clearly, these board members were concerned, not about the appropriate length of suspension for Appellant, but rather their responsibility in reinstating him to practice medicine given the fact that he clearly did not seem to understand the proper boundaries as set forth in the 2007 sexual boundary rules. This concern was also raised through the testimony of the Board's expert witness,

Randall Wexler, M.D. when he expressed his opinion that the Appellant did not appreciate the harm that he caused to Patient 1. See December 10, 2008 Board Minutes. A review and understanding of the record shows that the Board was more concerned with the prospective aspect of this issue, not the retrospective aspect.

Dr. Varyani moved to amend the suspension period of the proposed order to be an indefinite suspension, for a minimum of one year. Dr. Madia seconded the motion and eight board members voted in favor of the motion, while two members abstained. See December 10, 2008 Board Minutes. A review of the Board's minutes clearly show that the Board's decision to impose a one-year suspension was based on the its decision to impose the minimal disciplinary guidelines in a sexual misconduct case and clearly was not an enhancement based on Appellant's remarks to the Board.

A review of the record indicates that the Board properly articulated its reasons for modifying the recommendation of the hearing examiner. See R.C. 119.09. Furthermore, the Board's findings and conclusions, and final order are based on its own independent examination and review of Appellant's administrative record. Additionally, no recommendation of a hearing examiner is final until it is confirmed and approved by the Board as indicated by order. See R.C. 119.09.

4. There was sufficient evidence to support that Appellant violated R.C. 4731.22(B)(34).

The hearing examiner and the Board believed that the Appellant lied under oath when he stated that he had terminated his doctor/patient relationship with the Patient 1 prior to having sex with her in July 2000. R.C. 4731.22(B)(34) includes the "failure to answer truthfully a question presented by the board at a deposition or in written interrogatories." The Appellee presented evidence that the Appellant lied in certain answers to its second

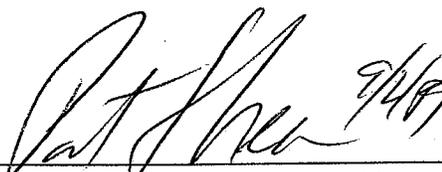
set of interrogatories and lied under oath during his deposition when he testified that he had terminated the doctor/patient relationship verbally and in writing prior to his sexual encounter with Patient 1 in July 2000. The hearing examiner and Board based its judgment regarding Appellant's lack of credibility, and on the credible testimony of Patient 1, Ms. Hemme's testimony, Appellant's own medical records of Patient 1, and the discrepancies between Appellant's answers to the Appellee's first set of interrogatories and the inconsistencies with the second set of interrogatories, and his deposition testimony.

The hearing examiner unequivocally stated that Appellant lied in his account of when he actually terminated the doctor/patient relationship with Patient 1. See Report and Recommendation, p. 16, Finding of Fact 1. Moreover, several of the board members expressed their opinion that the Appellant lied to them in regard to when he actually terminated the doctor/patient relationship with Patient 1. See December 10, 2008 Board Minutes. Thus, there was sufficient evidence to support the conclusion that Appellant violated R.C. 4731.22(B)(34) when he failed to "to answer truthfully a question presented by the board at a deposition or in written interrogatories." See R.C. 4731.22(B)(34).

DECISION

Based on the foregoing, and upon a review of the record, this Court concludes that there is reliable, probative and substantial evidence supporting the January 7, 2009 Order of the State Medical Board of Ohio. Moreover, this Court concludes that the Board's Order is in accordance with law. The Board's January 7, 2009 Order is hereby **AFFIRMED**.

It is so ordered.



JUDGE PATRICK SHEERAN

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IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2009 FEB 26 PM 1:48
CLERK OF COURTS

Leonid Macheret, M.D., :
 :
 Plaintiff, :
 :
 v. :
 :
 State Medical Board of Ohio, :
 :
 Appellee. :

Case No. 09 CV 660

Judge Sheeran

TERMINATION NO. <u>17</u>
<u>RN</u> BY: <u>2-26-09</u>

DECISION GRANTING MOTION TO STAY
(FILED JANUARY 15, 2009)

AND

ENTRY OF CONDITIONAL STAY

Sheeran, J.

Currently before the Court is Dr. Macheret's Motion to Stay the underlying administrative order which permanently revoked his license but stayed the revocation and suspended his license for an indefinite period of time but not less than one year. The Board imposed this sanction after finding several violations of R.C. Chapter 4731 based on Dr. Macheret's one-time sexual relationship with a patient, Patient #1, in 2000 as well as his later misrepresentations regarding the relationship during the Board's investigation of the same in 2006.

Dr. Macheret, who has been practicing since 1990 and has over 2,000 patients, has never previously been disciplined. Dr. Macheret asserts that his practice is unique because, to put it generally, of its holistic approach which involves traditional and non-traditional treatment including the administration of vitamins through an IV. The Board does not differ with this characterization.

R.C. § 119.12 provides, in pertinent part:

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency... In the case of an appeal from the state medical board or state chiropractic board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order.

Dr. Macheret argues that he will suffer an unusual hardship if the suspension is not stayed because he will have to close his practice and refer his almost 2,000 patients to other physicians in the Cincinnati area which he insists, given the unique and holistic nature of his practice, will be nearly impossible. Due to the limited number of physicians with similar practices, Dr. Macheret asserts that continuous care for his patients is not assured. He also asserts that, absent a stay, he will lose his practice.

The Board points to previous decisions of this Court which have held that an appellant must demonstrate an unusual hardship, which necessarily implies a hardship beyond that imposed by the order itself. *See, Banks v. State Med. Bd. of Ohio*, Case No. 08 CVF 18046. As Dr. Macheret points out, this case is factually distinguishable from *Banks* because this case involves a shorter proposed suspension, because of the unique nature of Dr. Macheret's practice, and because Dr. Macheret has an active practice with thousands of patients. Further, the doctor in *Banks* argued the imposition of the suspension itself constituted an unusual hardship whereas Dr. Macheret argues that, in addition to the suspension's obvious effects, he will lose his practice if it is not stayed regardless of the Court's decision on the appeal itself.

The Court agrees that this case is distinguishable from *Banks* not just because of the above but also because of the conduct at issue. Though the Court did a poor job of

explaining its rationale in the *Banks* decision, it engages in a balancing test when deciding whether a stay is appropriate.

Thus, in *Little v. State Medical Board*, Case No. 09 CVF 416, the Court fully espoused its rationale as follows:

In general, this Court has had a longstanding belief that the words of Judge Alan C. Travis are correct:

We normally do not execute prisoners of criminal cases before providing an opportunity for appeal. It may well be that appellant will be unsuccessful in his appeal from the order below. However, the court is satisfied that appellant has met his burden to demonstrate that "unusual hardship" will occur if the administrative revocation order is enforced before the [court] can review the proceedings of the agency.

Travis, J., in *Ohio Veterinary Med. Licensing Bd. v. Harrison* (1998), Franklin Cty. C.P. Case No. 98-CV-7821, at p. 3.

This is not to say that every administrative appeal from an adverse holding regarding one's license automatically qualifies as an "unusual hardship." Despite the respect this Court has for the above holding from Judge Travis, this Court has also refused to grant a Stay where there was a significant risk of harm to the public, or where "the proof was evident, and the presumption great", to make an analogy to Crim. R. 46 (the rationale for justifying a refusal to grant bond in capital cases).

Banks involved the alleged supply of hundreds of thousands of controlled medications leading to the Board's findings that Dr. Banks, "was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate." The seriousness of these charges weighed on the Court's decision.

Thus, this Court stated in *Little*, "if an appellant plead guilty to felonious conduct in a criminal proceeding, or was proven to have wrongly supplied dozens (or more) persons with prescriptions for controlled substances in the thousands of unit doses, then

this Court would be far less inclined to grant a stay in a license revocation case.” The Court later indicated, “[t]he weighing process is complex; that is, not easily reducible to a “bright line” test.” In short, though the Court’s decision in *Banks* could be more clear, the risk to the public weighed on the Court’s decision despite its discussion of the unusual hardship element. Regardless, the Court’s decisions make clear that it will decide such matters on a case-by-case basis.

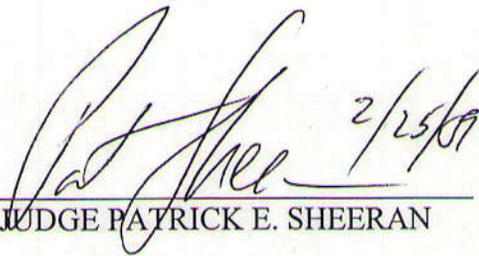
It is apparent that Dr. Macheret, his practice, and his patients will suffer an unusual hardship if a stay is not granted. He will have served over half the suspension before the initial deadline for the Court’s decision on the appeal. Further, the Court agrees that the unique nature of his practice, i.e. the holistic approach, could make it difficult for continuing treatment and difficult for him to start over with his practice if he ultimately wins his appeal. Further, as noted and unlike in *Banks*, Dr. Macheret faces not only the hardship of serving the suspension, i.e. a loss of income, etc., but also the real possibility that he will lose his practice.

Given the above and despite the Court’s decision in *Banks*, it continues to believe in the correctness of Judge Travis’s rationale and finds that Dr. Macheret has demonstrated an unusual hardship.

In terms of harm to the public, the Court, though not completely free from concern, does not feel there is a great risk. Dr. Macheret’s case involves, by all accounts, a single relationship. There is no alleged pattern or history of misconduct as in *Banks*. Further, in his Reply, Dr. Banks offers, as a condition to the stay, to undertake immediately the ethics and professionalism coursework imposed by the Board as part of its Order imposing the suspension.

Given the above, the Court is granting the stay on the following condition, that Dr. Macharet begin, enroll in, attend, or otherwise undertake the ethics course(s) imposed by the Board's order within 14 days of the date of this Order. He need not finish them within this time-frame but must begin them. In reviewing the underlying decision, the Court notes that the number and nature of the courses and the number of hours requires prior board approval. Appellant's counsel should communicate with Appellee's counsel regarding the necessary coursework. Any failure by Dr. Macharet to undertake the courses will result in the Court immediately lifting the stay once notified by Appellee's counsel.

It is so ORDERED.

 2/25/09

JUDGE PATRICK E. SHEERAN

Copies to:

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Columbus, OH 43215

Elizabeth Collis
1650 Lake Shore Dr., Suite 225
Columbus, OH 43204

The decision of the Medical Board to suspend Dr. Macheret's license is contrary to law based on the fact that Dr. Macheret did not violate R.C. 4731.22(B)(34) or the AMA Code of Ethics as charged, as he verbally terminated the physician-patient relationship prior to engaging in a sexual relationship with Patient #1.

In addition, the Medical Board relied on evidence that was not part of the hearing record to extend the proposed disciplinary action from six to twelve months – which is contrary to R.C. 119.07.

The Medical Board erred as a matter of law by failing to include additional exculpatory information into the record. The Medical Board erred as a matter of law by finding that Dr. Macheret violated R.C. 4731.22(B)(34) by failing to provide Patient #1 with a written termination letter prior to engaging in a sexual relationship, even though the Board did not require written termination of the physician-patient relationship in 2000.

Finally, the Board failed to introduce reliable, probative and substantial evidence that Dr. Macheret violated R.C. 4731.22(B)(5) and (6).

Therefore, the decision of the Medical Board to suspend Dr. Macheret's license is contrary to law and should be reversed.

Respectfully submitted,



Elizabeth Y. Collis, LLC (#0061961)

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Counsel for Appellant, Leonid Macheret, M.D.

STATE MEDICAL BOARD
OF OHIO

2009 JAN 26 P 3:32

CERTIFICATE OF SERVICE

I certify that this *Notice of Appeal* was served via hand delivery this 15th day of January,

2009, upon the following:

Appellee, Ohio State Medical Board
30 E. Broad Street, 3rd Floor
Columbus, Ohio 43215

Barbara Pfeiffer, Esq.
Assistant Attorney General
Office of the Ohio Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

Counsel for Appellee



Elizabeth Y. Collis

STATE MEDICAL BOARD
OF OHIO
2009 JAN 26 P 3:32


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

December 10, 2008

Leonid Macheret, M.D.
12087 Sheraton Lane
Cincinnati, OH 45246

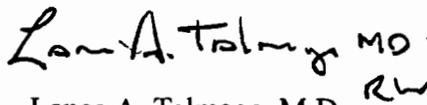
Dear Doctor Macheret:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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


Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5897
RETURN RECEIPT REQUESTED

Cc: Elizabeth Y. Collis, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5903
RETURN RECEIPT REQUESTED

Mailed 1-7-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Leonid Macheret, 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 MD
Lance A. Talmage, M.D. RW
Secretary

December 10, 2008
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

LEONID MACHERET, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 10, 2008.

Upon the Report and Recommendation of R. Gregory Porter, 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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Leonid Macheret, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Macheret's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
2. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Macheret's certificate to practice medicine and surgery until all of the following conditions have been met:
 - a. **Application for Reinstatement or Restoration:** Dr. Macheret shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 - b. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Macheret shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in

addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

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

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

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

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

3. **PROBATION**: Upon reinstatement or restoration, Dr. Macheret's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

- a. **Obey Laws in Ohio**: Dr. Macheret shall obey all federal, state, and local laws; and all rules governing the practice of medicine in the state in which he is practicing.
- b. **Quarterly Declarations**: Dr. Macheret shall submit quarterly declarations under penalty of Board disciplinary action 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 the first day of the third month following the month in which Dr. Macheret's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- c. **Personal Appearances**: Dr. Macheret shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Macheret's certificate is restored or reinstated, or as otherwise directed by the Board. 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.
 - d. **Violation of Terms of Probation**: If Dr. Macheret violates the terms of his probation 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.
4. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Macheret's certificate will be fully restored.
5. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING**:
 - a. **Required Reporting to Employers and Hospitals**: Within 30 days of the effective date of this Board Order, Dr. Macheret shall provide a copy of this Board 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 where he has privileges or appointments. Further, Dr. Macheret shall promptly provide a copy of this Board Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Macheret provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within 30 days of the effective date of this Board Order, Dr. Macheret shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Macheret receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

- b. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Board Order, Dr. Macheret shall provide a copy of this Board 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. Macheret further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Dr. Macheret receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

c. **Documentation that the Required Reporting Has Been Performed:**

Dr. Macheret shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each notification required above: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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



Lance A. Talmage, M.D.
Lance A. Talmage, M.D. *rw*
Secretary

December 10, 2008
Date

2008 DEC -3 P 2:17

BEFORE THE STATE MEDICAL BOARD OF OHIO

**ERRATA TO THE REPORT AND RECOMMENDATION
IN THE MATTER OF LEONID MACHERET, M.D.**

The Report and Recommendation in the Matter of Leonid Macheret, M.D., was filed on November 12, 2008. The Hearing Examiner has since been made aware that he had inadvertently overlooked an Affidavit of Dr. Macheret that had been admitted post-hearing on March 14, 2008. Accordingly, the Report and Recommendation is amended as follows:

1. **The following is hereby appended to the Evidence Examined section:**

Post-Hearing Exhibits

Respondent's Exhibit C: Procedural exhibit: Copy of Respondent's March 6, 2008, motion requesting admission of a March 3, 2008, Affidavit to the hearing record. [Note: This Exhibit was marked by the Hearing Examiner and admitted to the record post-hearing]

Respondent's Exhibit D: Copy of a March 3, 2008, Affidavit of Leonid Macheret, M.D. [Note: This Exhibit was marked by the Hearing Examiner and admitted to the record post-hearing]

Board Exhibit A: Procedural exhibit: Copy of March 14, 2008, Entry admitting Respondent's Exhibit D to the hearing record. [Note: This Exhibit was marked by the Hearing Examiner and admitted to the record post-hearing]

2. **The following section is hereby inserted above the Summary of the Evidence section:**

PROCEDURAL MATTERS

By motion dated March 6, 2008, the Respondent requested that an additional exhibit be admitted to the hearing record. A teleconference was held and Counsel for the State expressed no objection. Accordingly, by Entry dated March 14, 2008, the exhibit was admitted to the hearing record. The hearing record closed on March 14, 2008.

3. The following is hereby appended to the Summary of the Evidence section:

21. By Affidavit dated March 3, 2008, Dr. Macheret stated that, approximately two years ago, he had been instrumental in the creation of a charity called "Wellness Golf Academy." The charity focuses upon "introducing disadvantaged inner-city children to local businesspeople through the game of golf." Dr. Macheret stated that the program has been beneficial to the children and the adults involved.

Dr. Macheret further stated that he recently started an acupuncture service called "Tri-State Acupuncture" that successfully utilizes acupuncture to treat children and young adults who suffer from chemical abuse.

Moreover, Dr. Macheret stated that he has "been instrumental in providing medical equipment to Russian and Nicaraguan foster children and orphans."

Finally, Dr. Macheret stated, "During my service in both the United States Army and the United States Air Force I have received special commendations and medals from each military branch."

(Respondent's Exhibit D)

- 4. After due consideration of the additional evidence, the Hearing Examiner makes no further amendments to the Report and Recommendation, and the Findings of Fact, Conclusions of Law, and Proposed Order remain unchanged.**



R. Gregory Porter
Hearing Examiner

**REPORT AND RECOMMENDATION
IN THE MATTER OF LEONID MACHERET, M.D.**

The Matter of Leonid Macheret, M.D., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on February 7 and 8, 2008.

INTRODUCTION

Basis for Hearing

By letter dated August 9, 2007, the State Medical Board of Ohio [Board] notified Leonid Macheret, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Macheret had engaged in sexual contact with a patient, and that he had provided false statements to the Board during the Board's investigation of that matter. The Board further alleged that the conduct of Dr. Macheret constitutes violations of Sections 4731.22(B)(5), (6), (18), and (34), Ohio Revised Code. Accordingly, the Board advised Dr. Macheret of his right to request a hearing in this matter, and received his written request on August 29, 2007. (State's Exhibits 8-A, 8-C)

Appearances

Nancy H. Rogers, Attorney General, and Barbara J. Pfeiffer, Assistant Attorney General, on behalf of the State.

Kevin P. Byers, Esq., on behalf of Dr. Macheret.

EVIDENCE EXAMINED

Testimony Heard

Presented by the State

Leonid Macheret, M.D., as upon cross-examination
Patient 1
Spouse of Patient 1
Randell K. Wexler, M.D.

Presented by the Respondent

Leonid Macheret, M.D.
Cindy Hemme

Exhibits Examined

Presented by the State

State's Exhibit 1: Copy of medical record for Patient 1 maintained by Dr. Macheret. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 2: Copy of medical billing records for Patient 1 maintained by Dr. Macheret. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 3: Certified copy of responses to the Board's first set of Interrogatories, submitted by Dr. Macheret to the Board on February 14, 2006. (Note: Patient names were redacted by the Hearing Examiner post-hearing at pages 5 and 9)

State's Exhibit 4: Certified copy of responses to the Board's second set of Interrogatories, submitted by Dr. Macheret to the Board on July 24, 2006, with the following exhibits attached:

State's Exhibit 4-A: Copy of a July 9, 2001, letter to the Academy of Medicine of Cincinnati from Kevin R. Feazell, Esq. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 4-B: Copy of a January 8, 2001, letter to Mr. Feazell from the Academy of Medicine at Cincinnati. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 4-C: Copy of a December 11, 2000, letter to Mr. Feazell from the Academy of Medicine of Cincinnati. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 5: Expert report prepared by Randell K. Wexler, M.D., MPH, FAAFP.

State's Exhibit 5-A: Curriculum vitae for Dr. Wexler.

State's Exhibit 6: Copies of the American Medical Association's "Principles of Medical Ethics"; and guidelines "E-8.115, Termination of the Physician-Patient Relationship," and "E-8.14, Sexual Misconduct in the Practice of Medicine."

State's Exhibit 7: Not presented.

State's Exhibits 8-A through 8-N: Procedural exhibits. (Note: A Patient Key was removed from State's Exhibit 8-C)

State's Exhibit 8-A-1: Patient Key. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 8-O: Procedural exhibit. (Note: Exhibit sealed to protect patient confidentiality.)

State's Exhibit 9: Transcript of October 3, 2006, deposition of Dr. Macheret, with deposition exhibits 9-A through 9-J. (Note: State's Exhibits 9-A through 9-J, which consist of a Patient Key, excerpts from Patient 1's medical records, and correspondence related to Dr. Macheret's treatment of Patient 1, are sealed to protect patient confidentiality)

Presented by the Respondent

Respondent's Exhibit A: Copy a December 11, 2000, letter to Kevin R. Feazell, Esq., from the Academy of Medicine of Cincinnati. (Note: Exhibit sealed to protect patient confidentiality.)

Respondent's Exhibit B: Copy a January 8, 2001, letter to Mr. Feazell from the Academy of Medicine of Cincinnati. (Note: Exhibit sealed to protect patient confidentiality.)

SUMMARY OF THE EVIDENCE

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

Background Information

1. Leonid Macheret, M.D., is the sole owner and sole practitioner of his practice, Partners in Wellness, Inc., in Cincinnati, Ohio. Dr. Macheret testified that he had graduated from an elite medical school in Moscow, Russia. He stated that the program was a six-year program, and included specialties in "nonconventional medicine" such as healing touch, acupuncture, homeopathy, manipulation, herbs, nutritional practices, and cultural and ethnic treatments. (Hearing Transcript [Tr.] at 7-15, 176-177)

Dr. Macheret testified that he had come to the United States in 1979. He "had one year of surgical residence in the Brooklyn Caledonia Medical Center." Thereafter, he "was one year ENT," served as a "general medical officer and flight officer," and "went to Wright State University." Dr. Macheret further stated that he had served in the United States Army and resigned with medals and an honorable discharge. He later joined the Air Force Reserve, and served in the U.S. aerospace program. He resigned from the Air Force Reserves in 1992. He then completed a Masters degree in occupational and preventative medicine at the University of Cincinnati. (Tr. at 177-179; State's Exhibit [St. Ex.] 9 at 8-11)

Dr. Macheret testified that he practices “conventional and nonconventional healing services by definition of the State and also medical.” He stated that he has approximately 2,000 active patients. Many of his patients are ethnic, coming from the Middle East, Asia, Africa, Europe, and South America. (Tr. at 7-15, 176-177)

Dr. Macheret testified that he is licensed to practice medicine and surgery in Ohio and Georgia. He stated that he also had had a license in New Jersey but that that license has lapsed. The New Jersey board is awaiting the results of the disciplinary action in Ohio before renewing his license in that state. Dr. Macheret testified that he is board-eligible in occupational and preventative medicine. He is not board-certified because, although he took the examination, he did not pass it. (Tr. at 8; St. Ex. 9 at 8-9)

2. Dr. Macheret testified that, in December 1999, he had started treating Patient 1, a female born in 1945. At that time, Patient 1 complained of a digestive problem. Dr. Macheret diagnosed her with intestinal Candida, intermittent hypoglycemia, multiple food allergies, and “sensitivities.” Dr. Macheret testified that he had continued to treat Patient 1 through the summer of 2000. He stated that, with his treatment, her digestion improved and she improved overall. (St. Ex. 1 at 3; Tr. at 18-21) Dr. Macheret described his treatment modalities in detail. (Tr. at 21-24)

Testimony of Patient 1

3. Patient 1 testified on behalf of the State. Patient 1 testified that she had started seeing Dr. Macheret in December 1999 for complaints of insomnia, low back pain, and fatigue. Patient 1, who lives in Dayton, was referred to Dr. Macheret in Cincinnati by her personal trainer. (Tr. at 81-83)

Patient 1 testified that, on her first visit to Dr. Macheret, Dr. Macheret examined a variety of vitamins and supplements that Patient 1 had brought with her. He administered vitamins and supplements intravenously. Dr. Macheret recommended that Patient 1 return to his office once a week, but Patient 1 chose to return every other week. (Tr. at 84-85)

Patient 1 further testified that, on the first visit, Dr. Macheret came into the examining room and hugged her. She stated that he was very warm and friendly. Patient 1 testified that, over the next several months, Dr. Macheret had hugged her often as he entered the examination room. She stated that, over time, she had fallen in love with Dr. Macheret. Patient 1 explained that she had become emotionally bound to Dr. Macheret, and believed that his conduct was a sign that he was interested in her personally. (Tr. at 84-86, 90, 92-93, 118-119)

Patient 1 testified that, in June 2000, Dr. Macheret started asking her to play golf with him. She stated that he had asked her repeatedly, and she finally consented. On one occasion, Dr. Macheret drove to Dayton with his three children to play golf with Patient 1 at her private golf club. (Tr. at 87-89)

Shortly thereafter, Patient 1 asked Dr. Macheret to meet her for dinner. He agreed, and gave her the name of a restaurant where he promised to meet her. Patient 1 went to the restaurant and waited for him, but Dr. Macheret did not come. Patient 1 drove back to Dayton. She stated that she had been so upset by his conduct that she had not been able to sleep that night. Dr. Macheret called her the next morning to explain and, in her emotional state, she told him about her feelings for him. Patient 1 testified that Dr. Macheret had acknowledged that he had feelings for her also. (Tr. at 91, 93-94)

Dr. Macheret and Patient 1 talked several times that day, trying to make arrangements to meet. They finally agreed to meet in a café the following Sunday. They met and spent an hour in the café. Patient 1 stated that she had spent the time telling him about her feelings for him and all the things he had done to cause her to fall in love with him. When they left the café, they went to his office. She stated that, when they arrived in his office, Dr. Macheret had carried Patient 1 to an examination room, and they had kissed for at least an hour. (Tr. at 96-98)

Patient 1 testified that the next time she saw Dr. Macheret was during a regularly scheduled appointment on July 12, 2000. The appointment was late in the afternoon or early in the evening. Dr. Macheret invited her to dinner, and she accepted. They agreed that Patient 1 would prepare the meal at his home. Patient 1 testified that, after finishing the meal, she prepared to leave. As she was leaving, Dr. Macheret hugged her and rubbed her back for about ten minutes. Patient 1 told Dr. Macheret that she loved him, and she left. (Tr. at 99-101, 128)

Patient 1 testified that she did not see Dr. Macheret again until her next scheduled appointment, early in the evening on July 26, 2000. Dr. Macheret again invited Patient 1 to dinner. Patient 1 accepted, and offered to cook again. She left his office, went to the store, and purchased food for the meal. She stated that he arrived at his home at the same time she did, and he let her in. (Tr. at 101)

Patient 1 testified that, after dinner, Dr. Macheret took her to the living room. He pulled her to the couch and unhooked her bra. Patient 1 stopped him and said, "I can't do this. This is too painful." He asked what he could do to ease her guilt, and she replied, "Marry me." He told her that he might remarry in about ten years, and started kissing her again. He carried her to the basement, removed her clothes, and started kissing her. Patient 1 testified that she and Dr. Macheret then engaged in "sexual relations," and that it was not a problem for her because she loved him. She left his home at 2:00 a.m. and drove back to Dayton. She said she was feeling wonderful. (Tr. at 101-103)

Patient 1 returned to the office the following Thursday, although she did not have an appointment. Dr. Macheret asked his assistant to take Patient 1 to an examination room to administer an injection. Dr. Macheret saw her in the examination room also. Patient 1 stated that he had smiled when he saw her, and she had believed that he was glad to see her. (Tr. at 104-105)

Patient 1 called Dr. Macheret at home the following Sunday. She stated that Dr. Macheret was acting “very strange.” Dr. Macheret instructed Patient 1 to go to his office on Wednesday, and then hung up the telephone. Patient 1 stated that she did not go the office on Wednesday as instructed because she was feeling “hurt.” (Tr. at 105)

Dr. Macheret called Patient 1 on Thursday, and asked why she had not gone to the office. Patient 1 told him that she had been feeling hurt. She asked if his girlfriend had been with him when she called on Sunday, and he answered “yes.” Then Dr. Macheret told Patient 1 that she must return to his office in order to continue her treatments. She responded that she “did not care about treatment” and “wanted to die.” (Tr. at 105-106)

Patient 1 made several attempts to meet with Dr. Macheret after that conversation. Eventually, he agreed to meet her. Patient 1 stated that she had begun to realize that he did not want to see her. Therefore, she called to cancel the meeting and told him that she never wanted to see him again. (Tr. at 107-108, 124)

Patient 1 testified that, sometime afterward, she had injured her back. She called Dr. Macheret, and saw him in his office. Dr. Macheret administered a spinal injection which relieved the pain “immediately.” (Tr. at 108-109)

4. Patient 1 testified that the relationship had been extremely painful for her. She stated that she had been so in love with Dr. Macheret that she had been willing to leave her husband to be with Dr. Macheret after 38 years of marriage. (Tr. at 107)
5. Patient 1 denied that Dr. Macheret had ever told her that their physician-patient relationship must be terminated if they engaged in a personal relationship. In fact, she stated that Dr. Macheret encouraged her to return for treatment on her back after they had engaged in sexual conduct. (Tr. at 110-111)

Patient 1 testified that she had been the one to terminate the physician-patient relationship. She terminated the relationship because it was too painful to see Dr. Macheret in an impersonal manner. (Tr. at 107-111)

Dr. Macheret’s Medical Records for Patient 1

6. Dr. Macheret submitted bills for the following treatment rendered to Patient 1 at the end of their physician-patient relationship.

On July 26, 2000, Dr. Macheret billed for “E & M Detailed,” procedure code 99214. He also billed for an “IV,” procedure code 811, and “supplements,” procedure code 810. (St. Ex. 1 at 73; St. Ex. 2 at 2) Dr. Macheret also wrote a progress note, and recommended a follow-up visit in seven days. (St. Ex. 1 at 75)

On August 1, 2000, Dr. Macheret billed for “E & M Expanded,” procedure code 99213. He also billed for an “IV,” procedure code 811, and “supplements,”

procedure code 810. There is no progress note for this visit. (St. Ex. 1 at 74; St. Ex. 2 at 3)

On August 29, 2000, Dr. Macheret billed for “supplements,” procedure code 810. There is no progress note for this visit. (St. Ex. 1 at 74)

On September 3, 2000, Dr. Macheret billed for “IV,” procedure code 811. There is no progress note for this visit. (St. Ex. 1 at 74)

Complaint Filed with the Academy of Medicine of Cincinnati

7. On September 27, 2000, the spouse of Patient 1 submitted a complaint regarding Dr. Macheret’s conduct to the Academy of Medicine of Cincinnati.¹ The spouse of Patient 1 reported that Dr. Macheret had engaged in sexual relations with Patient 1. The spouse considered this to be “a betrayal of trust” and “a lack of professionalism.” (St. Ex. 1 at 56)
8. On October 10, 2000, Patient 1 submitted a letter to the Academy of Medicine of Cincinnati. In the letter, she described her relationship with Dr. Macheret. In addition, she explained that, “I feel a danger for others if this is a pattern of his, and so I think that he should be reminded of the power and responsibility of his position.” (St. Ex. 1 at 63)
9. On December 1, 2000, Kevin R. Feazell, Esq., attorney for Dr. Macheret, directed a letter to the Academy of Medicine of Cincinnati.² Mr. Feazell summarized his understanding of the events that took place in this matter. He further stated that, “Although consenting to sexual relations with a patient is a serious circumstance compelling the termination of the professional relationship, it must be emphasized that the professional relationship *was* terminated, at Dr. Macheret’s insistence, as soon as practicable thereafter. (St. Ex. 9-C) (Italics in original; underlining added)

On December 11, 2000, the Academy of Medicine of Cincinnati advised Mr. Feazell that the matter of Dr. Macheret would be adjudicated on January 22, 2001. (St. Ex. 4B; Respondent’s Exhibit [Resp. Ex.] A) On January 8, 2001, the Academy of Medicine of Cincinnati advised Mr. Feazell that the Judicial Committee of the Academy of Medicine of Cincinnati had determined to forward the complaint filed by the spouse of Patient 1 to the Board. (St. Ex. 4C; Resp. Ex. B)

¹ Within its Internet website, the Academy of Medicine of Cincinnati describes itself as follows: “The Academy of Medicine (Hamilton County Medical Society), founded in 1857, is a not-for-profit, professional association for the physicians of Hamilton County, Ohio. The mission of the Academy of Medicine is to advance the practice of medicine and promote optimal health for citizens of Greater Cincinnati through education, advocacy, and communication.” <<http://www.academyofmedicine.org/webpages1/acadhist.asp>> (12 November 2008)

²At hearing, there was some confusion regarding the date of this letter. The parties agreed that the letter was most likely sent on December 1, 2000. (Tr. at 198-201)

Testimony of the Spouse of Patient 1

10. The spouse of Patient 1 testified on behalf of the State. He testified that he has been married to Patient 1 for almost 45 years. They have six children. (Tr. at 131-132)

The spouse of Patient 1 testified that, sometime in September 2000, Patient 1 had confessed to him that she had had sexual relations with Dr. Macheret. Because the spouse of Patient 1 was very concerned that his marriage might be ending, he called Dr. Macheret on the telephone and confronted him. The spouse of Patient 1 asked Dr. Macheret if he loved Patient 1 and if he wanted to marry her. Dr. Macheret replied that Patient 1 was very special to him, but that he did not want to marry her. (Tr. at 132-134)

The spouse of Patient 1 testified that he had written the letter to the Cincinnati Academy of Medicine because Patient 1 had placed a lot of faith in Dr. Macheret's treatment and that she had "turn[ed] complete trust over to" him. The spouse of Patient 1 believed that Dr. Macheret's conduct was "fundamentally wrong." (Tr. at 135-137)

Testimony of Randell K. Wexler, M.D.

11. Randell K. Wexler, M.D., testified as an expert witness on behalf of the State. Dr. Wexler testified that, in 1990, he had received a medical degree from Wright State University in Dayton, Ohio. He testified that he practices family medicine in Gahanna, Ohio, and is board-certified in family medicine. Dr. Wexler also teaches and performs cardiovascular research at the Ohio State University College of Medicine. Dr. Wexler testified that he teaches a course in patient-physician interaction. The parties stipulated that Dr. Wexler's background and experience qualified him to testify as an expert in this matter. (Tr. at 144-147; St. Ex. 5A)

Dr. Wexler testified that, by engaging in sexual intercourse with Patient 1 while she was his patient, Dr. Macheret violated the American Medical Association's Principles of Medical Ethics. Moreover, Dr. Wexler testified that Dr. Macheret's conduct constitutes "a failure to conform to the minimal standards of care." (Tr. at 151-152; see also St. Ex. 5)

Dr. Wexler explained that, after reviewing Dr. Macheret's records for Patient 1 and other documents in this matter, he concluded that, at the time Dr. Macheret engaged in sexual relations with Patient 1, Patient 1 was still a patient of Dr. Macheret. (Tr. at 152)

Dr. Wexler testified that his review had revealed the following:

Dr. Macheret submitted E/M billing charges [99214] for treatment Patient 1 received on July 26, 2000. That billing code implies "moderate to severe complexity."

Dr. Wexler concluded that, in order to bill for a procedure of moderate to severe complexity, Dr. Macheret would have had to see Patient 1 himself.

Dr. Macheret submitted E/M billing charges [99213] for treatment Patient 1 received on August 1, 2000. Because a visit billed under this code requires a problem focused history, a problem focused exam, and straightforward decision-making, Dr. Wexler

concluded that Dr. Macheret would have had to be present for that encounter. Nevertheless, there is no office visit note documented to support the charge.

(St. Ex. 5)

Dr. Wexler further stated the behavior of Dr. Macheret violated ethical principles and departed from the minimal standard of care because:

The physician-patient relationship is inherently one that is unequal, and the balance is tipped significantly in favor of the physician due to their position not only historically within society and the community but also with regards to the type of care that a particular individual needs during the time of stress, whether it be simple such as a sore throat, or something much more dramatic, death in the family, a bad diagnosis or something like that.

As such it is not uncommon for patients to view their physician in an overly benevolent way and have feelings of personal attachment to the physician based on this inherent, unequal relationship. It is that portion or the lack of equality that makes such relationships inappropriate.

(Tr. at 153)

When asked if his opinion would change if it had been Patient 1 who pursued Dr. Macheret, Dr. Wexler stated that it would make his opinion even stronger. He explained that it would be an indication that Patient 1 was experiencing life stress. It would also demonstrate that she was having difficulty managing the unequal physician-patient relationship and had viewed Dr. Macheret in that more benevolent manner discussed above. Dr. Wexler concluded that “such behavior would actually support the contention that the interaction was inappropriate.” (Tr. at 153-154)

Dr. Wexler concluded that Dr. Macheret’s conduct violated Principles I, II, and IV of the American Medical Association’s Principles of Medical Ethics. He explained that Principle I states that “a physician should be dedicated to providing competent medical service with compassion and respect for human dignity.” He stated taking advantage of a patient’s difficult personal situation violates Principle I. Principles II and IV address the failure to uphold the standards of professionalism. He concluded that Dr. Macheret’s conduct was inconsistent with each. (Tr. at 154-155; St. Ex. 6)

Dr. Macheret’s Responses to the Board’s First Set of Interrogatories

12. During the course of the Board’s investigation of this matter, Dr. Macheret submitted responses to two sets of interrogatories and testified in one deposition. In the first set of Interrogatories, submitted to the Board on February 14, 2006, Dr. Macheret provided the following information:

- He acknowledged that he had engaged in sexual activity with Patient 1 on one occasion. (St. Ex. 3 at 6)

- He could not remember the date on which the sexual contact had occurred. (St. Ex. 3 at 6)
- He objected to the characterization of the “single encounter initiated by Patient 1” as a sexual relationship. (St. Ex. 3 at 8, 17)
- He stated that he had gone out to lunch with Patient 1 on one occasion. (St. Ex. 3 at 10)
- He denied that he had ever met Patient 1 at his office when the office was closed. (St. Ex. 3 at 8)
- He stated that Patient 1 had been at his home with him on one occasion. He added that she had also been at his home on one occasion to see his children when he was not home. (St. Ex. 3 at 9)
- He admitted that he had had hugged Patient 1 in an examination room and/or at his office. He stated that, “In all likelihood, I hugged [Patient 1] but did so in a non-sexual manner. I hug all of my patients. Hugging is part of my culture, and as a consequence, part of the way I practice medicine.” (St. Ex. 3 at 7)
- He admitted that Patient 1 had asked him to marry her and that he had declined. (St. Ex. 3 at 7)
- He admitted that Patient 1 may have exhibited emotional instability. (St. Ex. 3 at 18)
- He stated that, prior to the sexual encounter, when Patient 1 had been demonstrating a desire for a personal relationship, he had “advised her to seek another physician and provided her with names of several physicians.” (St. Ex. 3 at 18)
- He stated that, prior to the sexual encounter, when Patient 1 had been demonstrating a desire for a personal relationship, he “was clear” in telling her that, if they developed a personal relationship he could not longer be her physician. (St. Ex. 3 at 19)
- He did not remember the date the physician-patient relationship with Patient 1 terminated. (St. Ex. 3 at 17)
- He denied having treated Patient 1 after the sexual encounter. (St. Ex. 3 at 18)
- He acknowledged that the spouse of Patient 1 had called him at home early one morning. He stated that he did not remember admitting to the spouse of Patient 1 that he had engaged in sexual relations with Patient 1. (St. Ex. 3 at 20)
- He denied ever having engaged in a sexual relationship with any patient or former patient other than Patient 1. (St. Ex. 3 at 10-15)

Dr. Macheret's Responses to the Board's Second Set of Interrogatories

13. In the second set of Interrogatories, submitted to the Board on July 24, 2006, Dr. Macheret provided the following information:

- He admitted that Patient 1 had demonstrated emotional instability, and described the emotional instability as:

Nervousness, anxiety, restlessness, indicated that she was a 'sugar junkie,' communicated how her 'kids had moved on' and she now 'had a lot of time on her hands,' and [Patient 1] communicated erratic patterns of conduct.

(St. Ex. 4 at 1)

- He admitted having played golf with Patient 1 at a country club in Dayton, but stated that Patient 1 had suggested the outing. (St. Ex. 4 at 9)
- He stated that he had terminated the physician-patient relationship with Patient 1 prior to engaging in sexual activity. (St. Ex. 4 at 2)
- He stated that he had terminated the relationship verbally and by written correspondence, and that he had documented the termination of the relationship in Patient 1's medical record. (St. Ex. 4 at 2, 5)
- He stated that, prior to the sexual encounter, he had advised his staff that no services could be provided to Patient 1 in the future. (St. Ex. 4 at 6)
- He did not remember the date he terminated the physician-patient relationship. (St. Ex. 4 at 3)
- He stated that Patient 1 had asked him to continue treating her subsequent to the sexual encounter. He stated that he had responded that he "could only provide emergency treatment under the circumstances." (St. Ex. 4 at 3)
- He did not recall whether Patient 1 had been at his office subsequent to the sexual encounter. (St. Ex. 4 at 4)
- He did not recall the types of treatment his office had provided to Patient 1 subsequent to the sexual encounter. (St. Ex. 4 at 4)
- He did not know if he had received any money or benefit as a result of the services provided to Patient 1 subsequent to the sexual encounter. (St. Ex. 4 at 4)

Dr. Macheret's Testimony During an October 3, 2006, Board Investigative Deposition

14. In his October 3, 2006, deposition, Dr. Macheret provided the following testimony:
- Dr. Macheret hugs “everybody.” He hugs his patients “ninety percent of the time.” It is part of his culture. (St. Ex. 9 at 44)
 - Dr. Macheret acknowledged kissing patients, but described it as “usually a gesture,” “like making the sounds around the cheek.” (St. Ex. 9 at 45-46)
 - Dr. Macheret denied touching Patient 1 in an intimate way at any time before he engaged in sexual intercourse with her. (St. Ex. 9 at 46)
 - Dr. Macheret has lunch or a cup of coffee on Fridays “with a lot of [his] patients” at a café. (St. Ex. 9 at 32)
 - Dr. Macheret had terminated the physician-patient relationship with Patient 1 “verbally” during a meeting at the café, prior to engaging in sexual conduct with her. (St. Ex. 9 at 32-34, 46-51)
 - He had advised Patient 1 on numerous occasions that he could not maintain a physician-patient relationship. He testified that, “It was stated to her very clear, verbally and written form” that he was no longer her physician. Dr. Macheret further stated that, prior to engaging in sexual activity, he had sent her a letter terminating the physician-patient relationship and indicating that he would assist her in finding another physician. (St. Ex. 9 at 31-32, 49-51, 59)
 - He had told one of his office employees, Cindy Hemme, to draft a letter and send it to Patient 1 terminating the physician-patient relationship. He further told Ms. Hemme not to schedule an appointment for Patient 1 unless it was an emergency. (St. Ex. 9 at 34-35)
 - He acknowledged that the medical record for Patient 1 does not contain a copy of a termination letter. (St. Ex. 9 at 32)
 - He acknowledged that Patient 1 had visited his office on July 27, 2000, and that an intravenous injection had been administered. He stated that, when a patient feels the need for a vitamin injection, it is a very urgent situation which could be considered an emergency. (St. Ex. 9 at 87-88)
 - Dr. Macheret never invited Patient 1 to his house. (St. Ex. 9 at 42)
 - Dr. Macheret stated that Patient 1 had gone to his house uninvited. She let herself in and started preparing a meal. He had been “surprised” to find her there when he arrived home. After dinner, Patient 1 went downstairs to see his “big screen” theater,

and he followed her. He and Patient 1 engaged in sexual relations that night. (St. Ex. 9 at 31, 41-43)

- Dr. Macheret insisted that Patient 1 had not been his patient at that time because he had terminated the physician-patient relationship prior to engaging in sexual conduct with Patient 1. (St. Ex. 9 at 31-32)
- Dr. Macheret did not see Patient 1 in his office subsequent to the occasion in which he engaged in sexual activity with Patient 1. (St. Ex. 9 at 53)
- Patient 1 received an IV injection on September 3, 2000. However, he considered it “one step below emergency.” (St. Ex. 9 at 87-88)
- He may have told Patient 1 that she would be welcome to purchase vitamins and supplements from his practice even though the physician-patient relationship had been terminated. He did not recall whether Patient 1 had done so. (St. Ex. 9 at 38, 84-85)
- He did not believe that anyone at his office had provided treatment to Patient 1 subsequent to the sexual encounter. (St. Ex. 9 at 37)
- Dr. Macheret administers or distributes Trans-D Tropin and My-B-Tabs only to patients. Patient 1 received Trans-D Tropin on July 26 and August 29, 2000. She received My-B-Tabs on July 26, 2000. (St. Ex. 9 at 69-71; St. Ex. 1 at 29, 32)
- Patient 1 received an intravenous injection on September 3, 2000. Dr. Macheret testified that his assistants give the injections, but he is responsible for ensuring that the intravenous injections are given properly. Nevertheless, Dr. Macheret denied that, in supervising the administration of intravenous injections, he was providing services as a physician. (St. Ex. 9 at 74-76)
- Dr. Macheret acknowledged that providing “E&M Detailed” services requires that a physician utilize professional skills. (St. Ex. 9 at 79)
- On August 1, 2000, Dr. Macheret billed under the procedure code for “E&M Expanded” services. Dr. Macheret testified that “E&M Expanded” services generally imply that the physician saw the patient. Nevertheless, Dr. Macheret could not find a progress note which corresponds to the billing code. Therefore, he concluded that he could not determine from the record whether he saw Patient 1 on that date. (St. Ex. 9 at 79-83, 87-88)
- His records for Patient 1 had been stored in a facility which flooded. Because of the flood, Patient 1’s medical record had been “wetted and molded.” (St. Ex. 9 at 27-28, 59-60)

Dr. Macheret's Testimony at Hearing

15. At hearing, Dr. Macheret testified that Patient 1 first came to see him as a patient in December 1999. Dr. Macheret acknowledged that, during the time that she was his patient, he had witnessed emotional instability on the part of Patient 1. He reasoned, however, that her emotional instability was related to her not eating the right food. Moreover, he described "emotional instability" as being emotional, expressive, and nice. (Tr. at 37-39)

Dr. Macheret acknowledged that he had engaged in sexual intercourse with Patient 1 on one occasion in approximately July 2000. Dr. Macheret explained that his wife had died in January 1999 and that, in July 2000, he had been at "the lowest point" in his life. He stated that Patient 1 had started catering to his needs: cooking meals for him, encouraging him to talk about his family, offering to take care of his three small children, and promising to take care of him the way his deceased wife had. Dr. Macheret testified that Patient 1 had wanted him to marry her. He stated that Patient 1, who had a great deal of money, had promised to support Dr. Macheret and his entire family if he would marry her. He stated that he had been flattered by her attentiveness. (Tr. at 26-30, 41-42, 186-187)

Dr. Macheret testified that he had been aware that Patient 1 was married at that time. He explained, however, that Patient 1 had described her relationship with her husband as if they had separated. Dr. Macheret testified that Patient 1 told him that her husband traveled a lot, both for business and pleasure. He went on fishing trips in Alaska for six weeks at a time. In addition, Patient 1 frequently traveled abroad for two or three weeks at a time without her husband. (Tr. at 30-32, 193-194)

Dr. Macheret explained that, on the occasion during which he engaged in sexual intercourse with Patient 1, she had come to his house and prepared a meal. Later, they engaged in sexual intercourse. Afterwards, Patient 1 stated that she wanted Dr. Macheret to marry her. Dr. Macheret testified that that was "an awakening." He stated that he had come to his senses and realized that the relationship was wrong. He stated that a sexual relationship should be based on something deeper than what he had shared with Patient 1. (Tr. at 40-42)

16. Dr. Macheret testified that he had terminated the physician-patient relationship with Patient 1 prior to engaging in sexual contact, as follows:

Verbally. Verbally when we went to the café and she ate something; and I had a cup of coffee, espresso or something * * *. It's difficult for me to say word by word, but basically I—I had to say something like this: 'I am stating it's coming too close, and in this situation I cannot and I will not continue doctor/patient relationship. You have to find somebody in Dayton.' And I remember her response when she said—'Well, we're not getting there yet.'

(Tr. at 32-33) Dr. Macheret concluded that, from the time he and Patient 1 had that conversation in the café, he had no longer been her physician. Dr. Macheret testified that it was clear to him at that time that Patient 1 was not his patient. He stated that she had had a

primary care physician, and he saw himself as simply a consultant for her. Moreover, he stated that he had asked his staff to put her on a list where “no matter what happens, she’s not allowed anymore in this office.” (Tr. at 35, 42-43, 63)

Nevertheless, Dr. Macheret acknowledged that, even after he and Patient 1 had had that conversation in the café and engaged in sexual relations, he had continued to provide her with “medical and healing care,” including IV vitamin and anesthetic injections. He stated that he had been providing her “good Samaritan-law-type of coverage” because he did not want to “just throw her on the street until she [found] someone who will help her.”

Dr. Macheret further testified that he had contacted a lawyer for the Board and asked if there is a law which defines how long a physician may still see a patient if the patient cannot find another physician. He stated that a lawyer for the board advised him that there is no law, so the physician should determine an appropriate time, possibly one month. Therefore, he had continued to provide emergency services to Patient 1. (Tr. at 35, 43-53)

Dr. Macheret acknowledged that his medical record for Patient 1 does not include a letter terminating the physician/patient relationship. Dr. Macheret testified that, a few months after he terminated his personal relationship with Patient 1, he had been contacted by the Cincinnati Academy of Medicine. The Cincinnati Academy of Medicine requested Dr. Macheret’s medical records for Patient 1. Although he retained copies of the record, his copies were later destroyed in a flood. (Tr. at 18-19, 34-35, 60-72)

17. When asked if he had ever kissed Patient 1 in his office, Dr. Macheret acknowledged he had. Nevertheless, he described kissing her in the same manner in which he kisses other patients: on the cheek or an “air-type of a kiss.” Dr. Macheret further testified that, although he has carried patients on occasion, he had not carried Patient 1 in his office or at his home. (Tr. at 39, 182-185)
18. Dr. Macheret acknowledged that a physician who engages in sexual intercourse with a patient violates the American Medical Association’s Principals of Medical Ethics. Nevertheless, he rationalized his conduct by stating that the time he had engaged in sexual relations with Patient 1 was shortly after his wife died. He stated that his judgment had been blurred. He had failed to see himself as a physician, and saw himself only as a man and a human being. Dr. Macheret testified that he regrets his conduct with Patient 1. (Tr. at 72, 187-188)
19. When asked if the sexual relationship had affected Patient 1 in a negative way, Dr. Macheret at first refused to answer. After persistent questioning by the State, Dr. Macheret finally responded:

I don’t mean to be really—I try to stay positive, but according to her husband it was a positive experience and if their right now marriage is much stronger than it was before. That’s what he said. And I will agree with him. I guess I will have to agree with him. I’m sorry.

(Tr. at 192-195)

Testimony of Cindy Hemme

20. Cindy Hemme testified at hearing on behalf of Dr. Macheret. Ms. Hemme testified that she worked for Dr. Macheret from February 1999 through August 2007. (Tr. at 164-165)

Ms. Hemme testified that she remembers Patient 1 coming to Dr. Macheret's office. She further remembers that Patient 1 asked questions about Dr. Macheret's personal life "a little more than others do." (Tr. at 167-168)

Ms. Hemme testified that she had participated in issuing two termination or discharge letters to Patient 1 on behalf of Dr. Macheret. Ms. Hemme testified that she could not remember the year in which the letters were issued; however, she does remember that it was in September or October. She stated she remembers the time of year due to other events that occurred during the same time. (165-166, 172-173)

Ms. Hemme testified that the letters were automatically generated at that time. Ms. Hemme filled in the blanks personalizing the letters to Patient 1, and Dr. Macheret signed the letters. Ms. Hemme mailed them to Patient 1. The first letter advised that Patient 1 had 30 days to find another physician unless an emergency occurred. After Patient 1 should have received the letter, she called the office to make an appointment. Ms. Hemme saw Patient 1 in the office shortly after Labor Day, and administered a vitamin injection. Ms. Hemme testified that, immediately afterward, she had sent a second copy of the letter and marked it, "second notice." Ms. Hemme testified that she could not know whether Patient 1 had received either of the letters. (Tr. at 166-167, 169-170, 172-173)

FINDINGS OF FACT

1. On July 26, 2000, Leonid Macheret, M.D., engaged in sexual intercourse with Patient 1, a patient of his at that time. Dr. Macheret's attestations that he had terminated the physician-patient relationship during the meeting at the café or otherwise prior to the occasion during which he engaged in sexual conduct with Patient 1 are not credible. On the other hand, Patient 1 is found to be a credible witness.
2. On October 3, 2006, Dr. Macheret was deposed by a representative of the Board. During the deposition, Dr. Macheret admitted that he had engaged in sexual intercourse with Patient 1. Nevertheless, Dr. Macheret avowed that he had first terminated the physician-patient relationship with Patient 1 both orally and in writing.

On July 24, 2006, Dr. Macheret submitted to the Board responses to a second set of Interrogatories. Dr. Macheret stated in the second set of Interrogatories and in his deposition that he had documented the termination of the physician-patient relationship in the Patient 1's medical record.

In fact, Dr. Macheret had not terminated the physician-patient relationship with Patient 1 before Dr. Macheret engaged in sexual contact with her. Dr. Macheret was unable to produce a copy of any letter or document that terminated the physician-patient relationship with the patient. In addition, Dr. Macheret's patient chart and billing records for the patient indicate that she received medical services at Dr. Macheret's office after the date on which Dr. Macheret asserted he had terminated the physician-patient relationship. Moreover, Ms. Hemme's testimony suggests that any such termination letters were sent after Dr. Macheret had engaged in sexual contact with Patient 1.

CONCLUSIONS OF LAW

1. The conduct of Leonid Macheret, M.D., as set forth in Findings of Fact 1, constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that language is used in Section 4731.22(B)(6), Ohio Revised Code.
2. The conduct of Dr. Macheret, as set forth in Findings of Fact 1, constitutes a "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that language is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics.
3. The conduct of Dr. Macheret, as set forth in Findings of Fact 1 and 2, constitutes a "[f]ailure to cooperate in an investigation conducted by the board under division (F) of [Section 4731.22, Ohio Revised Code], including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that language is used in Section 4731.22(B)(34), Ohio Revised Code.
4. The conduct of Dr. Macheret, as set forth in Findings of Fact 1 and 2, constitutes "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that language is used in Section 4731.22(B)(5), Ohio Revised Code.

* * * * *

Dr. Macheret committed a significant transgression by entering into a sexual relationship with Patient 1 while she was still his patient. The evidence clearly established that Dr. Macheret's sexual relations with Patient 1 violated the American Medical Association's Principles of Medical Ethics, Principles I, II, and IV, and fell below the minimal standards of care. Dr. Macheret's conduct was even more

objectionable because he had been aware of factors in Patient 1's life which made her more vulnerable and more dependent on Dr. Macheret. Moreover, Dr. Macheret fostered her dependence on him through personal comments and physical contact during the course of the physician-patient relationship. He was aware that she was in love with him, and ready to forsake her marriage and family. Despite her fragile state, Dr. Macheret engaged in sexual intercourse with Patient 1.

Dr. Macheret only complicated his situation by providing inconsistent and unconvincing answers in his hearing testimony, his deposition testimony, and his first and second interrogatories. For example, Dr. Macheret had first stated that, after engaging in sexual conduct with Patient 1, he had not seen Patient 1 as a physician. He later acknowledged that he had seen her in his office, but that he had treated her on an emergency basis. Neither statement is credible.

Dr. Macheret did present some mitigating testimony. The evidence suggests that Dr. Macheret entered into the sexual relationship with Patient 1 after experiencing a significant loss in his own life. Moreover, at hearing, Dr. Macheret expressed some remorse for his conduct.

PROPOSED ORDER

It is hereby ORDERED that:

1. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Leonid Macheret, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Macheret's certificate shall be SUSPENDED for an indefinite period of time, but not less than 180 days.
2. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Macheret's certificate to practice medicine and surgery until all of the following conditions have been met:
 - a. **Application for Reinstatement or Restoration:** Dr. Macheret shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 - b. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Macheret shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Macheret submits the documentation of successful completion of the course or courses dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he

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

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

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

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

3. **PROBATION**: Upon reinstatement or restoration, Dr. Macheret's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

- a. **Obey Laws in Ohio**: Dr. Macheret shall obey all federal, state, and local laws; and all rules governing the practice of medicine in the state in which he is practicing.
- b. **Quarterly Declarations**: Dr. Macheret shall submit quarterly declarations under penalty of Board disciplinary action 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 the first day of the third month following the month in which Dr. Macheret's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- c. **Personal Appearances**: Dr. Macheret shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Macheret's certificate is restored or reinstated, or as otherwise directed by the Board. 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.

- d. **Violation of Terms of Probation:** If Dr. Macheret violates the terms of his probation 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.
4. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Macheret's certificate will be fully restored.
5. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**

- a. **Required Reporting to Employers and Hospitals:** Within 30 days of the effective date of this Board Order, Dr. Macheret shall provide a copy of this Board 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 where he has privileges or appointments. Further, Dr. Macheret shall promptly provide a copy of this Board Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Macheret provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within 30 days of the effective date of this Board Order, Dr. Macheret shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Macheret receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

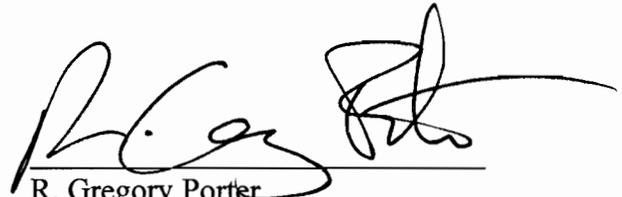
- b. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Board Order, Dr. Macheret shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well 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. Macheret further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Dr. Macheret receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

- c. **Documentation that the Required Reporting Has Been Performed:** Dr. Macheret shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each notification required above:

(1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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



R. Gregory Porter
Hearing Examiner

State Medical Board of Ohio

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



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EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 10, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He 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: Larry John Little, M.D.; Donald E. Higgs, M.D.; Erica L. Berry; Sara C. Gorbett; Patricia Ann Hale; Leonid Macheret, M.D.; Ruba W. Nijmeh, M.D.; and Paul H. Volkman, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani 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. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani 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. They may, however, participate in the matters of Dr. Higgs and Dr. Nijmeh, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. 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.

.....

Dr. Talmage, Dr. Amato and Dr. Stephens left the meeting during the previous discussion.

.....

LEONID MACHERET, M.D.

Dr. Varyani directed the Board's attention to the matter of Leonid Macheret, M.D., and noted that an Errata to the Report and Recommendation has been filed by Hearing Examiner Porter. He advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

Dr. Varyani continued that a request to address the Board has been timely filed on behalf of Dr. Macheret. Five minutes would be allowed for that address.

Dr. Macheret was accompanied by his attorney, Elizabeth Y. Collis. Ms. Collis stated her comments have been outlined in her objections, and she won't make any additional comments at this time.

Dr. Macheret thanked the Board for an opportunity to appear before it. He stated that he is here today because of an error in judgment that he made over eight years ago. He never made such a mistake before or since that time. Dr. Macheret stated that he would like to explain how this one-time lack of judgment came about and to request that the Board permit him to practice medicine.

Dr. Macheret stated that the year 2000 was not only a very difficult time for him and for his family, but he felt that he was starting his life all over again. In the span of a few short years, he lost not only his wife to cancer, but also his mother-in-law and his great aunt. Additionally, his mother, stepfather and father were not doing well. His entire family support had fallen apart, and he was left to care for his young children and to manage his medical practice.

Dr. Macheret stated that, looking back, he realizes that grief and exhaustion from not sleeping sufficiently for more than six months and being by his wife's hospital bed had made him emotionally vulnerable.

Dr. Macheret stated that he was faced with more family responsibilities than he had ever had to manage by himself before. He was overwhelmed physically and emotionally. Dr. Macheret stated that this was a very difficult time for his children, after losing not only their mother, but also other family members who had been an integral part of their life.

Dr. Macheret continued that in 2000, he was seeing Patient 1 in his medical practice. She was aware, as were many of his patients, that he had been recently widowed and that his children were having a difficult time coping with the situation. Dr. Macheret stated that he has always been a friendly and gregarious physician by training. He hugs his patients in a non-sexual way, and he asks them questions about their lives and their emotional wellbeing. He knows his patients as people in order to better help them. He has been fortunate enough over the years to build a large medical practice of more than 2,000 active patients. These patients could trust and rely on him for their care.

Dr. Macheret stated that in 2000, Patient 1 was very kind to his children. On one occasion, she came to his home and gave his kids a game. He stated that his daughter still remembers that. She also invited them to play golf with her and her children, and on one occasion he and his children did play golf with her. Dr. Macheret advised that over time, Patient 1 expressed to him that she was developing personal feelings for him and that she wanted to have a personal relationship with him. He stated that he thought at the time that it was inappropriate, and he was terminating the doctor/patient relationship. She agreed and she said that she would look for another doctor immediately. At that time he asked his administrative assistant to send Patient 1 a termination letter. Dr. Macheret stated that he knows that his office sent Patient 1 not one but two termination letters. The second letter was sent in response to Patient 1's multiple requests to make appointments.

Dr. Macheret stated that, as he testified at hearing, he has never denied that he had sexual relations with Patient 1 on one occasion, in the summer of 2000, at his home. However, he did not believe that she was his patient at that time. Dr. Macheret stated that, on the contrary, he had verbally told her several times that he was not her physician anymore, and she was not his patient anymore. He could not treat her anymore. He believed that his office had already sent her a termination letter. He also received verbal confirmation from Patient 1 as to what he said. Therefore, at the time of their encounter, he did not consider this person to be a patient in his practice.

Dr. Macheret stated that at the hearing, his former employee testified that the termination letter was not sent until September 2000. He stated that this was not his recollection of what had happened. It was his understanding that the first termination letter was ordered to be sent around July 4, weeks before the encounter. He also admitted at the hearing that he had continued to provide treatment to Patient 1 two or three times after the sexual encounter. It was then, and is still, his understanding that, even after you terminate the patient from your practice, you must continue to provide medical care to the patient on an emergency basis, until they find another doctor. At the time of her termination as his patient, he even had called the Medical Board for advice. He was advised that he should continue to provide medical treatment to a former patient for a few weeks after termination, and to continue care if they had not found another physician. It was under this "good Samaritan" provision that he treated Patient 1 a few times after the

personal encounter.

Dr. Macheret stated that he made an error in judgment in this case back in 2000 which he deeply regrets. He stated that he has practiced medicine in Ohio for nearly 20 years, more than six years in the military, without any type of disciplinary action taken against him, only words. Dr. Macheret indicated that he's devastated that this one momentary lapse in judgment will ruin his medical practice, and the reputation that he's worked so hard to build. Dr. Macheret stated that, as the Board has seen by the letters of support from his patients, he provides excellent care to his patients. They rely on him and trust him. Suspension of his medical license for a one-time error in judgment in 2000 does not serve to protect the citizens of Ohio. It only serves to punish the patients whom he is currently treating.

Dr. Macheret urged the Board, based on the evidence in this case, to not impose the sanction that has been recommended by the Hearing Examiner, but to place his license on probation and to issue a reprimand.

Dr. Varyani asked Dr. Macheret how he greets patients today.

Dr. Macheret stated that it's the same as usual. He still hugs them, and he asks them about their life.

Dr. Varyani asked whether Dr. Macheret still kisses his patients.

Dr. Macheret stated that from time to time they exchange air kisses. It's the Italian or Russian culture.

Dr. Varyani asked whether the Assistant Attorney General wished to respond.

Ms. Pfeiffer stated that the evidence is clear in this case that Dr. Macheret did engage in sexual contact with Patient 1. In particular, they had sexual intercourse in late July 2000. Ms. Pfeiffer stated that this was eighteen months after Dr. Macheret's wife died. He testified that his wife had died in January 1999, so it was roughly a year and a half later. Ms. Pfeiffer stated that she doesn't say this to minimize Dr. Macheret's grief, but to show the Board that there was a significant amount of time that had passed before this sexual encounter.

Ms. Pfeiffer stated that she thinks that it is pretty clear that at the time of the sexual encounter, Patient 1 was truly Dr. Macheret's patient, based upon the patient's own testimony at the hearing, and, in particular, her patient records as introduced into evidence. Patient 1 was clearly treated by Dr. Macheret after the sexual encounter. Ms. Pfeiffer advised that Dr. Macheret's administrative assistant testified clearly that it had been sometime in September or October that she had sent out the termination letter.

Ms. Pfeiffer stated that what was also clear in this particular case is that Patient 1 went to Dr. Macheret for help, after not having success with more traditional forms of medicine. She was in a somewhat vulnerable state because she had been feeling poorly physically for a while, and her marriage was not particularly healthy; she shared all of this with Dr. Macheret. After she began treatment, Patient 1 began feeling better physically from the treatment she received, and she began to develop an emotional attachment to

Dr. Macheret. Ms. Pfeiffer stated that Dr. Macheret allowed this emotional attachment to grow and blossom to the point where he had sex with her in his own home. Ms. Pfeiffer stated that, as can be seen from the testimony, Patient 1 was much further ahead, emotionally, in this relationship than Dr. Macheret. Patient 1 testified that she was to the point that she was willing to leave her husband, and she wanted to marry Dr. Macheret. She asked him whether he would marry her. Dr. Macheret said "No." He wasn't where she was, emotionally. Ms. Pfeiffer stated that that's kind of when the house of cards fell down and everything kind of blew up.

Ms. Pfeiffer stated that she would like to reiterate points of testimony that she thinks are relevant for the Board's consideration. In the testimony at hearing from Patient 1, Ms. Pfeiffer asked Patient 1 how her sexual relationship with Dr. Macheret affected her. Patient 1's answer was, "Lots of hurt, lots of pain." Ms. Pfeiffer advised that she had asked Patient 1 how revealing what took place to her husband affected her marriage. Patient 1 answered, "Well, it's been hard on it, very hard for us to go through. I think we've addressed a lot of issues that we needed to address, and made some things better."

Ms. Pfeiffer continued that Patient 1's husband testified at the hearing, and on that same topic he answered,

"Patient 1 told my daughter about it, and it was just an emotionally-charged situation. Our children saw their parents' marriage dissolving, so on and so forth, which in the last eight years, it's been a wonderful marriage. So, you know, it's behind us as far as that is concerned."

Ms. Pfeiffer stated that when she asked Dr. Macheret at hearing about the impact this had on Patient 1, he finally gave an answer to her question. She stated that she asked, "Did what happened, the sexual contact with Patient 1, affect her in a bad way?" Dr. Macheret responded,

I don't mean to be really -- I try to stay positive, but according to her husband it was a positive experience and their right now marriage is much stronger than it was before. That's what he said. And I will agree with him. I guess I will have to agree with him.

Ms. Pfeiffer stated that her point in highlighting that is that she's not sure that Dr. Macheret appreciates the harm that can come from his conduct. He sees it as an error in judgment, which she agrees that it was, but she's not sure if he understands the consequences, which she thinks were very well articulated at the hearing by the Board's expert witness, Randell Wexler, M.D. In Dr. Wexler's testimony about the impact of a sexual relationship between a doctor and a patient, Dr. Wexler testified as follows:

The patient/physician relationship is inherently one that is unequal, and the balance is tipped significantly in favor of the physician due to their position not only historically within society and the community but also with regards to the type of care that a particular individual needs during the time of stress, whether it be simple such as a sore throat or something much more traumatic, death in the family, a bad diagnosis or something like that.

As such it is not uncommon for patients to view their physician in an overly benevolent way and have feelings of personal attachment to the physician based on this inherent, unequal relationship. It is that portion or the lack of equality that makes such relationships inappropriate.

Ms. Pfeiffer asked whether his opinion would be affected or altered if Patient 1 had been pursuing Dr. Macheret. Dr. Wexler's reply was, "On the contrary. That would make my opinion even stronger." When asked to explain, Dr. Wexler advised,

The particular state of mind as I can best tell from these records and the difficulty and life stress this patient was under would make Patient 1's ability to actually engage not only in an equal relationship, but would make her more likely to view a physician who is helping her in this more benevolent way that we talked about and as such makes it even more difficult for her to in and of herself see clearly what is going on. And, therefore, I would argue that such behavior would actually support the contention that the interaction was inappropriate.

Ms. Pfeiffer stated that it doesn't matter if the patient's pursuing the doctor. He's the professional. He's the one who has to distance himself and not get involved, and he didn't. This is a little bit more than an error in judgment, and she doesn't think that he understands the ramifications.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF LEONID MACHERET, M.D. MR. HAIRSTON SECONDED THE MOTION.

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

Dr. Madia stated that in reading this Report and Recommendation it was very clear to him that when Dr. Macheret had the sexual relationship with Patient 1, she was still his patient. Dr. Madia noted that Dr. Macheret's testimony is that he told her verbally that she was not his patient. Dr. Madia stated that he believes that this woman was still Dr. Macheret's patient.

Dr. Madia stated that the second thing that bothers him is that Dr. Macheret greets new patients with hugs and kisses. He stated that he doesn't feel that that is right, and it may give the wrong impression to some patients, although not to all patients. Dr. Madia stated that he does agree with the Report and Recommendation.

Dr. Suppan stated that she also agrees with what has been said so far.

Dr. Egner stated that she thinks that Dr. Macheret lies, and that he's still lying. Dr. Egner stated that Dr. Macheret knew that this woman was his patient, and he knows it today. The termination letters to

which he referred can't be produced. Dr. Egner stated that she thinks that in the testimony, it was described as a boilerplate letter and that they plugged it in. Dr. Egner commented that if he has a boilerplate letter, where's the blank? Dr. Egner stated that she doesn't believe a letter was ever sent. She thinks that this is all made up after the fact.

Dr. Egner stated that Dr. Macheret has chosen to practice a very alternative form of medicine. A special kind of person does that. One of the characteristics of someone who does that is someone who doesn't follow traditional paths. Dr. Macheret doesn't practice traditional medicine. He doesn't change his habits of how he deals with patients. He stated that he still hugs them and kisses them. Furthermore, he stated that it's a cultural thing, he's allowed to do it, and he doesn't have to abide by the Board's standards and rules.

Dr. Egner stated that she also agrees with Ms. Pfeiffer's statements about what he did to that woman and to her life. Patient 1 thought she loved him and was going to leave her husband to marry him. Dr. Egner stated that the Board sees these people pick really vulnerable people. He messed up her life terribly, and Dr. Egner has no confidence that he's not going to do this again. Dr. Egner stated that she thinks that a six-month suspension and two-year probation is an absolute gift, one he doesn't deserve.

Dr. Steinbergh agreed with Dr. Egner. She stated that she was very disappointed with this case. Dr. Steinbergh stated that over the years that she's spent here at the Board and seeing those physicians who take advantage of vulnerable patients, it's always very shocking to her. He had a sexual encounter with his patient. There was absolutely no documentation in this record that he ever severed the relationship with the patient. Dr. Steinbergh stated that the Board has talked about this before; as you go across the threshold into the room to have a sexual encounter, saying, "oh by the way, you're not my patient anymore," simply is inappropriate. The Board has rules in regard to this and he did not follow them. There's no record that he did follow them. Dr. Steinbergh stated that she feels that he was untruthful on this. He was untruthful during his interrogatories and untruthful during the hearing.

Dr. Steinbergh stated that the social thing about hugging and kissing a patient in your office is absolutely inappropriate. She stated that she doesn't want to say that there is never a time that a physician, under certain circumstances, doesn't hug his or her patient. There are times when a patient's in grief, there are times when a patient is upset, whether it be depression or whatever. There are times when a physician feels the need, after a lengthy relationship and knowing the patient very well. But there's never a question that it's a boundary issue. In this case, it's constantly a boundary issue. Dr. Steinbergh stated that there are students in the room today and the Board is teaching them to be appropriate in their relationships with patients, and she can't say that there is never a time. She added that she will say that, as a female physician, she has never hugged a male patient in her practice. She wouldn't under any circumstance do that. There have been women patients who, during grief or times they've needed some support, she's put her arm around and given a gentle hug of support.

Dr. Steinbergh stated that the other thing that disturbed her was that, even though Dr. Macheret said that he had severed this relationship as of a certain date, he continued to see her for non-emergency care, and he

billed for services for which there were no medical records and no documentation. Although the Board didn't charge him for that, and her decision-making isn't based on that, he continued to see this patient.

Dr. Steinbergh agreed with Dr. Egner. She noted that the disciplinary guidelines call for a minimum of one-year suspension, and she's not going to agree to "no less than 180 days" in this type of a case. She agrees with the Proposed Order of permanent revocation with a stay, a suspension, but she disagrees with the 180 days, and feels that the Board ought to follow the minimal disciplinary guidelines for sexual misconduct within the practice, i.e., stayed permanent revocation, minimum one year suspension, conditions for reinstatement and probation. She added that Dr. Macheret will also be required to take a course in professional ethics, as well as personal ethics, and the usual stipulations that the Board has.

Dr. Amato returned during Dr. Steinbergh's comments.

Dr. Mahajan stated that physicians can sense when the patient is desperate and needs comfort, and they have to protect themselves and the patient. Most physicians, when they have these feelings, would have someone with them when they see the patient, and leave aside inviting the patient to the house.

Dr. Mahajan stated that he thinks that those things were way beyond the limit of what anyone should have done.

Dr. Varyani asked Dr. Mahajan whether he agrees with the Proposed Order.

Dr. Mahajan stated that he does.

Dr. Suppan stated that she would like to add one thing.

Dr. Varyani asked whether he can get back to Dr. Suppan. He stated that he knows that this is a subject everybody has a feeling about. He noted that Dr. Amato was not here at the beginning of the discussion, and advised him that this is a case of sexual boundaries. He asked whether Dr. Amato has a comment to make.

Dr. Amato stated that he agrees with Dr. Steinbergh.

Mr. Hairston stated that, as a consumer, he's very concerned about this. Hearing Dr. Macheret talk about the time that he had problems in his own family, and then the time that he allowed Patient 1 to come to his home, Mr. Hairston thinks that Dr. Macheret had time to go out and get the help that he needed for healing. Mr. Hairston stated that he doesn't think that Dr. Macheret took the appropriate steps. He added that Dr. Macheret was wrong and Patient 1 was wrong, but he also thinks that Dr. Macheret led the patient on. He does agree with the amendment.

Dr. Suppan stated that she thinks that if Dr. Macheret is going to return to practice, it's important that he be evaluated for grief issues and/or depression, and that that should be written in, too. He has to have education as to how to get the support he needs. Dr. Suppan stated that so many times physicians believe

that they have to treat themselves and manage their own emotional issues.

Dr. Varyani stated that he feels very strongly about this issue. He stated that his initial involvement with organized medicine was that he started with an ethics committee in the 1980s. Dr. Varyani stated that he asked Dr. Macheret the question about how he greets his patients today, and Dr. Macheret replied that he gives hugs and kisses. Dr. Varyani stated that he doesn't know how this Board can make it more clear. He stated that he is surprised that Dr. Macheret would be one of the few physicians who did not read the updated 2007 Sexual Misconduct Rules. Dr. Varyani stated that he knows that every physician reads the Board's quarterly report, just to see who got cited and what the rule changes are; but in 2007 this was a big thing. In December 2008, Dr. Macheret sits before the Board and tells it that he hugs and kisses patients. Dr. Varyani stated that Dr. Macheret's license is going to be suspended no less than one year if he can help it, and that is lucky. Dr. Varyani stated that he's surprised that the Board is giving a stay on this permanent revocation. Dr. Varyani stated that whatever Dr. Macheret did was a long time ago, and he's sorry that the Board's action is late. Dr. Varyani stated that Dr. Macheret's statement that he still greets patients with hugs and kisses is unbelievable. Dr. Varyani stated that he cannot believe that a physician would do that today. He advised, again, that he would be very sorry if Dr. Macheret were let off with a suspension less than one year. He stated that he would really like to permanently revoke Dr. Macheret's license.

Dr. Varyani asked whether Dr. Macheret thinks that the Board just makes rules. He stated that Dr. Macheret just witnessed the Board wanting to override a rule, but being unable to. He stated that the Board reviews its rules every few years. The last modification of the sexual boundary rules was in 2007. Those rules explicitly say that the physician is supposed to ask patients whether they want a third party present. He stated that he's sure that there was nobody else there when Dr. Macheret did the spinal block, or whatever block he did, when Patient 1 had back pain the second time around, and that he never offered her the option to have someone else present. Dr. Varyani again expressed concern that Dr. Macheret is still hugging and kissing patients.

Ms. Debolt stated that a couple of Board members have mentioned the Board's sexual misconduct rules. She stated that she wanted to clarify that the sexual misconduct rules do not apply to this case. This case occurred prior to those rules. This is strictly under the A.M.A. Code of Ethics.

Dr. Varyani stated that it doesn't matter. He stated that Ohio had sexual misconduct rules in 2003 and 2007. They were reviewed in 2007. Dr. Varyani stated that those rules may not apply in this case, but, Dr. Macheret admitted today that he still hugs and kisses patients today. Dr. Varyani stated that he doesn't like this idea. He doesn't think that Dr. Macheret was a victim. Dr. Varyani agreed that he should have counseling, but he doesn't know how the Board can be more explicit regarding sexual boundaries. Dr. Varyani stated that he would prefer to amend this order to permanent revocation, such revocation being stayed, and a suspension for an indefinite period but not less than one year.

DR. VARYANI MOVED TO AMEND THE SUSPENSION PERIOD OF THE PROPOSED ORDER TO BE AN INDEFINITE SUSPENSION, FOR A MINIMUM OF ONE YEAR. DR. MADIA SECONDED THE MOTION.

Dr. Steinbergh stated that she would like to require a psychiatric evaluation.

Ms. Debolt advised against adding that requirement, as Dr. Macheret was not charged with being mentally impaired.

Dr. Talmage returned to the meeting at this time.

A vote was taken on Dr. Varyani's motion to amend:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF LEONID MACHERET, M.D. DR. EGNER SECONDED THE MOTION.

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

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 9, 2007

Leonid Macheret, M.D.
10568 Stablehand Drive
Cincinnati, Ohio 45241

Dear Doctor Macheret:

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) In the course of an investigation by the Board, you were deposed by a representative of the Board on or about October 3, 2006. While you admitted during your deposition that you had engaged in sexual contact with a woman who you indicated was a former patient, you testified that you had first terminated the physician-patient relationship. You also stated in your deposition and in your responses to the Board's second set of Interrogatories, which the Board received on or about July 24, 2006, that you had documented the termination of the physician-patient relationship in the patient's file, and that the termination was via a written letter as well as verbal.

In fact, you had not terminated the physician-patient relationship with the patient before you engaged in sexual contact with her. You were unable to produce a copy of any letter or document that terminated the physician-patient relationship with the patient. In addition, your patient chart and billing records for the patient indicate that she was provided services at your medical office after the date on which you asserted you had terminated the physician-patient relationship. Despite your ongoing physician-patient relationship with Patient 1, identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure), you engaged in sexual contact with Patient 1 on or about July 27, 2000.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with

Mailed 8.9.07

an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue,” as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association’s Principles of Medical Ethics.

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

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

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

Leonid Macheret, M.D.

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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/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8317 6598
RETURN RECEIPT REQUESTED

cc: Kevin R. Fezell, Esq.
Cors & Bassett, LLC
537 East Pete Rose Way, Suite 400
Cincinnati, OH 45202

CERTIFIED MAIL #91 7108 2133 3931 8317 6604
RETURN RECEIPT REQUESTED