

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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FRANKLIN COUNTY OHIO
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John Michael Schechter, M.D., :
Appellant-Appellant, :
v. :
Ohio State Medical Board, :
Appellee-Appellee, :

No. 04AP-1115
(C.P.C. No. 04V-2968)
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on August 9, 2005, appellant's two assignments of error are overruled, and it is the order and judgment of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs to be assessed to appellant.

SADLER, BROWN, P.J. & PETREE, J.



Judge Lisa L. Sadler

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OF OHIO
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Appellant-Appellant,	:	
v.	:	No. 04AP-1115 (C.P.C. No. 04V-2968)
Ohio State Medical Board,	:	(REGULAR CALENDAR)
Appellee-Appellee,	:	

O P I N I O N

Rendered on August 9, 2005

Porter, Wright, Morris & Arthur, and *Eric J. Plinke*, for appellant.

Jim Petro, Attorney General, and *Kyle Wilcox*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Plaintiff-appellant, John Michael Schechter, M.D. ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas affirming the order of defendant-appellee, State Medical Board of Ohio ("the board"), in which the board permanently revoked appellant's license to practice medicine in the State of Ohio.

{¶2} Appellant asserts the following two assignments of error for our review:

First Assignment of Error:

THE BOARD'S ORDER IS NOT SUPPORTED BY THE REQUISITE QUANTUM OF RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE AND IS CONTRARY TO LAW AS IT IS BASED UPON FALSE EVIDENCE.

Second Assignment of Error:

THE BOARD'S ORDER IS CONTRARY TO LAW BECAUSE IT PROVIDES DISCIPLINE THAT IS GROSSLY EXCESSIVE TO THE ESTABLISHED PROCEDURES AND DISCIPLINE IN SIMILAR CASES SUCH THAT IT IS VIOLATIVE OF DUE PROCESS AND ARBITRARY, UNREASONABLE AND CAPRICIOUS.

{¶3} The following facts are taken from the report of the hearing examiner, the transcript of testimony given at the hearing, and the exhibits admitted into the record. Appellant received his medical degree in 1989 from the Ohio State University College of Medicine. In 1993, he completed a psychiatry residency at the University Hospitals at Case Western Reserve University College of Medicine in Cleveland, Ohio. Thereafter, appellant served as an attending psychiatrist at St. Luke's Medical Center in Cleveland. In 2000, appellant accepted a position as a geriatric psychiatrist at Community Support Services in Akron, Ohio. He also maintained a private practice in Solon, Ohio, which he closed in 2002.

{¶4} At the time of the hearing, appellant maintained employment with Community Support Services and also worked as an Assistant Clinical Professor of Psychiatry at Northeastern Ohio University College of Medicine and at Case Western Reserve University College of Medicine. Appellant is certified by the American Board of Psychiatry and Neurology.

{¶5} By letter dated May 14, 2003, the board notified appellant that it intended to take action against his license to practice medicine based upon the following allegations:

- (1) In the routine course of your practice, you undertook the treatment of Patient 1, identified on the attached Patient Key, which is confidential and to be withheld from public disclosure. You began treating Patient 1 in 1996 on referral from her psychologist for elements of mood disorder and difficulties associated with childhood sexual abuse. You initially diagnosed Patient 1 with Cyclothymia, hypomanic, and later changed her diagnosis to Bipolar Disorder. During the time she was your patient, Patient 1 was hospitalized twice for psychiatric decompensation, and was hospitalized once following your treatment of her.
- (2) During the course of her treatment with you, Patient 1 reported to you that she had a history of sexual abuse, self-mutilation, and problems with her marriage. After beginning treatment with you, Patient 1 declared her love for you, expressing feelings of sexual attraction and becoming increasingly flirtatious and provocative. During your psychiatric sessions with Patient 1, you allowed Patient 1 to expose herself to you, listened to her sexual fantasies involving you, and allowed her to rub her genitals in your presence.
- (3) In or about the year 1999, in your office during a psychiatric session with Patient 1, while Patient 1 was exposing her panties to you, you touched Patient 1's panties. On or about April 17, 2000, in your office during a psychiatric session with Patient 1, you engaged in sexual relations with Patient 1.
- (4) Following sexual relations with Patient 1, you continued to treat her as your psychiatric patient for approximately two more years, although your behavior toward Patient 1 was dictated by fear that if you angered her, she would disclose your sexual activities with her. During this time and/or shortly following your termination of Patient 1 as your psychiatric patient, you inappropriately discussed your personal feelings with Patient 1, and discussed the consequences of her revealing your conduct, including that

you would deny any sexual activity occurred. At some point following sexual relations with Patient 1, and during the time she was under your care as a psychiatric patient, you slapped Patient 1 in the face.

(State's Exhibit 1-A.)

{¶6} The board charged that the foregoing conduct constituted a violation of R.C. 4731.22(B)(6) because it represented "[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 injury to a patient is established." Further, the board charged appellant with violating R.C. 4731.22(B)(18), alleging that appellant's conduct constituted, "[V]iolation of any provision of a code of ethics of the American Medical Association * * *." Pursuant to R.C. Chapter 119, appellant timely requested a hearing, which was held over four days in October and December 2003.

{¶7} Patient 1 lives in a town near Akron, has been married for 22 years and has two daughters. She was sexually and psychologically abused by her father over a period of 15 years during her childhood. As a result of this abuse, according to Patient 1, she had "split" into two personalities. She stated that she first sought treatment for these issues with her psychologist, Dr. McGraw, in 1990. Dr. McGraw diagnosed post-traumatic stress disorder and referred her to a psychiatrist – Dr. Peter Kontos – who diagnosed Patient 1 with bipolar affective disorder, atypical mixed.

{¶8} After Dr. Kontos left the practice of medicine, Patient 1 took no medications for two years. In 1996, Dr. McGraw became concerned about Patient 1 and referred her to appellant for medication management. During her initial visit with appellant, Patient 1

reported that she had been cutting herself with a razor while shaving as a means to "feel something." She reported feeling as though there were two other people in the room with her when she cut herself. She also reported a history of alcohol abuse.

{¶9} Appellant initially diagnosed Patient 1 with cyclothymia, hypomanic, and prescribed Depakote. In December 1997, appellant changed his diagnosis to bipolar disorder, depressed, and prescribed Paxil in addition to the Depakote. In February 1998, Patient 1 experienced a manic episode during which she was "decompensating at work, becoming more psychotic, [and] burning herself." She was taken to the emergency department at St. Vincent Charity Hospital and later admitted to Windsor Hospital in Chagrin Falls, Ohio.

{¶10} According to Patient 1, not long after she began treating with appellant, she developed feelings of affection for him, which began to manifest themselves first through flirting and later through Patient 1 hugging appellant and telling him that she loved him. She testified that appellant told her that he was flattered. When Patient 1 inquired whether any of appellant's other patients had fallen in love with him, he responded that others had, but that none had been "as pretty" as Patient 1. According to appellant, however, he tried to impress upon her that her feelings for him were most likely a transference of feelings that she really had for someone else. Appellant characterized his efforts in this regard as unsuccessful.

{¶11} According to Patient 1, after she confessed her attraction to appellant, he would sit next to her and subtly touch her hair or her leg. Patient 1 became more and more physically attracted to appellant, and he acknowledged that the attraction was

mutual, but said that they could not "do anything." Patient 1 then began sharing with appellant her sexual fantasies involving him. She testified that she also gave him written sexual fantasies because appellant told her that he likes erotica.

{¶12} Appellant testified that he had explained to Patient 1 that there were boundaries that must be observed during her medication management sessions, and that this meant, "You can say and do whatever you want, but you need to stay in your seat." According to Patient 1, appellant never discouraged her from sharing her fantasies and he actually encouraged her to explore them further. Eventually, Patient 1 began to act out her sexual fantasies during her sessions with appellant. She explained:

In the process of telling him a fantasy, I started touching myself, and he said, 'What are you doing?' And I said, 'I'm showing you what I would like you to do to me.' And I took off my bra and showed him my breasts, and he said they were perfect. And he said, 'You can do anything you want in therapy. I can only watch. You can, you know, do anything. It's your dime, you know. Whatever you want to do, I can just watch, but, you know, we can't really touch.'

(Tr., 74.)

{¶13} Appellant explained that he had allowed Patient 1 to disrobe and/or masturbate in his presence on approximately thirty-six occasions. (Tr., at 30, 345-346.) He testified that he asked her to stop but he did not tell her that he would end the sessions if she did not stop. He testified:

[A] more experienced or skillful psychiatrist, in handling this correctly, would have allowed her to say what she wanted, but would have been more effective at setting boundaries on her behavior, and would have been better at separating his own human responses between physician and human being, better than I was.

(Tr., 342.) He went on to explain:

I had an inability to stop her in her tracks. That was my clear incompetence, that was my first crucial mistake. I could not get her to stop. I know now that I could have gotten – If I was armed with more knowledge, I could have gotten her to stop.

(Tr., 347.)

{¶14} When asked about the incident in which appellant allegedly touched her panties, Patient 1 testified:

I was – we were talking sexual. I lifted up my skirt and pulled my panties aside, and he got up and closed the blinds and came over to me and said, 'Lay back,' and, like, took my shoulders and laid me back, and he knelt down next to me, and he touched my vagina, my panties were pulled aside, and said, 'Do you like when I touch you there?'

And then he got up and said, 'I have to stop now. I've gone farther with you than anyone else.' And he was standing right in front of me, and his erection was bulging out of his pants and put my face on there. And then he went over to the wall and stood there, and I went over. We were like hugging a little bit.

(Tr., 80).

{¶15} Appellant admitted that he touched Patient 1's genitals, though he stated that he did so only over her panties. He testified that, on that day, Patient 1 had been touching herself and begging him to touch her, whereupon he "lost control" and touched her. He related that he was "horrified" at his own behavior and knew that he could lose his license to practice medicine, but he had "trouble sorting things out" after that. He stated that despite the fact that he knew that Patient 1's father had sexually abused her as a child, he struggled to treat Patient 1 effectively because his "human side was

pushing through intense sexual excitement." He stated that he found it difficult to see the harm he could do to Patient 1 because of the sexual excitement he was experiencing. He acknowledged that he could have sought help from a third party but did not do so because he felt ashamed about his behavior.

{¶16} Patient 1 testified that she telephoned appellant after this incident. She told him that what happened was really affecting her. She related that appellant yelled at her, shouting that he had not raped her and that he had not exposed himself to her. He told her that he could get into a lot of trouble for what had happened between them. (Tr., 80-81.)

{¶17} On March 17, 1999, appellant wrote in Patient 1's records that she "still [had] poor boundaries at times." On June 20, 1999, he wrote that she was "inappropriate and extremely flirtatious at times. May be related to marital issues – urged her to work on this with Dr. McGraw." (State's Ex. 7, at 44b-46b.) Throughout the fall of 1999, appellant noted that Patient 1 was experiencing increased symptoms of depression and that she continued to be "provocative," that she "needed more redirection" and that she was "becoming more ill."

{¶18} After noting, on February 16, 2000, that Patient 1's behavior had become "more appropriate," his notes indicate that he again allowed Patient 1 to stimulate herself in his presence on April 17, 2000. On that date, after watching Patient 1 touch herself, he decided to have sexual intercourse with her. He testified that he first asked her to promise not to tell anyone. When she agreed, appellant locked his office doors, after which the two engaged in sexual intercourse and fellatio.

{¶19} Patient 1 also testified regarding the April 17, 2000 incident. She related that she had been sitting on the couch in appellant's office and had given him another sexually charged letter. Appellant sat on the couch next to her to read the letter. Patient 1 laid her head on his thigh while he read the letter, and he rubbed her back while he was reading. When he finished reading, he got up and went back to his chair, sat down with his groin thrusting outward, and, with a disappointed look, said, "You kept your clothes on." Patient 1 responded, "Oh you spoke too soon." She began to remove her clothes, and appellant got up and locked the office doors. When he returned to his chair, Patient 1 was simulating masturbation and appellant began to watch while holding his erection. She stood, and they started kissing and rubbing their genital areas together. Appellant told her to bend over his credenza, and when she complied he engaged in intercourse with her. He stopped shortly thereafter, and then accepted her offer of fellatio.

{¶20} She testified that, afterwards, the two shared a cigarette during which appellant repeatedly stated that he was "so fucking stupid." After they finished smoking, he wrote her a prescription, walked her to the door, thanked her for "being so nice to [him]" and said, "Please don't call me tomorrow." (Tr., 84.) Patient 1 testified that she was unable to work for the week following this incident because she was obsessed with appellant and felt that she was under his control.

{¶21} Appellant testified that he asked Patient 1 not to tell anyone about their sexual activities because he knew that he could lose his medical license as well as his family. He stated that, despite Patient 1's history of mental illness, he believed that their sexual encounters would be something that they would both keep private. Appellant did

not place the incident in any of Patient 1's medical records. He continued to treat her, and did so, according to appellant, because he wanted to give her an opportunity to "process" the incident. He testified that he believed that, by continuing to treat Patient 1, he could help her or could at least remediate the impact of the sexual encounter that had occurred between them. He stated:

I thought I could help her understand that what happened was a mistake. I thought that she was entitled to an explanation.

And I was operating under a principle that I believed her when she said she wasn't going to tell anybody about it, and that we could – and I thought that I would be the person to help her understand the elements of human interaction that occurred, in my opinion, there was an element of accountability on both sides for the human interaction. I don't pretend that I'm not the one to blame for this, but I thought that she deserved an explanation for why I had such difficulty controlling myself.

(Tr., 367-368).

{¶22} Appellant testified that, over time, he began to worry that Patient 1 would expose his behavior. She once asked him what he would do if she were to tell a third person. He responded that he would deny it, and that people would believe him and not her. On May 5, 2000, he noted in his records for Patient 1 that she "continues to declare her love for me – I attempted to redirect the patient." (State's Ex. 7, at 57a.) On March 14, 2001, he wrote that Patient 1 had told him that she was as depressed as she had ever been. He also wrote, "Symptoms of mania seem better since increase in Zyprexa and Depakote ER. Beginning to talk about voices inside of her – altered ego states." (State's Ex. 7, at 56b.)

{¶23} On April 4, 2001, appellant wrote, "[Patient 1] seen; decompensating rapidly. Self mutilating, dissociating. Needs hospitalization." On April 5, 2001, Patient 1 was admitted to St. Vincent Charity Hospital. Appellant acted as her attending physician during this hospital stay. Patient 1 testified that this hospitalization was the result of her being unable to deal with her feelings for appellant. She stated that she told appellant that she felt with him the way she had felt with her father when she was a child. Appellant told her that the two relationships were significantly different. Following adjustments to her medications, Patient 1 was discharged on April 19, 2001, after which appellant continued to treat her.

{¶24} Patient 1 testified regarding an incident that occurred several months later, during the summer of 2001. She had had an appointment with appellant earlier that evening, during which he stimulated himself through his clothing while she told him another erotic story. She went over to him and laid on him while he held her and leaned back in his chair. She asked him, "Why is this going on?" and he replied, "Because I wanted you and maybe I still do." The appointment ended there, and appellant had one more appointment with another patient that evening.

{¶25} Patient 1 testified that she waited for appellant in the stairwell of his building until the conclusion of his last appointment because she "felt there was so much more there." When he saw her, he asked why she was there. She told him that she wanted to talk to him about the things he had said, and he invited her to return to his office. Patient 1 then became very provocative, told him she wanted him, grabbed at his groin and may have touched him there. He told her to get out and to leave him alone because she was

harassing him. When Patient 1 asked him why he only wanted it when he wanted it, he responded, "What if my wife finds out?" Patient 1 continued:

And with that he hit me across the face. My earring flew out of my ear, and I bent back, and I turned around, and I said, 'Why do you want to fight?' And with that he took and threw me and pushed me, and I hit a wall that was like a corner sticking out wall. My head hit that, and I fell to the ground. And he bent down and said, I was just going to call an ambulance, and then he got up. I was still on the ground in shock and pain, and he walked out, and he paused. And before he left he said, 'Go ahead. Turn me in. Sue me if you have to.' And he left me there in the open offices.

(Tr., 87-88.)

{¶26} Appellant's version of this incident includes testimony that Patient 1 was "out of control," speaking at a high volume, and demanding sex from him. He stated that she was very vulgar and repeatedly attempted to touch him, as a result of which he slapped her. He testified:

I had packed up all my things and was trying to leave my office, and she was grabbing me and attempting to touch me, and I probably spent fifteen minutes asking her to stop, to stop touching me and to calm down and to go home. At some point, I had in my mind sort of a movie scene where someone is out of control, and you slap them lightly. And this was a light slap on the face to get them to get a hold of themselves. I was being violated at that point. * * * She did not fall immediately. She fell – she was hit, and then she fell in sort of a melodramatic fashion. I left, and I came back a half-hour later because I wanted to make sure that she was gone and was okay, and she was gone.

(Tr., 45.) Appellant denied slapping Patient 1 out of anger.

{¶27} Patient 1 testified to numerous threats that appellant made in order to discourage Patient 1 from revealing the details of their sessions:

Patient 1 testified that she had been afraid to tell anyone about the relationship between her and Dr. Schechter. She stated that Dr. Schechter had threatened her that, if she told anyone, he would never speak to her again, that he would have only hate feelings for her, and that he would not hold a special place for her in his heart. She stated that he had also threatened to kill himself. He also told her that no one would believe her over him anyway. Moreover, she stated that Dr. Schechter had threatened to ruin her by exposing her pictures and letters. Patient 1 testified that she could not tell anyone because she wanted his approval and felt that she was under his power. She stated that his threats of suicide had devastated her, and that she had almost sought hospitalization.

(Report of Hearing Examiner, at 19, citing Tr., 89-92.) Appellant admitted that he had threatened to commit suicide if Patient 1 told anyone about their relationship. He denied that this amounted to coercion of Patient 1, and described it instead as "self-disclosure" on his part. He also admitted to threatening Patient 1 with release of letters and nude photographs she had given him.

{¶28} In March 2002, appellant noted in Patient 1's records that she continued to discuss her love for him and that she was poorly redirectable in that regard. On March 15, 2002, appellant called Patient 1's pharmacy and discovered that she had not taken her antipsychotic medication for the immediately preceding four months. Shortly thereafter, Patient 1 finally told Dr. McGraw about the relationship. Dr. McGraw confronted appellant and appellant denied the truth of what Patient 1 had told Dr. McGraw. Appellant instructed Dr. McGraw to note in Patient 1's records that Patient 1 was delusional.

{¶29} By letter dated March 22, 2002, appellant advised Patient 1 that he could no longer serve as her psychiatrist. He stated, "It is with regret that I find it necessary to inform you that I am withdrawing further professional attendance upon you. The extent and magnitude of your problems are beyond the scope of my practice in Solon." After offering to assist her in transitioning to another psychiatrist, appellant stated, "I am sorry that I cannot continue as your psychiatrist. I hope that you will ultimately view our work together as helpful and meaningful. I extend best wishes to you for your future health and happiness." (State's Ex. 3.)

{¶30} Appellant testified that he did not terminate his physician-patient relationship with Patient 1 earlier because:

Dismissing people isn't consistent with the kind of doctor I tried to be. Certainly, it would have been safer, but I really told myself, outside the heat of the moment, that I could control myself. I really believed that I could control myself. And that sending a person away because you were weak wasn't an appropriate thing to do. I should have gotten stronger. I should have sought help.

(Tr., 352.)

{¶31} Later, appellant promised Patient 1 that he would confess to Dr. McGraw, that he would remove any reference in Patient 1's records about her being delusional, and that he would not kill himself. He then accompanied Patient 1 to a session with Dr. McGraw, where he admitted his conduct to Dr. McGraw.

{¶32} Appellant testified that, following this disclosure, he told his wife about his conduct. His wife sought help for him with Dr. Steven B. Levine, M.D., who he has been seeing ever since. Appellant testified that Dr. Levine has helped him a great deal. At the

hearing, appellant acknowledged that he had victimized Patient 1, and that his treatment of Patient 1 violated the standard that a psychiatrist owes to his patients. He stated that his conduct violated the Hippocratic Oath, the ethical rules of the American Medical Association and the American Psychiatric Association.

{¶33} Patient 1 was hospitalized on October 30, 2002, and she described the reasons therefor as follows:

It was through therapy and trying to deal with [my relationship with Dr. Schechter], I realized what happened, that I was abused and exploited, and I just got angry, and I felt rage, and I just had to get help. I've never felt like that before, and it was directed at Dr. Schechter and I wanted - - I still had feelings, very mixed feelings. * * *

The whole time it was exacerbated by my illness, my bipolarity. I was like on a roller coaster. It was up and down. I never knew what was going to happen. I was in love. I told him I don't know how many times. I didn't want to be with anyone but him. My husband, my marriage suffered. * * * [M]y work suffered. And * * * I don't know if I will ever get over this.

(Tr., 96.)

{¶34} Patient 1's treating psychiatrist at that time, Brooke Wolf, M.D., recommended that Patient 1 seek hospitalization due to Patient 1's "acute agitation, mood lability, uncontrollable anger, impulsive behavior and rage that was becoming problematic." It was also noted that Patient 1 had been "engaging in having affairs and having strong impulses toward harming a previous psychiatrist."

{¶35} When she presented to the emergency room at Lake Hospital West in Willoughby, Ohio, she was combative to the point that all four of her limbs had to be

physically restrained, she was agitated and hallucinating, and her blood alcohol level was 0.042 gm/dl. Patient 1 reported that her uncontrollable anger was stimulated by her memories of the sexual abuse perpetrated by appellant. She was transferred to University Hospitals Health System, Laurelwood Hospital & Counseling Centers in Willoughby, Ohio, and was discharged on November 6, 2002. (State's Ex. 11, at 9, 18-20.)

{¶36} David Bienenfeld, M.D., testified at the hearing on behalf of the state. He received his medical degree in 1978 from the University of Cincinnati College of Medicine in Cincinnati, Ohio, completed an internship and residency in psychiatry in 1981, and a fellowship in geriatric psychiatry in 1982, all at the University of Cincinnati. He is currently a Professor of Psychiatry and Vice-Chair of the Department of Psychiatry at Wright State University School of Medicine. He also maintains a private practice. He is board-certified in general psychiatry.

{¶37} He testified that appellant's encounters with Patient 1 went far outside the scope of the referral through which he became Patient 1's psychiatrist for purposes of medication management. He stated that, "there was much more of an intrusive investigation into elements of the patient's thoughts, feelings, behavior and past than would be necessary for medication management." He testified that he would have great difficulty describing appellant's conduct as psychotherapeutic. He stated that appellant violated the American Medical Association's Principles of Medical Ethics I, II and IV. He went on to explain:

The relationship between doctor and patient is inherently unequal. The doctor is always the more powerful figure of the two, and a sexual relationship between a physician and a patient is almost by its nature exploitative of the patient.

Beyond that, it clouds the physician's judgment about being able to make competent, accurate, proper medical decisions with regard to the patient. In the psychiatric realm, the issues are even more complex because patients will probably view their physicians through a kind of natural distortion of personal history, temperament, [and] current needs.

(Tr., 136.)

{¶38} The hearing officer summarized another key portion of Dr. Bienenfeld's testimony thusly:

Dr. Bienenfeld added that, with a psychiatric patient, the patient's vulnerability is greater and the nature of the relationship tends to make possible more distortions. He explained that a psychotherapeutic relationship generally involves transference of the patient's personal history, current needs, and expectations to the psychiatrist. He explained that a patient with Patient 1's history would likely enter the therapeutic relationship with a pre-disposition to affection toward the psychiatrist. He added that the relationship between the psychiatrist and patient is part of the healing element of psychiatric therapy when handled properly. He stated that, 'when that relationship becomes polluted by a sexual encounter, than [sic] what should be a therapeutic relationship becomes a destructive one.'

(Report of Hearing Officer, at 21-22.)

{¶39} Dr. Bienenfeld testified that sexual contact between a psychiatrist and a patient is never within the standard of care, and that appellant's conduct fell below the minimum standards of care of similar practitioners under the same or similar circumstances. He testified that, when appellant told Patient 1 that she could do anything

so long as she stayed in her chair, appellant had incorrectly paraphrased a tenet of psychotherapy known as the "rule of abstinence." This rule provides that, "a patient can say anything but not act." He added that, because the relationship between a psychiatrist and his or her patient is so intimate, the "rule of abstinence" is very important.

{¶40} He further testified that when Patient 1 began to behave in a sexually demonstrative manner, appellant should have told Patient 1 that he would be unable to help her if she continued to behave that way. He should have then encouraged her to share her feelings with Dr. McGraw, and then directed the conversation back toward the purpose of her visits, which was medication management and the symptoms that the medications were targeting. Appellant also fell below the standard of care, according to Dr. Bienenfeld, when he failed to fully document the extent of the sexual content of his sessions with Patient 1, and when he failed to apprise Dr. McGraw of the same.

{¶41} Dr. Bienenfeld characterized much of appellant's behavior toward Patient 1 as "self-serving and sometimes malicious," including appellant's threats toward Patient 1 and his lying to Dr. McGraw regarding his diagnosis that Patient 1 was delusional. Dr. Bienenfeld also testified that a reasonable practitioner should have and would have been aware that given her history of having been a victim of sexual abuse, Patient 1 was particularly vulnerable to her psychiatrist's sexual conduct toward her and with her. He stated that, "the behavior enacted under the guise of therapy was not appropriate for the patient's diagnosis and condition, nor for any patient." (State's Ex. 4.)

{¶42} In addition to his own testimony, appellant offered the testimony of two other physicians, the aforementioned Dr. Levine as well as Gregory Alan Peterson, M.D.

Dr. Levine received his medical degree in 1967 from Case Western Reserve University School of Medicine, and for 20 years worked within that institution's Department of Psychiatry. Since 1993, he has been engaged in the private practice of medicine at the Center for Marital and Sexual Health, specializing in relationship and sexual abnormality. Since the 1980s, the practice has operated a program for treating professionals who sexually offend during the course of their practice. Dr. Levine testified that one-half of his practice is devoted to general adult psychiatry and one-half is focused on sexual abnormality, including sexual identity, sexual offending behaviors, sexual dysfunction and marital problems.

{¶43} Dr. Levine first met appellant in 2002 when appellant's wife contacted him and reported that appellant was planning to kill himself. Since that time, appellant has met with Dr. Levine weekly for therapy sessions. Dr. Levine described the focus of these therapy sessions as helping appellant to deal with his "technical incompetence" in dealing with Patient 1. (Tr., 407-408, 450.) Dr. Levine testified that Patient 1's behavior toward appellant is what is known as "erotized transference." He described this behavior as follows:

[Patient 1] was relentless in her insistence that she loved him, [that she] wanted to have sex with him, and intended to do everything in her power to bring that about. Despite Dr. Schechter's repeated refusals and attempts to redirect her to more productive use of their time together, he succumbed to her unrelenting barrage of letters and fantasies about what she sexually wanted to do with him, and seductive displays of her underwear, anatomy, and sexual excitement.

(Respondent's Ex. B.) Dr. Levine testified that it is very difficult to deal appropriately with eroticized transference, and further that most psychiatrists never experience eroticized transference in the course of their practice. (Tr., 402-403, 453.)

{¶44} Dr. Levine testified that roughly one-half of practicing psychiatrists would have terminated Patient 1's treatment, finding the same would be fruitless, and that the other half would not have terminated Patient 1's treatment because they would believe that abandoning such a patient "in the midst of her acting out this center of her pathology" would be detrimental to her. Ideally, though, he concluded, appellant should have consulted with Dr. McGraw or with a psychiatrist who had experience with eroticized transference, once appellant decided to continue treating Patient 1.

{¶45} Dr. Levine testified that he encouraged appellant to return to psychotherapy, and to treat all types of patients, including women. He stated that appellant has the intellect and motivation to use his own experience to teach others about boundary crossing. When asked whether appellant had harmed Patient 1, Dr. Levine would say only that Patient 1 was very sick, and that, "[t]he harm that came to Patient 1 is that, at the end of this relationship, it was clear that no great accomplishment came as a result of the years working with Dr. Schechter." (Tr., 424.)

{¶46} Gregory Alan Peterson, M.D., also testified on behalf of appellant. Dr. Peterson is the Director of Clinical Services for Community Support Services, Inc., in Akron, Ohio. He received his medical degree from the Ohio State University College of Medicine in 1978. He testified that Community Support Services, Inc., is a large practice that treats nearly 3,000 patients and employs 14 psychiatrists, including appellant. Dr.

Peterson testified that Community Support Services, Inc., has employed appellant for the past five years and that Dr. Peterson is appellant's supervisor. He recounted that when appellant informed him of the situation involving Patient 1, in the fall of 2002, appellant showed a great deal of remorse and self-criticism. Dr. Peterson stated that he endeavored to determine whether the situation involving Patient 1 was an isolated incident or whether appellant had engaged in any similar conduct with Community Support Services, Inc. clients. He concluded that the inappropriate conduct with Patient 1 was an isolated case. (Tr., 284-286.)

{¶47} Dr. Peterson opined that appellant engaged in this inappropriate conduct with Patient 1 because appellant's pride prevented him from seeking help when he found himself in a situation he was unable to handle. He further testified that the leadership at Community Support Services, Inc., decided not to impose any discipline upon appellant in relation to his conduct with Patient 1. He stated that he felt comfortable that appellant was not a threat to clients and that appellant had continued to practice with the agency without direct supervision or other limitations or safeguards being imposed. On cross-examination, Dr. Peterson admitted that he probably would not have hired appellant had he known about appellant's conduct with Patient 1.

{¶48} Upon consideration of all of the foregoing evidence, the hearing officer made findings of fact and conclusions of law consistent with the state's presentation of evidence and the charges listed in the May 14, 2003 notification letter that the board sent to appellant. The hearing officer proposed the permanent revocation of appellant's license to practice medicine and surgery, noting, "Dr. Schechter's clear disregard for the

welfare of this patient affords this Board little choice but to permanently revoke his license to practice medicine and surgery in this state." (Report and Recommendation, at 31.)

{¶49} Appellant filed objections to the Report and Recommendation and requested permission to address the board. An excerpt from the draft minutes of the board's March 10, 2004 meeting indicates that all board members received and read copies of the Report and Recommendation and the objections. The board permitted appellant to address the board for five minutes.

{¶50} During his address to the board members, appellant expressed regret for his conduct and acknowledged that his "incompetence" caused his family and Patient 1 to suffer. Appellant told the board that he has learned many things from this incident and that he has turned his life around. He stated that he has closed his private practice, worked with Dr. Levine, changed his clinical focus, discussed his situation candidly with his supervisors and colleagues, and cooperated with the board's investigation. He stated that he feels he still has a place in the practice of medicine and that he believes that he is a competent, safe and compassionate physician. He expressed a desire to share his experience regarding treating Patient 1 in order to teach others about how to avoid boundary violations with patients. He emphasized that he has successfully treated hundreds of patients in the time since he admitted to his conduct with Patient 1, and that he continues to enjoy the support of colleagues and supervisors.

{¶51} In response, Assistant Attorney General Wilcox urged the board to permanently revoke appellant's license to practice medicine. He argued that appellant abused a very vulnerable patient over a substantial period of time, and did so knowing

that she had been the victim of years of abuse as a child. The excerpt of the board's minutes further memorialized Mr. Wilcox's remarks as follows:

Mr. Wilcox stated that * * * Dr. Schechter used this patient as his personal sex toy. He admittedly allowed her to perform exhibitionist sexual acts for him on at least 36 different occasions. Mr. Wilcox stated that Dr. Schechter encouraged this behavior by telling the patient that she could do whatever she wanted, as long as she remained in the chair. Dr. Schechter could have easily ended this behavior by simply telling the patient that such behavior was unacceptable, and that, if she continued it, he would no longer treat her. Dr. Schechter didn't do that, and that's the crux of the issue. He didn't want her to stop. Dr. Schechter knowingly abused this patient for months.

* * * Dr. Schechter allowed this patient to masturbate in his presence on at least 36 occasions. He then had sex with this patient, knowing that it would cost him his career and his license to practice. He then emotionally abused her, attempting for months to cover up his acts, only deepening the damage he did to this patient. Additionally, in an argument outside of his office, Dr. Schechter physically slapped this patient.

Mr. Wilcox stated that Dr. Schechter should never be allowed to put any other patient in such danger. * * *

(Excerpt from Draft Minutes of March 10, 2004, at 4.)

{¶52} Assistant Attorney General Perry also spoke. He argued that appellant's claims that his conduct with Patient 1 was due to his technical incompetence is "totally irrelevant in this case." (Ibid.) He continued:

This case isn't here because Dr. Schechter didn't have the ability to make this person get better. It's here because, whatever his ability level, he should have stopped this atrocity from ever happening.

* * * Dr. Schechter claims that he has learned a lesson from his experience in this case. This was not a gray area. There was no judgment call here. The rule against having sex with a patient is as black and white as black and white can be. * * * The risk of patient harm is unmistakable, and that's not something that Dr. Schechter needed to learn. He already knew that. It shouldn't have taken any special ability or expertise on his part just to say, 'no, we're not going there.'

(Id. at 4-5.)

{¶53} The excerpt from the draft minutes also contains the discussion in which the board members engaged prior to rendering their decision:

Dr. Steinbergh stated that this case was probably the most difficult, most egregious she has had to read in the 11 years she's been on the Board. * * * [S]he's pleased to know that Dr. Schechter has handled his personal life to his satisfaction. She added, however, that Dr. Schechter needs to know that the Board's mission is one of public protection, and there are certain acts so egregious by physicians, so severe, that this Board cannot accept those acts. It's absolutely intolerable. There was so much harm to this patient, and there were so many chances not to harm this patient, and he continued with it.

Dr. Steinbergh stated that Mr. Wilcox' reply today absolutely reflects her thoughts in this case. There is no question in her mind that this license has to be permanently revoked.

Dr. Robbins agreed with Dr. Steinbergh and stated that the Assistant Attorneys General put it very well. These instances of 'whatever happens in the chair, as long as she stays in the chair,' are just atrocious, and in his mind this wasn't psychotherapy. This was a peeping Tom. There's no place in medicine for something like this, and permanent revocation is the only penalty.

Dr. Bhati stated that the whole thing described in the Report and Recommendation and by the two Assistant Attorneys General speaks on its own. Imagine 36 counts of masturbation sitting in the office, going for months having sex.

What else can go wrong here? Dr. Bhati stated that it has to be permanent revocation in plain, simple form, and nothing else.

Dr. Egner also spoke in agreement. She stated that there aren't many times before this Board where there is a single patient involved and the Board has revoked a license. The thing considered when that happens is that the action itself is so egregious that it doesn't matter that it is just one patient. This was definitely one patient over many, many times in many years so, in a sense, although it's a single patient, it's not necessarily a single act.

Dr. Egner continued that the Board has to take into consideration Dr. Schechter's specialty, psychiatry. She stated that she likens it, many times, to impairment cases when anesthesiologists are involved. The Board sees them in a little different light than it does the other specialties because they have such easy access to drugs. It makes their situation a little different from some of the other specialties. In the same sense, a sexual abuse case in relation to psychiatry is the worst situation you can have. The Board doesn't have a way to monitor him when he is alone with patients. There is no such thing as a third party in a room with a psychiatrist. That in itself limits the Board's ability to know that this won't happen again.

* * *

Dr. Buchan stated that to Dr. Schechter's credit, he appreciated Dr. Schechter's disclosure. Dr. Buchan stated that the Board is so used to seeing records full of conflicting reports and lies and deceit. Dr. Schechter makes no mistake about what he did. Dr. Buchan stated that he hopes that this is the beginning of a better life for Dr. Schechter, noting that it wasn't working so well before. Dr. Buchan stated that he will vote for revocation in this case, but hopes that Dr. Schechter continues to stay on track.

Mr. Browning stated that, from a consumer perspective, if the Board didn't revoke this license, he doesn't know a case where it could. This was beyond any standard of decency, and it goes way beyond incompetence, in his judgment, for

Dr. Schechter to knowingly pursue that course of action. Mr. Browning stated that the Board is compelled to vote to permanently revoke. He also agrees with Dr. Buchan that this is a tragedy for the doctor and the patient. Hopefully, Dr. Schechter can find a better way going forward, but he Board has to revoke.

(Id. at 5-7.)

{¶54} Following their discussion, all seven non-abstaining members of the Board voted to approve and confirm the hearing officer's proposed findings of fact, conclusions of law, and order of permanent revocation. Appellant timely appealed the board's order to the Franklin County Court of Common Pleas, which affirmed the order, finding that the same was supported by reliable, probative, and substantial evidence. Thereafter, appellant appealed to this court.

{¶55} Before turning to the substantive issues raised in appellant's assignments of error, we call to mind the appropriate standard of review that guides our disposition thereof. In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with the law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, 19 OBR 123, 482 N.E.2d 1248; *Rossiter v. State Med. Bd. of Ohio*, 155 Ohio App.3d 689, 2004-Ohio-128, 802 N.E.2d 1149, at ¶11. Reliable, probative, and substantial evidence has been defined as follows:

* * * (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3)

"Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St.3d 570, 571, 589 N.E.2d 1303.

{¶56} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, this court does not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707, 590 N.E.2d 1240. In reviewing the court of common pleas' determination that the commission's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680, 610 N.E.2d 562. The term abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140. However, on the question of whether the commission's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343, 587 N.E.2d 835.

{¶57} In his first assignment of error, appellant argues that the trial court abused its discretion in failing to vacate the board's order because the order is based upon "false evidence" and is not supported by reliable, probative and substantial evidence. The sole basis of appellant's argument under this assignment of error consists in his contention

that the board members based their decision on mischaracterizations of the evidence first made by Assistant Attorney General Wilcox and echoed by some of the board members.

{¶58} Our review of appellant's briefs filed with this court reveals that he does not argue that the factual findings placed in the hearing examiner's report and adopted by the board are unsupported by reliable, probative, and substantial evidence. He also does not argue that the evidence adduced at the hearing fails to demonstrate that appellant did all of the acts charged in the board's May 14, 2003 letter. Rather, he argues that some of the board members' comments reveal that they based their votes upon misunderstandings and mischaracterizations of the evidence, and that, as such, the board's order is not based upon reliable, probative, and substantial evidence and is contrary to law.

{¶59} Appellant directs our attention to several specific items in the record. First, Drs. Robbins, Steinbergh and Bhati all expressed agreement with the characterization of the facts offered by Assistant Attorney General Wilcox during his summation. As part of his argument, attorney Wilcox stated, "Dr. Schechter allowed this patient to masturbate in his presence on at least 36 occasions." (Excerpt of Draft Minutes of March 10, 2004, at 4.) Later, Drs. Steinbergh and Robbins expressed their agreement with the way in which the assistant attorneys general had stated the case. Dr. Bhati then commented, "Imagine 36 counts of masturbation sitting in the office, going for months having sex. What else can go wrong here?" (Excerpt from Draft Minutes of March 10, 2004, at 6.)

{¶60} Appellant points out that there were not 36 instances of masturbation. When he was questioned about this at the hearing, he explained that the 36 instances did

not all involve masturbation per se; rather, Patient 1's activities during these 36 instances ranged from varying degrees of disrobing to self-stimulation. Appellant stated, "I think masturbation is a strong term. She would touch herself, but she did not have an orgasm in my office, and I would attempt to redirect her. So the episodes of self-stimulation were limited." (Tr., 37.) Appellant also points out that, by all accounts, there was only one instance of intercourse/fellatio between appellant and Patient 1, and that he was not "going for months having sex."

{¶61} Appellant argues that the board members' comments "demonstrate that they believed certain 'facts' to be part of the record, when they were not." (Brief of appellant, at 13.) He argues that the foregoing comments of some of the board members, and the fact that the other members failed to correct these misstatements, demonstrate that the board members "believed that permanent revocation was necessary and appropriate because of the false statements." He contends that the board's order was not based on the facts adduced, but on false interpretations of the facts, and that this violates his right to due process of law and the basic principle of fairness upon which the Administrative Procedure Act is based.

{¶62} Upon our examination of the entire record, including all of the board members' comments, we conclude that the administrative hearing that led to appellant's license revocation comported with the requirements of fairness and due process. We note initially that at the commencement of the board's March 10, 2004 meeting, all board members acknowledged that they had "received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in

[appellant's case]." (Id. at 1.) Thus, the members were fully apprised of the evidence adduced at appellant's hearing.

{¶63} It is true that Dr. Bhati misstated the evidence with respect to the nature of all 36 instances of exhibitionism involving Patient 1, and did so also with respect to the number of times appellant had sexual relations with Patient 1. However, there is reliable, probative, and substantial evidence in the record that substantiates all of the charges against appellant and supports the penalty imposed by the board, sufficient to outweigh appellant's claims of prejudice from Dr. Bhati's misstatement of the evidence. See *Clayman v. State Med. Bd. of Ohio* (1999), 133 Ohio App.3d 122, 128, 726 N.E.2d 1098.

{¶64} The evidence undisputedly demonstrates that appellant allowed Patient 1 to expose herself to him, listened to her sexual fantasies involving him, and allowed Patient 1 to rub her genitals in his presence, all as charged in allegation number two of the board's May 14, 2003 letter. The evidence also demonstrates that appellant touched Patient 1's panties on one occasion, as charged in allegation number three of the board's letter, and that appellant engaged in sexual relations with Patient 1 during a psychiatric session on April 17, 2000, as charged in the same paragraph. Finally, the evidence overwhelmingly establishes, and appellant admitted, that after he had sexual relations with Patient 1 he continued to treat her for approximately two more years; inappropriately discussed his personal feelings with Patient 1, including the consequences of her revealing his conduct; told her that he would deny that any such conduct had occurred; and slapped Patient 1 in the face, all as charged in allegation number four of the board's letter.

{¶65} With all of the foregoing allegations having been established, we fail to see, and appellant fails to satisfactorily explain, why it is consequential that Dr. Bhati believed that the evidence revealed multiple instances of sexual intercourse rather than just one, or why the board's order should be vacated because Dr. Bhati believed that Patient 1 actually masturbated on all 36 occasions of exhibitionism that appellant admittedly allowed to occur during his treatment sessions with Patient 1.

{¶66} With respect to the disputed "36 instances," Assistant Attorney General Wilcox told the board that Dr. Schechter "admittedly allowed [Patient 1] to perform exhibitionist sexual acts for him on at least 36 occasions." He later said, "* * * Dr. Schechter allowed this patient to masturbate in his presence on at least 36 occasions." Viewed as a whole, we do not think that attorney Wilcox so mischaracterized the evidence that his summation prejudiced appellant's right to a fair hearing and to the protections of due process. As we previously noted, the board members had reviewed the entire record and the hearing examiner's report prior to hearing from Mr. Wilcox. The record contains uncontroverted evidence that appellant allowed Patient 1 to disrobe and/or touch herself erotically, to varying degrees, during what were supposed to be therapeutic medication management appointments. Regardless of the degree of accuracy with which attorney Wilcox restated it during his argument, this is the true essence of the undisputed evidence that was before the board.

{¶67} As for Drs. Steinbergh and Robbins, these board members expressed much more than simple agreement with the assistant attorney generals' statements. As we noted earlier, Dr. Steinbergh called this case the "most egregious she has had to read

in the 11 years she's been on the Board." (Excerpt from Draft Minutes of March 10, 2004, at 5.) Immediately thereafter, she stated that "[t]he Board has read the record and had time to give thought to it, and listening to what has been said * * * [but] Dr. Schechter needs to know that the Board's mission is one of public protection, and there are certain acts so egregious by physicians, so severe, that this Board cannot accept those acts. It's absolutely intolerable." (Ibid.)

{¶68} Dr. Robbins focused his comments primarily upon appellant's rule for his sessions with Patient 1 of " 'whatever happens in the chair, as long as she stays in the chair,' " and called this "just atrocious[.] * * * [I]n his mind this wasn't psychotherapy. This was a peeping Tom. There's no place in medicine for something like this, and permanent revocation is the only penalty." (Id. at 6.)

{¶69} Moreover, the other board members were not simply silent as to the facts of record, as appellant contends. Dr. Egner stated that conduct involving a single patient rarely culminates in revocation, but that appellant's conduct was so egregious that it warrants such a sanction. Dr. Egner also emphasized that appellant's practice area of psychiatry renders board oversight virtually impossible because he must be alone with his patients in order to treat them. She compared appellant's case to cases in which anesthesiologists, whose practice necessitates access to drugs, are before the board on substance-related impairment issues. But she noted that, "a sexual abuse case in relation to psychiatry is the worst situation you can have * * * [because] [t]here is no such thing as a third party in a room with a psychiatrist." (Ibid.)

{¶70} Finally, board member Browning, who represents the interests of consumers on the board, stated that, "if the Board didn't revoke this license, he doesn't know a case where it could." (Id. at 7.)

{¶71} It is clear from the record that the evidence of appellant's misconduct is overwhelming. It is also clear that the board members were aware of the nature and substance of all of the evidence and testimony, and based their decision thereon. Thus, the board's order adopting the findings of the hearing examiner and permanently revoking appellant's license to practice medicine was not contrary to law and was supported by the requisite quantum of reliable, probative, and substantial evidence. Accordingly, appellant's first assignment of error is overruled.

{¶72} In support of his second assignment of error, appellant argues that his right to due process of law was violated because the board's imposition of permanent revocation was "grossly excessive" and is unreasonably and arbitrarily disproportionate to the sanctions imposed in similar cases.

{¶73} For support of this contention, appellant relies on the case of *Brost v. Ohio State Med. Bd.* (1991), 62 Ohio St.3d 218, 581 N.E.2d 515. Curiously, appellant relies on *Brost* to support his argument that the board should have viewed his case in light of its actions in other cases, and that it violated his right to due process because the sanction it imposed upon him "departed wildly from the standards stated and processes followed in all prior similar case precedent, resulting in a violation of due process." (Reply Brief of Appellant, at 8.) But the court in *Brost* vacated a board order because it was questionable whether the board had felt compelled to impose a particular sanction in

accordance with non-statutory "guidelines" that had never been promulgated as an administrative rule, and had failed to consider other sanctions.

{¶74} Put another way, *Brost* stands for the proposition that the board must evaluate each disciplinary action on a case-by-case basis. Indeed, R.C. 4731.22(B) requires the board to address each disciplinary matter on a case-by-case basis. *Clayman v. State Med. Bd. of Ohio* (1999), 133 Ohio App.3d 122, 129, 726 N.E.2d 1098.

{¶75} The majority in *Brost* stated, in dicta, that when the General Assembly granted the board a broad spectrum of sanctions from which to choose in disciplining physicians it " * * * intended that the sanction selected by the board be proportionate to the prohibited act or acts committed by the doctor." *Id.* at 221. Appellant contorts this language in support of his contention that the board is required to conduct a proportionality inventory of all sexual abuse-related disciplinary cases each time it considers a sanction in such a case, and that the court of common pleas must conduct some sort of proportionality review of the board's decision. We find a dearth of support for this argument and reject it as wholly contrary to the express language and intent of R.C. 4731.22.

{¶76} In light of the overwhelming evidence that appellant allowed a psychiatric patient to engage in sexual acting out during what were supposed to be therapeutic medication management sessions, that he engaged in sexual relations with the patient, that he continued to treat her afterward, and that he threatened her with reprisals if she revealed his actions, it cannot be said that the board's order is disproportionate to the prohibited acts committed by this doctor. The board clearly obeyed its statutory mandate

to evaluate appellant's case – standing alone – on the evidence of record therein. Accordingly, we perceive absolutely no violation of *Brost* in this case.

{¶77} Moreover, the record reveals that the board members acknowledged 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." (Excerpt from Draft Minutes of March 10, 2004 Board Meeting, at 1.) This court has twice rejected *Brost*-based arguments like appellant's when the record contained language identical to that quoted hereinabove, which indicated that the board acknowledged that its disciplinary guidelines did not limit it to any particular sanction, and that it considered the full range of sanctions authorized by R.C. 4731.22(B). See *Ross v. State Med. Bd. of Ohio*, 10th Dist. No. 03AP-971, 2004-Ohio-2130; *Bouquett v. State Med. Bd. of Ohio* (1997), 123 Ohio App.3d 466, 704 N.E.2d 583.

{¶78} When the board's order is supported by reliable, probative, and substantial evidence and is in accordance with law, a reviewing court may not modify a sanction authorized by statute. *Henry's Cafe, Inc. v. Ohio Bd. of Liquor Control* (1959), 170 Ohio St. 233, 10 O.O.2d 177, 163 N.E.2d 678; *Merritt v. Ohio Liquor Control Comm.*, 10th Dist. No. 02AP-709, 2003-Ohio-822, at ¶34. The board is authorized to revoke appellant's license to practice medicine in Ohio for "[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," R.C. 4731.22(B)(6), and for "violation of any provision of a code of ethics of the American medical association." R.C. 4731.22(B)(18). Because the board's sanction was

authorized by statute, the trial court could not order modification of the penalty imposed. *Henry's Café, Inc.*, supra; *Ross*, supra, at ¶14.

{¶79} For all of the foregoing reasons, appellant's second assignment of error is overruled.

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

Judgment affirmed.

BROWN, P.J., and PETREE, J., concur.

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8-5946

IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO

John Michael Schechter, M.D. :
150 Cross Street :
Akron, OH 44311 :

Case No. 04CVF-03-2968

Appellant, :

Judge D. Crawford

vs. :

State Medical Board of Ohio :
77 South High Street, 17th Floor :
Columbus, OH 43215-6127, :

Appeal from the Entry of Order
of September 15, 2004

Appellee. :

FILED
COURT OF APPEALS
FRANKLIN COUNTY, OHIO
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CLERK OF COURTS

APPELLANT'S NOTICE OF APPEAL

OHIO STATE MEDICAL BOARD

OCT 14 2004

Notice is hereby given that Appellant, John Michael Schechter, M.D., hereby appeals to the Court of Appeals of Franklin County, Tenth Appellate District, from the Judgment Entry entered in this action on the 15th day of September, 2004.

Respectfully submitted,



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FILED
COURT OF APPEALS
FRANKLIN COUNTY, OHIO
04 OCT 12 PM 4:17
CLERK OF COURTS



CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2004 the foregoing Notice of Appeal was filed via hand delivery with the Court of Common Pleas of Franklin County, Court of Appeals of Franklin County, Tenth Appellate District, and that a copy was served via regular mail, upon:

Kyle Wilcox, Esq.
Assistant Attorney General
Health & Human Services Section
Ohio Attorney General
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Columbus, Ohio 43215-3428



Eric J. Plinke (0059463)

OHIO STATE MEDICAL BOARD

OCT 14 2004

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FINAL APPEALABLE ORDER

JOHN MICHAEL SCHECTER, M.D.,

Appellant

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee

Case No. 04CVF-03-2968

JUDGE D. CRAWFORD

TERMINATION NO. 10
BY *[Signature]*

JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S
MARCH 10, 2004 ORDER PERMANENTLY REVOKING
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN
OHIO

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the March 10, 2004 Order of the State Medical Board of Ohio which permanently revoked Appellant, John Michael Schechter, M.D.'s license to practice medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered and filed on September 2, 2004, which decision is incorporated by reference as if fully rewritten herein, it is hereby.

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the March 10, 2004 Order of the State Medical Board in the matter of John Michael Schechter, M.D., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

Date

JUDGE DALE CRAWFORD

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STATE MEDICAL BOARD
OF OHIO
2004 SEP 16 P 3:16

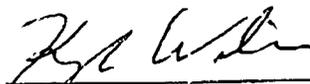
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STATE MEDICAL BOARD
OF OHIO
2004 SEP 16 P 3:16

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JOHN MICHAEL SCHECHTER, M.D.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO

Appellee

CASE NO. 04CVF-03-2968

JUDGE CRAWFORD

DECISION AFFIRMING THE ORDER OF
THE OHIO STATE MEDICAL BOARD

Rendered this 2nd day of September, 2004

FILED
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CLERK OF COURTS

CRAWFORD, JUDGE

This is an appeal pursuant to R.C. 119.12 of a March 10, 2004 Order of the State Medical Board of Ohio ("the Board") revoking the medical license of Appellant John Michael Schechter, M.D.

I. HISTORY OF THIS MATTER

By letter dated May 14, 2003, the Board notified Appellant that it proposed to take disciplinary action against his medical license. The Board alleged that Appellant had failed 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). The Board also alleged that Appellant had failed to conform to codes of ethics of the American Medical Association, in violation of R.C. 4731.22(B)(18). The charges related to Appellant's sexual activities with, and allegedly inappropriate treatment of, Patient 1.

Appellant requested a hearing on the charges. An administrative hearing was held on October 21-23 and December 15, 2003.

HEALTH & HUMAN

SEP 07 2004

SERVICES SECTION

On February 13, 2004, the Hearing Examiner issued a Report and Recommendation concluding that Appellant had committed the violations charged, and recommending permanent revocation of his medical license.

The Board considered this matter at its March 10, 2004 meeting. At the conclusion of the discussion, the Board voted to confirm the Report and Recommendation and revoke Appellant's medical license.

On March 15, 2004, Appellant filed this appeal of the Board's Order.

II. FACTS

Appellant received his medical degree in 1989 from the Ohio State University College of Medicine. In 1993, Appellant completed a psychiatry residency at University Hospitals of Cleveland, Case Western Reserve University College of Medicine. Appellant maintained a private practice as a psychiatrist in Solon, Ohio until 2002. At the time of the hearing, Appellant worked for Community Support Services, in Akron, Ohio, as a psychiatrist. (Tr. 15-18).

In 1996, Appellant undertook the treatment of Patient 1, who had been referred by her primary therapist, Dr. McGraw. (Tr. 19). Patient 1 was thirty-eight years old, married, and had two children. She was referred for treatment of cyclical mood disorder and difficulties associated with childhood sexual and emotional abuse. (Tr. 18-23). Patient 1 had attempted suicide in the past and was diagnosed as bipolar. (Tr. 21-22). Appellant's plan was to provide medication management to Patient 1 to complement Dr. McGraw's ongoing psychological management. (Tr. 19-21).

In 1998, Patient 1 suffered a manic episode and was hospitalized. (Tr. 23-24). During treatments sessions after her discharge, Patient 1 began telling Appellant that she

was in love with him and began discussing sexually explicit images with him and expressing sexual fantasies involving him. (Tr. 24-25, 27). She also gave Appellant written descriptions of her fantasies. (Tr. 28).

Appellant testified that he explained to Patient 1 that there were boundary lines of behavior she was required to adhere to during the treatment sessions. (Tr. 25). When asked what he told her, Appellant stated: "My words, I believe, were you can say and do whatever you want, but you need to stay in your seat." (Tr. 25-26). He added that he could not have any physical contact with her. (Tr. 26).

Patient 1 eventually began undressing and touching her genitals during the sessions with Appellant. (Tr. 28). Appellant testified that he asked her to stop, but did not threaten to end the sessions if she continued to do this. (*Id.*). When asked why he did not end the sessions, Appellant stated: "I didn't feel that it was appropriate to discharge a patient because of my lack of self control." (*Id.*). After he told her to stop, "she would stop, and then she would come back and do it again." (*Id.*). He added: "when it got to be extremely pornographic I would ask her please, Patient 1, stop, this is not doing either of us any good." (Tr. 29). He admitted that he lost control of the sessions and that he was aroused during the sessions. (Tr. 29-30). He testified:

Q. And approximately how many times did you, if you recall, allow her to disrobe or somehow masturbate in your presence, do you recall?

A. Total?

Q. If you can.

A. I would say approximately three dozen. (Tr. 30).

Appellant testified that during a session in 1999, he touched Patient 1's genitals through her underwear. (Tr. 31). According to Patient 1, Appellant also touched her

vagina on this occasion. (Tr. 80). Appellant testified that he told Patient 1 he could lose his license because of his behavior. (Tr. 31).

Appellant continued treating Patient 1, even though he admitted he had “lost any kind of therapeutic advantage to the patient.” (Tr. 32). Patient 1’s provocative behavior continued. Appellant accepted nude photographs from Patient 1. (Tr. 52). Appellant acknowledged that he could have, but did not seek outside help. (Tr. 348). Appellant was aware that Patient 1 had been sexually abused by her father. (Tr. 34).

During a treatment session on April 17, 2000, Appellant allowed Patient 1 to masturbate in his presence. Appellant made the decision to have sex with her, asked her to promise not to tell anyone, and locked the office door. (Tr. 37-38). Appellant testified that he asked her to promise not to tell because he knew he would lose his license if she did. (Tr. 39). Appellant and Patient 1 engaged in sexual intercourse and fellatio. (Tr. 38-40).

Appellant continued the treatment sessions with Patient 1 after this incident. (Tr. 41). During subsequent conversations, Patient 1 asked Appellant what he would do if she told someone about the incident, and Appellant responded that he would deny it and they would believe him. (Tr. 43).

In 2001, Patient 1 came to Appellant’s office without an appointment and demanded that he have sex with her. (Tr. 44). He testified that she was out of control and that she was grabbing him and would not stop. He admitted that he slapped her in the face. (*Id.*) Patient 1 testified that he also pushed her into a wall and that she fell. (Tr. 87-88).

Appellant testified that he told Patient 1 he would commit suicide if she exposed him. (Tr. 48). He also threatened to release letters she had written him and the nude photographs if she told what had happened. (Tr. 53).

On March 22, 2002, Dr. McGraw confronted Appellant about his sexual relationship with Patient 1. (Tr. 49-50). Appellant denied the accusations and stated that Patient 1 was delusional. (Tr. 50). At the hearing, Appellant acknowledged that he had lied to Dr. McGraw and that lying to a patient's therapist can be disastrous. (Tr. 52).

In a letter dated March 22, 2002, Appellant advised Patient 1 that he could no longer serve as her psychiatrist. (Tr. 48). He testified that he had not terminated the doctor-patient relationship earlier because "sending a person away because you were weak wasn't an appropriate thing to do. I should have gotten stronger. I should have gotten help." (Tr. 352).

Twelve days later, Appellant admitted the sexual relationship to Dr. McGraw. (Tr. 368-371). After an episode in which Appellant threatened suicide, he began seeing a psychiatrist, Dr. Stephen B. Levine. (Tr. 377-378).

At the hearing, Appellant admitted that he had victimized Patient 1 and that his treatment of Patient 1 violated standards of care and ethical standards. (Tr. 54-57).

David Bienenfeld, M.D., testified as an expert witness for the State. Dr. Bienenfeld received his medical degree in 1978, completed an internship and residency in psychiatry in 1981, and is currently a Professor in Psychiatry and Vice-Chair of the Department of Psychiatry at the Wright State University School of Medicine. (Tr. 118-122). Dr. Bienenfeld testified that Appellant's sexual conduct with Patient 1 violated the American Medical Association's Principles of Medical Ethics (Tr. 134-136) and fell

below minimal standards of care. (Tr. 139). He stated that with a psychiatric patient, the vulnerability of the patient is greater, and a sexual relationship is by its nature exploitative. (Tr. 134-136). He stated that it was inappropriate for Appellant to continue treatment after the sexual activity began. (Tr. 170-173). He stated that it was also inappropriate for Appellant to threaten Patient 1, slap her, and lie to her therapist. (Exhibit 4).

Stephen B. Levine, M.D., testified on behalf of Appellant. Dr. Levine received his medical degree in 1967, completed a psychiatric residency, and has worked in the Department of Psychiatry at Case Western and maintained a private practice. (Tr. 392-399). Dr. Levine described Patient 1's behavior as eroticized transference, including compulsive and relentless behavior. (Ex. B). He stated that it is very difficult to deal appropriately with this type of behavior. He stated that this was not a case of a physician taking advantage of a patient. Instead, he stated, Patient 1 "was able to make Dr. Schechter feel helpless and sexually excited" and that "because Dr. Schechter didn't recognize that, his behavior was incompetent and he then eventually succumbed." (Tr. 419-420). Dr. Levine stated that Appellant's conduct with Patient 1 was "an aberration, that he is given to virtuous behavior as a physician and that he has the best of intentions." (Tr. 413-416).

Gregory Alan Peterson, M.D., also testified on behalf of Appellant. Dr. Peterson received his medical degree in 1978, completed an internship and residency in psychiatry, and is currently Director of Clinical Services for Community Support Services, Inc. in Akron, Ohio, where Appellant is currently employed. Dr. Peterson testified that he has known Appellant professionally for ten years. (Tr. 272-275). Dr. Peterson testified to his

opinion that Appellant's inappropriate conduct with Patient 1 was an isolated incident inconsistent with his clinical skills and character. (Tr. 280, 284-289).

III. FINDINGS OF THE BOARD

In her Report and Recommendation, the Hearing Examiner reviewed the evidence in detail and found that Appellant failed 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) and failed to conform to codes of ethics of the American Medical Association, in violation of R.C. 4731.22(B)(18). The Hearing Examiner stated that Appellant's conduct was deplorable, specifically referring to Appellant's allowing Patient 1 to expose herself and masturbate, engaging in sexual activities with Patient 1, failing to seek outside help, threatening Patient 1 to prevent her from disclosing the relationship, slapping her, and lying to her therapist, among other things. (Report and Recommendation, p. 30-31). The Hearing Examiner concluded: "Dr. Schechter's clear disregard for the welfare of his patient affords this Board little choice but to permanently revoke his license to practice medicine and surgery in this state." (*Id.* at 31).

The Board considered this matter at its March 10, 2004 meeting. Appellant and his counsel addressed the Board. The Assistant Attorney Generals who worked on the case, Mr. Perry and Mr. Wilcox, also addressed the Board. At the conclusion of its deliberations, the Board voted 7-0 to confirm the Report and Recommendation and revoke Appellant's medical license. The Board issued its Order of permanent revocation on March 10, 2004.

IV. LAW

When considering an appeal from an order of the Medical Board, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621; *Landefeld v. State Med. Bd.* (2000), Tenth Appellate District No. 99AP-612, 2000 Ohio App. LEXIS 2556.

The Ohio Supreme Court has recognized that the General Assembly granted the Medical Board a broad measure of discretion. *Arlen v. State* (1980), 61 Ohio St. 2d 168, 174. In *Farrand v. State Med. Bd.* (1949), 151 Ohio St. 222, 224, the court stated:

... The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the necessary knowledge and experience pertaining to a particular field. ...

“Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board’s interpretation of the technical and ethical requirements of the medical profession.” *Landefeld, supra*, at pg. 9.

V. THE COURT’S FINDINGS AND CONCLUSIONS

Appellant raises four assignments of error for this Court’s review. First, Appellant argues that the Board’s decision is not supported by reliable, probative and substantial evidence or in accordance with law because it is based on facts that are not in the record.

Appellant notes that when addressing the Board, Assistant Attorney General Wilcox’s comments included the following:

Mr. Wilcox stated that he thinks that permanent revocation is absolutely necessary in this case. Dr. Schechter physically and mentally abused this

patient. This was a very vulnerable patient with a horrible past that included years of sexual abuse by her father. **Dr. Schechter used this patient as his personal sex toy. He admittedly allowed her to perform exhibitionist sexual acts for him on at least 36 different occasions.** Mr. Wilcox stated that Dr. Schechter encouraged this behavior by telling the patient that she could do whatever she wanted, as long as she remained in the chair. Dr. Schechter could have easily ended this behavior by simply telling the patient that such behavior was unacceptable, and that, if she continued it, he would no longer treat her. Dr. Schechter didn't do that, and that's the crux of the issue. He didn't want her to stop. Dr. Schechter knowingly abused this patient for months.

Mr. Wilcox stated that Dr. Schechter has attempted to marginalize his conduct in that it was only two episodes of sexual conduct with the patient and, therefore, harm was minimal. **Dr. Schechter allowed this patient to masturbate in his presence on at least 36 occasions.** He then had sex with this patient, knowing that it would cost him his career and his license to practice. He then emotionally abused her, attempting for months to cover up his acts, only deepening the damage he did to this patient. Additionally, in an argument outside of his office, Dr. Schechter physically slapped this patient. (emphasis added)

Appellant asserts that Mr. Wilcox's statements that Appellant allowed the patient to masturbate on 36 occasions and used the patient as "his personal sex toy" are inaccurate and not supported by the record.

Appellant argues that the comments of the Board members during their deliberations show that they relied upon and accepted the allegedly erroneous statements of counsel. Appellant notes that Dr. Steinbergh indicated that "Mr. Wilcox's reply today absolutely reflects [my] thoughts in this case. (Minutes, p. 13914). Dr. Robbins "agreed with Dr. Steinbergh" and indicated that "the Assistant Attorneys General put it very well ..." (*Id.*). Appellant emphasizes the comments of Dr. Bhati, who stated: "the whole thing described in the Report and Recommendation and by the two Assistant Attorneys General speaks on its own. Imagine 36 counts masturbation sitting in the office, going for months having sex."

At the hearing, Appellant testified that Patient 1 undressed and touched her genitals during the treatment sessions. (Tr. 28). He added that “it got to be extremely pornographic,” he lost control of the sessions, and he was aroused during the sessions. (Tr. 29-30). He then testified:

Q. And approximately how many times did you, if you recall, allow her to disrobe or somehow masturbate in your presence, do you recall?

A. Total?

Q. If you can.

A. I would say approximately three dozen. (Tr. 30).

The record also reflects that Appellant engaged in sexual activity with Appellant on two occasions.

Mr. Wilcox’s statements that Appellant allowed the patient to masturbate on 36 occasions and used the patient as “his personal sex toy” were made during closing argument to the Board, which is comparable to a closing argument at a hearing or trial. Counsel are permitted broad latitude in such arguments.

Appellant’s complaint is apparently that counsel referred to 36 occasions of masturbation rather than 36 occasions of exposure and/or masturbation. In view of the entire record, the Court does not find this difference to be material or prejudicial. Under either description of the conduct, it is inappropriate and only part of a series of inappropriate behaviors that formed the basis of the Board’s action.

Appellant asserts that counsel erroneously stated that Appellant used the patient as “his personal sex toy.” The record reflects that the sexual conduct continued over a lengthy period of time, that Appellant could have stopped treating the patient, and that Appellant threatened the patient and lied to keep the sexual relationship secret. Given the

broad latitude afforded to counsel during argument, the Court does not find that counsel's statement exceeds the bounds of permissible argument.

A review of the comments of the Board members does not suggest that counsel's statements somehow misled the Board. The Board had before it the Hearing Examiner's Report and Recommendation describing in detail exactly what occurred during the treatment sessions. Each Board member verified that he or she had read the entire record.

As noted by Appellant, Dr. Bhati did refer to "36 counts masturbation sitting in the office, going for months having sex." However, this was the only reference by a Board member to the number of specific types of sexual activity. The comments of the Board members as a whole reflect careful consideration of the entire course of Appellant's behavior. Dr. Steinbergh stated: "the Board has read the record and had time to give thought to it." (Minutes at 13014). In their comments, the Board members expressly addressed the need to protect the public, the harm to this patient, the egregiousness of the conduct, the time period over which it continued, the inability to monitor conduct during psychiatric treatment, the vulnerability of this patient given her history of sexual abuse, and the threats made to the patient to prevent disclosure of the conduct.

The Court finds that there is reliable, probative and substantial evidence supporting the Board's Order. The Court is to "give due deference to the administrative resolution of evidentiary conflicts" because the fact finder had the opportunity to observe the witnesses and weigh their credibility. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111. The Court "will not substitute its judgment for the Board's where there

is some evidence supporting the Board's Order." *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 579.

Appellant's second assignment of error argues that the Board failed to consider mitigating factors as it has in similar cases, thereby depriving Appellant of due process rights. Appellant argues that mitigating factors listed in the Board's disciplinary guidelines were met in this case, including the absence of a prior disciplinary record, the isolated nature of the incident, disclosure to the Board, interim rehabilitative measures, remorse, and the remoteness of the misconduct.

The Hearing Examiner's 31-page report sets forth in great detail the evidence presented by Appellant in defense of the charges, including the evidence relating to mitigation. The report and its factual findings include the evidence relating to the specific mitigating factors identified by Appellant, including the testimony of Dr. Levine and Dr. Peterson regarding the absence of similar incidents, rehabilitative measures, Appellant's remorse, etc.

The Board had before it all of this evidence. Appellant and his counsel also addressed the Board at its hearing regarding the mitigating factors. During the Board's discussion of this matter, Dr. Steinbergh commented on the changes Appellant had made in his personal life. Dr. Egner addressed the fact that the conduct involved a single patient. Dr. Buchan indicated that Appellant's disclosure was appreciated.

The record does not support Appellant's argument that the Board failed to consider mitigating factors. Accordingly, this assignment of error is overruled.

it appears that substantial justice was not done); *Ray v. Harrisburg* (1994), Tenth Appellate District, No. 94APE04-550, 1994 Ohio App. LEXIS 5839.

For these reasons, Appellant's third assignment of error is overruled.

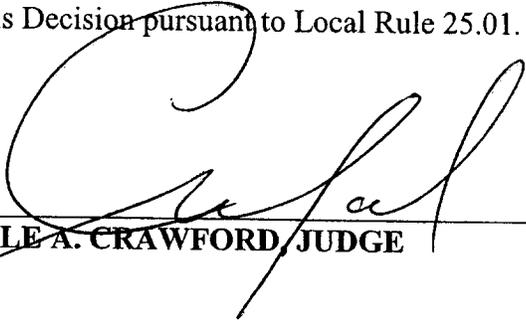
Appellant's fourth assignment of error asserts that it was error to permit two Ohio Assistant Attorney Generals to address the Board at its hearing. Appellant relies upon Local Rules of Practice of the Franklin County Common Pleas Court providing that only one counsel for each party may question a witness or address an issue.

At its March 10, 2004 meeting, the Board permitted each side to address this matter. Appellant and his counsel addressed the Board. The Assistant Attorney Generals who worked on the case, Mr. Perry and Mr. Wilcox, also addressed the Board. The Board's practice is to permit each side five minutes to address the Board.

The rules cited by Appellant plainly do not apply to proceedings before the Board. Nothing in the Board's rules or in statute prohibits two attorneys from one side addressing the Board. Appellant also has not shown that any alleged error was material or prejudicial.

For these reasons, Appellant's fourth assignment of error is overruled.

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative and substantial evidence and is in accordance with law. The Board's Order is **AFFIRMED**. Within twenty-one days, counsel for Appellee shall submit an appropriate Judgment Entry reflecting this Decision pursuant to Local Rule 25.01.


DALE A. CRAWFORD, JUDGE

Copies to:
Eric J. Plinke, Counsel for Appellant
Kyle C. Wilcox, Counsel for Appellee

STATE MEDICAL BOARD OF OHIO
BEFORE THE STATE MEDICAL BOARD OF OHIO

2004 MAR 15 P 4: 11

John Michael Schechter, M.D.
150 Cross Street
Akron, OH 44311

Case No. **04CVF 03 2968**
Judge _____

Appellant,

vs.

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, OH 43215-6127,

Appellee.

Appeal from the Entry of Order
of March 10, 2004

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2004 MAR 15 PM 4:47
CLERK OF COURTS-CV

APPELLANT'S NOTICE OF APPEAL

Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, John Michael Schechter, M.D., appeals the State Medical Board of Ohio's Entry of Order dated March 10, 2004, and mailed March 12, 2004 (copy attached as Exhibit A). The State Medical Board of Ohio Entry Order is not supported by the requisite quantum of reliable, probative, and substantial evidence and is not in accordance with law.

Respectfully submitted,



Eric J. Plinke (0059463)
PORTER, WRIGHT, MORRIS & ARTHUR, LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2000 Fax (614) 227-2100
Attorney for Appellant
John Michael Schechter, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2004, the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, and with the Court of Common Pleas, Franklin County, Ohio, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

Kyle C. Wilcox, Esq.
Gregory A. Perry, Esq.
Assistant Attorney General
Health & Human Services Section
Ohio Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215-3428


Eric J. Plinke (0059463)

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State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

March 10, 2004

John Michael Schechter, M.D.
150 Cross Street
Akron, OH 44311

Dear Doctor Schechter:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 10, 2004, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and 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. 7000 0600 0024 5148 4371
RETURN RECEIPT REQUESTED

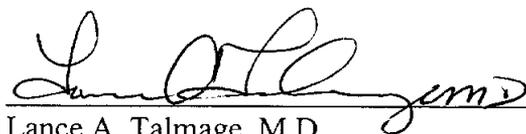
Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5148 4357
RETURN RECEIPT REQUESTED

Mailed 3-12-04

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 10, 2004, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of John Michael Schechter, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

March 10, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JOHN MICHAEL SCHECHTER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 10, 2004.

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

It is hereby ORDERED that:

The certificate of John Michael Schechter, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

March 10, 2004
Date

2004 FEB 13 A 8 42

**REPORT AND RECOMMENDATION
IN THE MATTER OF JOHN MICHAEL SCHECHTER, M.D.**

The Matter of John Michael Schechter, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 21, 22, 23, and December 15, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated May 14, 2003, the State Medical Board of Ohio [Board] notified John Michael Schechter, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's proposed action was based on allegations that included the assertions that, during his provision of psychiatric care and treatment to Patient 1, Dr. Schechter had allowed Patient 1 to expose herself to him and had engaged in sexual relations with Patient 1. The Board further alleged that, despite this conduct, Dr. Schechter had continued to treat Patient 1 as his psychiatric patient for approximately two more years.

The Board further alleged that Dr. Schechter's conduct 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 clause is used in Section 4731.22(B)(6), Ohio Revised Code [and/or] '[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: the American Medical Association's Principles of Medical Ethics I, II and IV.'" Accordingly, the Board advised Dr. Schechter of his right to request a hearing in this matter. (State's Exhibit 1A)

- B. On May 28, 2003, Eric J. Plinke and John P. Carney, Esqs., submitted a written hearing request on behalf of Dr. Schechter. (State's Exhibit 1C)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox and Gregory A. Perry, Assistant Attorneys General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State:

1. John Michael Schechter, M.D., as if on cross-examination
2. Patient 1
3. David Bienenfeld, M.D.

B. Presented by the Respondent:

1. Gregory Peterson, M.D.
2. John Michael Schechter, M.D.
3. Stephen Levine, M.D.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A through 1CC: Procedural exhibits.
- * 2. State's Exhibit 2: June 12, 2002, letter to the Board from Dr. Schechter with attached "Personal Statement."
- * 3. State's Exhibit 3: Copy of a March 22, 2003, letter to Patient 1 from Dr. Schechter.
4. State's Exhibit 4: Report of David Bienenfeld, M.D. [Some portions of this exhibit were redacted upon objection by the Respondent and with the agreement of the State. See Hearing Transcript at Tr. 181-182)
5. State's Exhibit 5: Copies of the American Medical Association's "Principles of Medical Ethics" and guideline "E-8.14, Sexual Misconduct in the Practice of Medicine."
- * 6. State's Exhibit 6: Patient Key.
- * 7. State's Exhibit 7: Dr. Schechter's medical records for Patient 1.
8. State's Exhibit 8: Curriculum vitae of Dr. Bienenfeld.

- * 9. State's Exhibit 9: Copies of medical records for Patient 1 maintained by Windsor Hospital in Chagrin Falls, Ohio.
- * 10. State's Exhibit 10: Copies of medical records for Patient 1 maintained by Summa Health System, St. Thomas Hospital, in Akron, Ohio.
- * 11. State's Exhibit 11: Copies of medical records for Patient 1 maintained by University Hospitals Health System, Laurelwood Hospital & Counseling Centers, in Willoughby, Ohio.
- * 12. State's Exhibit 12: Copies of medical records for Patient 1 maintained by the Lake Hospital System, Lake Hospital West, in Willoughby, Ohio.
- * 13. State's Exhibit 13: Copies of medical records for Patient 1 maintained by the St. Vincent Charity Hospital, in Cleveland, Ohio.
- 14. State's Exhibit 16: Written closing argument of the State.
- 15. State's Exhibit 17: Written rebuttal closing argument of the State.

B. Presented by the Respondent:

- 1. Respondent's Exhibit A: Curriculum vitae of Dr. Schechter.
- * 2. Respondent's Exhibit B: Copy of a May 14, 2003, letter to the Board from Stephen B. Levine, M.D., Althof, Levine, Risen & Associates, Beachwood, Ohio. [Exhibit was redacted by agreement of the parties. See Hearing Transcript at 469-470.]
- 3. Respondent's Exhibits C through G: Copies of letters written in support of Dr. Schechter. [Some exhibits were redacted by agreement of the parties. See Hearing Transcript at 470-472.]
- 4. Respondent's Exhibit H: Copy of an article entitled, "Residency Education on the Prevention of Physician-Patient Sexual Misconduct," published in Academic Psychiatry, 1997.
- 5. Respondent's Exhibit I: Copy of an article entitled, "Psychiatrist-Patient Sexual Contact: Results of a National Survey, I: Prevalence," published in the American Journal of Psychiatry, September 1986."

- * 6. Respondent's Exhibit J: Copy of a letter written by a patient of Dr. Schechter's in his support.
- * 7. Respondent's Exhibit K: Copies of electronic-mail messages between Dr. Schechter and Patient 1.
- 8. Respondent's Exhibit L: Resident's Evaluation of Supervisor, Northeastern Ohio Universities College of Medicine, 2000-2001, Psychiatry Residency Program.
- 9. Respondent's Exhibit M: Respondent's Closing Argument.

* Note: Exhibits marked with an asterisk [*] have been sealed to protect patient confidentiality.

PROFFERED MATERIALS

- 1. During the course of the hearing, the State elicited testimony to which the Respondent objected. The Hearing Examiner sustained the Respondent's objections and agreed to strike the testimony and the related discussions. Accordingly, the unredacted condensed transcript is proffered as Board Exhibit A.
- 2. At the request of the State, medical records for Patient 1 maintained by Brooke Wolf, M.D. and by Linda McGraw, Ph.D., are proffered as State's Exhibit 14 and State's Exhibit 15, respectively. (See Hearing Transcript at 261)

PROCEDURAL MATTERS

- 1. Patient 1 originally asked that her testimony be sealed. Later in the hearing, however, Counsel for the State advised the Hearing Examiner that Patient 1 had requested that her testimony not be sealed. Accordingly, the testimony of Patient 1 shall not be sealed. (See State's Exhibit 1CC)
- 2. A number of procedural documents were submitted during the course of the hearing but were not identified or admitted to the record. Post-hearing, the Hearing Examiner labeled the exhibits and admitted them to the record, as follows:
 - a. State's Exhibit 1Y: The State's Notice of Appearance of Co-Counsel with Corrected Certificate of Service, filed October 17, 2003.
 - b. State's Exhibit 1Z: The State's Supplemental Brief in Support of Motion in Limine, filed October 23, 2003.

- c. State's Exhibit AA: The State's Motion for Reconsideration, filed October 28, 2003.
 - d. State's Exhibit 1BB: The Respondent's Memorandum in Opposition to Motion for Reconsideration, filed November 5, 2003.
 - e. State's Exhibit 1CC: Patient 1's October 21, 2003, electronic mail message to Counsel for the State requesting that her testimony not be sealed.
3. The hearing record was held open to allow the parties to submit written closing arguments. The closing arguments were filed in a timely manner, and were admitted to the record as State's Exhibits 16 and 17 and Respondent's Exhibit M. The hearing record closed on February 4, 2004.

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.

GENERAL BACKGROUND

1. John Michael Schechter, M.D., received a medical degree in 1989 from the Ohio State University College of Medicine in Columbus, Ohio. In 1993, Dr. Schechter completed a psychiatry residency at the University Hospitals of Cleveland, Case Western Reserve University College of Medicine, in Cleveland, Ohio. Following his residency, Dr. Schechter served as an attending psychiatrist at St. Luke's Medical Center in Cleveland, Ohio. In 2000, Dr. Schechter accepted a position as a geriatric psychiatrist at Community Support Services, in Akron, Ohio. Dr. Schechter also maintained a private practice in Solon, Ohio, which he closed in 2002. (Hearing Transcript at [Tr.] 15-18, 332; Respondent's Exhibit [Resp. Ex.] A)

Currently, Dr. Schechter continues to work for Community Support Services in Akron. Dr. Schechter practices as a geriatric psychiatrist, but stated that he also has an eclectic group of patients, both old and young, in the hospital, outpatient clinics, and nursing homes. He also treats geriatric patients in specialty clinics, and he leads a hospital teaching service. Moreover, as part of his employment at Community Support Services, Dr. Schechter is an Assistant Clinical Professor of Psychiatry at Northeastern Ohio Universities College of Medicine and at Case Western Reserve University College of Medicine. Dr. Schechter no longer maintains a private office practice. (Tr. 333-336)

Dr. Schechter is certified by the American Board of Psychiatry and Neurology, with added qualifications in Geriatric Psychiatry. He is married with three children. (Tr. 18; Resp. Ex. A) Dr. Schechter is not licensed in any state other than Ohio. (Tr. 15)

DR. SCHECHTER'S TESTIMONY AND MEDICAL RECORDS REGARDING PATIENT 1

2. In the routine course of his practice, Dr. Schechter undertook the treatment of Patient 1. Dr. Schechter began treating Patient 1 on September 10, 1996, on referral from her primary therapist, Linda McGraw, Ph.D. At the time, Patient 1 was thirty-eight years old, married, and the mother of two children. She had been referred to Dr. Schechter for treatment of cyclical mood disorder and difficulties associated with childhood sexual and emotional abuse. Patient 1 had attempted suicide in the past. Dr. Schechter's plan was to provide medication management to complement Dr. McGraw's ongoing psychological management. (Tr. 19-21, 339; State's Exhibit [St. Ex.] 2; St. Ex. 7 at 28, 144)

Dr. Schechter explained that he had diagnosed Patient 1 with cyclothymia, which is "an abbreviated or attenuated mood disorder characterized by highs and lows,[and] elements of hypomania and dysthymia." He further explained that hypomania "is a mood state that in some ways is opposite of depression." Dr. Schechter added that, eventually, he had diagnosed Patient 1 as suffering from bipolar disorder. (Tr. 21-22, 339-340)

Dr. Schechter testified that Patient 1 had been referred to him for management of her medication needs. Dr. Schechter added that, when treating a patient for medication management, he takes a full psychiatric history and identifies target symptoms. Subsequent treatment would be directed toward the target symptoms, medication side effects, and future plans for treatment. (Tr. 22-23)

3. Dr. Schechter's medical records for Patient 1 indicate that, on her initial visit, she reported that she had been cutting herself with a razor while shaving as a means to "feel something." She stated that, while she was doing this, she had felt there were two people in the room—Mary and Eileen. She also reported a history of alcohol abuse. Patient 1 stated that, recently, she had been feeling good, spending more money, sleeping only four to six hours per night, talking a lot, experiencing an increased sexual appetite, and having difficulty concentrating. A few months earlier, she had been depressed, with increased sleepiness and decreased sexual appetite. Finally, Patient 1 reported that she had been hospitalized in the past at Windsor Hospital. (St. Ex. 7 at 28)

In November 1996, Dr. Schechter noted that Patient 1 had been experiencing hypomanic symptoms, including a euphoric affect and sexual preoccupation. Dr. Schechter initially diagnosed Patient 1 with cyclothymia, hypomanic. He prescribed Depakote, a mood stabilizer, which relieved some of her hypomanic symptoms. (St. Ex. 7 at 35a-36b)

By December 1997, Patient 1's mood had depressed significantly. At that point, Dr. Schechter changed her diagnosis to bipolar disorder, depressed. Dr. Schechter prescribed Paxil, an anti-depressant, in addition to Depakote. After the addition of Paxil, however, in February 1998, Patient 1 experienced a manic episode during which she was "decompensating at work, becoming more psychotic, [and] burning herself." She was transported to the nearest emergency department, and admitted to Windsor Hospital in Chagrin Falls, Ohio. (Tr. 23; St. Ex. 2; St. Ex. 7 at 37b-38b) Dr. Schechter acknowledged that Patient 1 was in a very vulnerable state at that time. (Tr. 23)

On February 17, 1998, Patient 1 was admitted to the emergency department at St. Vincent Charity Hospital for a hypomanic episode. A psychiatric evaluator noted that, "[Patient 1] stated that their [sic] is dirt on her arms and she has scratched them enough to draw blood to remove it. [Patient 1] stated husband put her in hospital to get her away from the children because she is bad influence. [Patient 1] states, 'God controls her behavior.'" Patient 1 was restrained at all four extremities "for protection of self and others. Paranoid." Furthermore, Patient 1's husband reported that Patient 1 had been hospitalized in 1991, and had been taking Lithium for seven years thereafter. He further stated that Patient 1 had started seeing Dr. Schechter not long before, and that Patient 1 had been "decompensating since." Patient 1 was transferred to Windsor Hospital because St. Vincent Charity Hospital was not a provider approved by Patient 1's insurer. (St. Ex. 7 at 125-131)

Upon admission to Windsor Hospital, Patient 1's mental status examination included the following:

She was pacing and examining things. Behavior was bizarre, hyperactive, and suspicious. There was increased productivity of speech. Mood and affect, euphoric, angry and irritable. Questionable hallucinations. Depersonalization was present. Thought pattern and content—there was increased productivity, loose associations, tangentiality, circumstantiality, questionable delusions. There were no thoughts of suicide. There was suicidal behavior. The patient was felt to be a danger to property and others. The risk factors included psychosis and impulsivity.

(St. Ex. 9 at 4)

Patient 1 was stabilized, and discharged on February 28, 1998. Her discharge medications were Depakote and Risperdal. (St. Ex. 9 at 4-6)

4. Dr. Schechter testified that, after the 1998 hospitalization, Patient 1 had started telling Dr. Schechter that she was in love with him. Dr. Schechter stated that he had tried to impress upon Patient 1 that her feelings were most likely a manifestation of feelings that she had for someone else. Dr. Schechter testified that, however, that he had been unsuccessful in convincing her. (Tr. 24-25)

Dr. Schechter further testified that he had explained to Patient 1 that there were boundary rules of behavior that she must adhere to during her medication management sessions. Dr. Schechter testified that he had explained to Patient 1, “You can say and do whatever you want, but you need to stay in your seat.” He added that he could not have any physical contact with Patient 1. (Tr. 25-26)

Dr. Schechter testified that Patient 1 had also started to discuss sexually explicit images with him, and expressed her sexual fantasies involving him. She also provided these fantasies in writing. Dr. Schechter testified that he had not tried to dissuade her from expressing these things, but tried to help her understand that her feelings toward him were misdirected. Dr. Schechter testified that Patient 1 had continued to insist that her feelings were not the product of transference, but were her sincere feelings about Dr. Schechter. (Tr. 27-28, 342-345) In June 1998, Dr. Schechter noted in the medial record that Patient 1 had “confided details of inappropriate sexual behaviors.” (St. Ex. 7 at 39b)

Dr. Schechter testified that, eventually, Patient 1 had started undressing and touching her genital areas during the medication management sessions. Dr. Schechter testified that he had asked her to stop. Nevertheless, he did not tell her that he would end the session if she did not stop her behavior. He stated that he had not believed that it was appropriate to discharge a patient because of his personal lack of self-control. (Tr. 28) Dr. Schechter testified that,

[A] more experienced or skillful psychiatrist, in handling this correctly, would have allowed her to say what she wanted, but would have been more effective at setting boundaries on her behavior, and would have been better at separating his own human responses between physician and human being, better than I was.

(Tr. 342)

Dr. Schechter explained that he had allowed Patient 1 to disrobe and/or masturbate in his presence on approximately thirty-six occasions. Dr. Schechter acknowledged that he had been losing control of the medication management sessions. (Tr. 29-30, 345-347) Dr. Schechter testified that,

I had an inability to stop her in her tracks. That was my clear incompetence, that was my first crucial mistake. I could not get her to stop. I know now that I could have gotten – If I was armed with more knowledge, I could have gotten her to stop.

(Tr. 347)

Dr. Schechter testified that he had also accepted photographs of Patient 1 in the nude. Dr. Schechter testified that Patient 1 had told him that she planned to provide them to someone in an Internet chat room. Dr. Schechter stated that he took them from her and destroyed them on her behalf. (Tr. 52-53)

In January 1999, Dr. Schechter noted in Patient 1's medical record that Patient 1 had been "engaging in dangerous unusual sexual behaviors." Dr. McGraw reported that Patient 1 had been "cutting self and 'getting numb.'" Patient 1 reported that she had been unable to sleep, having racing thoughts and "visualizing things." Dr. Schechter continued to prescribe Depakote and reinstated Risperdal. Nevertheless, due to side effects associated with Risperdal, Dr. Schechter discontinued the drug and started Zyprexa. Patient 1's symptoms improved. (St. Ex. 7 at 41b-44b)

5. At some point in 1999, Dr. Schechter touched Patient 1's genitals through her panties. Dr. Schechter testified that he had been sitting in his chair; Patient 1 had been sitting in a seat to the side of his chair. Patient 1 was touching herself and begging Dr. Schechter to touch her. Dr. Schechter testified that he had "lost control" and touched her. Dr. Schechter testified that, after this, he had been "horrified" because of his behavior and knew that he could lose his license because of it. Dr. Schechter further acknowledged that, at that point, there had been "a huge erosion of my ability to manage her, because I lost any kind of therapeutic advantage to the patient." (Tr. 31-32, 33) Thereafter, the following exchange ensued:

Q. (by the Hearing Examiner): You believe you had a therapeutic advantage up until that point?

A. (by Dr. Schechter): I believe that I had—no, I believe that she knew that I was sexually excited by her demonstrations, but I was able to control myself enough until that point to not have done something terribly damaging.

Q: Don't you consider what had already happened terribly damaging?

A: I believe that if it would have been handled correctly, the limits set appropriately, that it could have been not terribly damaging, not catastrophic like it became. But in retrospect, as you asked me, ma'am, you're probably right. It was damaging throughout the displays that I allowed.

(Tr. 32)

Dr. Schechter further testified that, after this event, he had had "trouble sorting things out." Dr. Schechter testified that he had been aware that Patient 1 had had a father who had abused

her. Nevertheless, Dr. Schechter testified that “it had been a struggle for [him] to treat Patient 1 like [he] should have been treating her when at the same time [his] human side was pushing through intense sexual excitement.” He added that he was having difficulty seeing the harm he could do to Patient 1 because of the sexual excitement that he was experiencing. He stated that he was hoping that he could still manage her medications. (Tr. 34-35)

Dr. Schechter acknowledged that he could have obtained help from an outside source. He stated that he had not done so because he had been ashamed that he was failing, and that he was failing due to his own personal weaknesses. He stated that he had been ashamed to admit that he had experienced sexual excitement in an office where he “was supposed to be the professional.” (Tr. 348)

6. On March 17, 1999, Dr. Schechter noted in Patient 1’s medical record that Patient 1 “still [had] poor boundaries at times.” On April 6, 1999, he noted that she had been “less flirtatious.” Nevertheless, on July 20, 1999, Dr. Schechter noted that Patient 1 was “inappropriate and extremely flirtatious at times. May be related to marital issues—urged her to work in this with Dr. McGraw. No current discretions in other areas of [patient’s] life.” (St. Ex. 7 at 44b-46b)

On September 28, 1999, Dr. Schechter wrote that Patient 1 had been complaining of increasing depression, including increased sleeping, anhedonia, feelings of guilt, and suicidal ideation. Dr. Schechter noted that these were symptoms of “potential decompensation.” Dr. Schechter prescribed Celexa, an anti-depressant. (St. Ex. 7 at 49a-50a)

In November 1999, Dr. Schechter noted that Patient 1’s depressive symptoms could be related to “marital strife.” (St. Ex. 7 at 51a)

7. On November 23, 1999, Dr. Schechter noted that there was “continued provocative behavior which responds to firm limit setting.” (St. Ex. 7 at 52a) On December 23, 1999, Dr. Schechter noted that Patient 1 “continues to be provocative in the office, today needed more redirection. Clearly becoming more ill.” As an addendum to that note, Dr. Schechter wrote as follows:

[Patient 1] was waiting for me in the parking lot this evening. Had a bottle of wine—little was gone from the bottle and I disposed of it. [Patient 1] asked me to “go to get a bite to eat” and I refused and advised the patient to go home, stressed the inappropriateness of this request. [Patient 1] then followed me on the expressway. Eventually I stopped again and told the patient she needed to go home or I would have to call the authorities; she agreed and apparently went home. Will follow and discuss with Dr. McGraw.

(St. Ex. 7 at 53a)

On February 16, 2000, Dr. Schechter noted that Patient 1's behavior in the office was "more appropriate." (St. Ex. 7 at 55b)

8. Dr. Schechter testified that, on April 17, 2000, Patient 1 had presented to his office for a scheduled appointment. Dr. Schechter allowed Patient 1 to masturbate in his presence. After watching her, Dr. Schechter made the decision to have sexual intercourse with her, and asked her if she would promise not to tell anyone. She did, and Dr. Schechter locked his office doors. Dr. Schechter and Patient 1 engaged in kissing and touching in a sexual manner. Then Patient 1 bent over his desk and he penetrated her vaginally from behind. (Tr. 36-38)

Dr. Schechter testified that, after a few moments, he had an anxiety reaction. He withdrew from her, but allowed her to perform fellatio on him. (Tr. 39-40) Dr. Schechter testified that he had allowed her to do that because,

I was pretty much in a helpless state, sitting there with my pants off with an erection, and she didn't really ask permission, and then I had an orgasm relatively quickly.

(Tr. 40) Dr. Schechter testified that he had been distraught afterward. Patient 1 had tried to calm him down. (Tr. 41)

Dr. Schechter testified that he had asked Patient 1 not to tell anyone because he knew, "it would be the end of [him]." He was afraid of losing his license, his wife, and his children. He added that he had been under the assumption that this was something that he and Patient 1 would share privately. Dr. Schechter testified that he had believed this despite Patient 1's history of mental illness. (Tr. 39-40)

Dr. Schechter did not mention the incident in his medical record for Patient 1. (St. Ex. 7 at 56b) Moreover, he continued to treat Patient 1 after this incident. Dr. Schechter testified that he had done so because he had believed that Patient 1 deserved an explanation for his behavior, and because he wanted Patient 1 to have an opportunity to "process" the incident. (Tr. 41-42) Dr. Schechter further testified that he had thought that, by continuing to treat Patient 1, he could help Patient 1 or could remediate the impact of the sexual encounter. Dr. Schechter stated that,

I thought I could help her understand that what happened was a mistake. I thought that she was entitled to an explanation.

And I was operating under a principle that I believed her when she said she wasn't going to tell anybody about it, and that we could – and I thought that I would be the person to help her understand the elements of human interaction that occurred, for which, in my opinion, there was an

element of accountability on both sides for the human interaction. I don't pretend that I'm not the one to blame for this, but I thought that she deserved an explanation for why I had such difficulty controlling myself.

(Tr. 367-368)

Dr. Schechter further testified that, immediately after the incident, he had had no fear that Patient 1 would tell anyone about the sexual conduct. He stated that he had truly believed that Patient 1 would respect his confidentiality. As time went on, however, Dr. Schechter became fearful that Patient 1 would expose him. In subsequent conversations, Patient 1 asked Dr. Schechter what he would do if she told someone about the incident. Dr. Schechter responded that he would deny it. Dr. Schechter further told Patient 1 that people would believe him and not her. (Tr. 43-44)

9. In his medical record for Patient 1 on May 5, 2000, Dr. Schechter noted that Patient 1 "continued to require redirection. She continues to declare her love for me – I attempted to redirect the patient." (St. Ex. 7 at 57a)

On March 22, 2000, Dr. Schechter noted that Patient 1 had been "becoming somewhat provocative in office but denied other acting out. Refusing to increase medications. Will discuss with Dr. McGraw." (St. Ex. 7 at 56b)

On March 14, 2001, Dr. Schechter wrote that Patient 1 was "thinking about suicide but able to contract for safety. States she is depressed—'as depressed as I have ever been.' Symptoms of mania seem better since increase in Zyprexa and Depakote ER. Beginning to talk about voices inside of her—altered ego states." (St. Ex. 7 at 60a)

On April 4, 2001, Dr. Schechter wrote, "[Patient 1] seen; decompensating rapidly. Self mutilating, dissociating. Needs hospitalization." Patient 1 was admitted to St. Vincent Charity Hospital on April 5, 2001, due to an exacerbation of her bipolar disorder. Dr. Schechter was her attending physician during the hospitalization. After adjustments to her medications, Patient 1 was discharged on April 19, 2001. Following discharge, Dr. Schechter continued to treat Patient 1. (St. Ex. 7 at 60b; St. Ex. 10 at 13)

10. Dr. Schechter testified that, on one occasion during the summer of 2001, Patient 1 had returned to his office after his final appointment. Patient 1 was "out of control," talking very loud, "wearing sunglasses as she does when she decompensates, and she was demanding sex from [him]." She was very vulgar and attempting to touch Dr. Schechter. Dr. Schechter stated that he had slapped Patient 1 in the face. (Tr. 45, 47, 364-366)
Dr. Schechter stated,

I had packed up all my things and was trying to leave my office, and she was grabbing me and attempting to touch me, and I probably spent fifteen

minutes asking her to stop, to stop touching me and to calm down and to go home. At some point, I had in my mind sort of a movie scene where someone is out of control, and you slap them lightly. And this was a light slap on the face to get them to get a hold of themselves. I was being violated at that point. * * * She did not fall immediately. She fell - - she was hit, and then she fell in sort of a melodramatic fashion. I left, and I came back a half-hour later because I wanted to make sure that she was gone and was okay, and she was gone.

(Tr. 45) Dr. Schechter denied that he had lost his temper when he hit her. He stated that he had done it to stop her from grabbing him. (Tr. 46)

11. In November 2001, Patient 1 had another episode of dissociation. Patient 1 reported hearing voices and “losing time.” She also reported a deteriorating relationship with her husband, who believed that Dr. Schechter was “a fraud.” (St. Ex. 7 at 62a-63a) Dr. Schechter wrote,

Mental status exam reveals [Patient 1] to be agitated, having a hard time sitting still. Speech reveals normal rate and rhythm. Mood is dysphoric in response to internal voices and affect is inappropriate. Thoughts are disorganized – ‘I see my brain in different pieces.’ Thought content: recollections of past abuse. * * *”

(St. Ex. 7 at 63a) Dr. Schechter further wrote that Patient 1 was hearing a variety of voices in her head and was “obsessing” about him. Moreover, Patient 1 continued to express her love for Dr. Schechter. (St. Ex. 7 at 63a-64b)

12. Dr. Schechter testified that, at some point, he had told Patient 1 that, if she exposed him, he would commit suicide. Dr. Schechter testified that he had told her that because he felt that he owed her self-disclosure. Dr. Schechter denied that he had been employing a coercive measure to prevent Patient 1 from exposing him. (Tr. 47-48)

Dr. Schechter further testified that he had threatened Patient 1 by stating that if she exposed him, he would release the letters she had written him and the photographs of her in the nude. Dr. Schechter stated that he had recanted the threat the following day, because he could not “live with [him]self for the things [he] was saying to Patient 1.” (Tr. 53-54)

13. On March 13, 2002, Dr. Schechter noted in the medical record that Patient 1 had continued to discuss her love for him and that she was poorly redirectable in that regard. On March 15, 2002, Dr. Schechter noted that he had called Patient 1’s pharmacy, and discovered that she had not been taking her antipsychotic medication for approximately four months. (St. Ex. 7 at 66a)

On March 13, 2002, Dr. Schechter wrote in Patient 1's medical record as follows:

The patient continues to call. She told me she was self-mutilating and depressed, dissociating and feeling out of control. She denied suicidal intent. I advised her to go to a hospital for admission and told her I would facilitate this. I also encouraged the patient to take her medications and discuss pertinent issues with Dr. McGraw.

(St. Ex. 7 at 66b)

14. On March 22, 2002, Dr. McGraw confronted Dr. Schechter regarding his sexual relationship with Patient 1. Dr. Schechter denied the accusation and told Dr. McGraw that Patient 1 suffered from "erotomanic delusion." Dr. Schechter described an erotomanic delusion as "a fixed false belief that someone is in love with you and you are in love with them." (Tr. 49-50)

Dr. Schechter acknowledged that he had deliberately lied to Patient 1's treating psychologist. He further acknowledged that lying to a patient's therapist can be disastrous. He stated that, "the whole idea of treatment between a pharmacological manager and a psychologist is that there's a therapeutic alliance." (Tr. 50-52)

15. By letter dated March 22, 2002, Dr. Schechter advised Patient 1 that he could no longer serve as her psychiatrist. He stated, "It is with regret that I find it necessary to inform you that I am withdrawing further professional attendance upon you. The extent and magnitude of your problems are beyond the scope of my practice in Solon." Moreover, after offering to assist her in the transition to another psychiatrist, Dr. Schechter stated, "I am sorry that I cannot continue as your psychiatrist. I hope that you will ultimately view our work together as helpful and meaningful. I extend best wishes to you for your future health and happiness." (St. Ex. 3)

Dr. Schechter testified that he had not terminated Patient 1 earlier, because,

Dismissing people isn't consistent with the kind of doctor I tried to be. Certainly, it would have been safer, but I really told myself, outside the heat of the moment, that I could control myself. I really believed that I could control myself. And that sending a person away because you were weak wasn't an appropriate thing to do. I should have gotten stronger. I should have sought help.

(Tr. 352)

16. Dr. Schechter testified that, after Dr. McGraw confronted him with her knowledge of the sexual relationship between him and Patient 1, Dr. Schechter had first felt “justified in denying it.” He stated that he had known that, once he admitted the truth, “there would be no turning back.” Dr. Schechter stated that it had taken him a little while to acknowledge that disclosure was the right thing to do. Twelve days after denying the sexual relationship to Dr. McGraw, Dr. Schechter accompanied Patient 1 to a session with Dr. McGraw. Accordingly, twelve days after denying the sexual relationship to Dr. McGraw, Dr. Schechter admitted to her that his denial regarding the sexual relationship had been a lie. (Tr. 368-371)
17. Dr. Schechter testified that, on April 16, 2000, the husband of Patient 1 had left a message on Dr. Schechter’s answering machine. Patient 1’s husband stated that he knew about the relationship between Patient 1 and Dr. Schechter, and that he was “going to make things difficult” for Dr. Schechter. (Tr. 377-378)

Dr. Schechter testified that, after listening to the message, he had decided to go home, get his gun, and kill himself. He stated that, when he got home, he had found his wife in the driveway. He told her what had happened, and she called Steven B. Levine, M.D. Dr. Schechter saw Dr. Levine two days later, and has been seeing him ever since. Dr. Schechter testified that Dr. Levine has helped him immensely. (Tr. 377-378)

18. Dr. Schechter acknowledged that he had victimized Patient 1. Dr. Schechter further acknowledged that his treatment of Patient 1 violated a standard that a psychiatrist owes to his patients. Dr. Schechter testified that the Hippocratic oath, the American Medical Association, and the American Psychiatric Association all have rules of ethics that preclude behavior such as his. (Tr. 54-57)

SUBSEQUENT HOSPITALIZATIONS OF PATIENT 1

19. On October 30, 2002, Patient 1 was admitted to the emergency department at Lake Hospital System, Lake Hospital West, in Willoughby, Ohio. Upon admission, Patient 1 was combative, assaultive, agitated, and hallucinating; nylon restraints were applied to all four extremities. Her blood alcohol level was 0.042 gm/dl. Patient 1’s husband reported that she had not slept for one week. On October 31, 2002, Patient 1 was transferred to University Hospitals Health System, Laurelwood Hospital & Counseling Centers, [Laurelwood Hospital] in Willoughby. (St. Ex. 12 at 5, 9, 10, 14)
20. On October 31, 2002, Patient 1 was admitted to University Hospitals Health System, Laurelwood Hospital & Counseling Centers, in Willoughby. Patient 1’s subsequent treating psychiatrist, Brooke Wolf, M.D., recommended that Patient 1 seek hospitalization due to Patient 1’s “acute agitation, mood lability, uncontrollable anger, impulsive behavior and rage that was becoming problematic.” It was further noted that Patient 1 had been “engaging in having affairs and having strong impulses toward harming a previous

psychiatrist.” Patient 1 reported that her uncontrollable anger was stimulated by her memories of the sexual abuse perpetrated by Dr. Schechter. Patient 1 was discharged on November 6, 2002. (St. Ex. 11 at 9, 18-20)

TESTIMONY OF PATIENT 1

21. Patient 1 testified at hearing on behalf of the State. Patient 1 testified that she lives in a town near Akron. She is married and has been married since 1981. Patient 1 has two daughters, now twenty and thirteen. Patient 1 has worked as a court reporter for the past twenty-five years. (Tr. 66-67)
22. Patient 1 testified that, during her childhood, she had suffered sexual and psychological abuse by her father over a period of fifteen years. Patient 1 stated that, in order to cope with the abuse, she had “split” into two personalities. Patient 1 further testified that she had first sought treatment for these issues with Dr. McGraw in 1990. Dr. McGraw diagnosed post-traumatic stress disorder related to Patient 1’s abuse by her father. Shortly thereafter, Patient 1 began seeing a psychiatrist, Dr. Peter Kontos, who diagnosed her as suffering from bipolar affective disorder, atypical mixed. (Tr. 68-70)

Patient 1 testified that she had continued seeing Dr. Kontos until he left practice after a severe automobile accident. Patient 1 went without medications for approximately two years. At the end of that period, however, Dr. McGraw had become concerned that Patient 1 was “acting high.” Dr. McGraw referred Patient 1 to Dr. Schechter for medication management. (Tr. 70-71)

23. Patient 1 testified that, early in the course of her treatment with Dr. Schechter, she had developed feelings of affection for him. She stated that, in the beginning, they had had flirtations, subtle indications of feelings. Within six months, however, Patient 1 hugged Dr. Schechter and told him that she loved him. She stated that Dr. Schechter had told her that he was flattered. Patient 1 asked Dr. Schechter if any other patient had fallen in love with him. He responded that others had, but none had been “as pretty” as Patient 1. (Tr. 71-72)

Patient 1 testified that, after she told him that she loved him, Dr. Schechter would sit next to her and touch her subtly. She stated that he would touch her hair or put his knee on her leg. He also rubbed her leg while she was wearing a dress. Patient 1 testified that she had become very physically attracted to him. When she told him about it, he acknowledged that there was a mutual attraction. (Tr. 72-73)

Patient 1 testified that they had discussed transference, and Dr. Schechter had told Patient 1 that they could not “do anything” even if there was a mutual attraction. Patient 1 then started to share sexual fantasies about him. She stated that Dr. Schechter had told her that he likes erotica. She also gave him written sexual fantasies. Patient 1 stated that

Dr. Schechter had never discouraged her from sharing her fantasies and had, instead, asked her to explore them with him. Patient 1 stated that, eventually, she had started to act out the fantasies during her sessions with him. (Tr. 73-74, 103-104) Patient 1 explained,

In the process of telling him a fantasy, I started touching myself, and he said, 'What are you doing?' And I said, 'I'm showing you what I would like you to do to me.' And I took off my bra and showed him my breasts, and he said they were perfect. And he said, 'You can do anything you want in therapy. I can only watch. You can, you know, do anything. It's your dime, you know. Whatever you want to do, I can just watch, but, you know, we can't really touch.'

(Tr. 74)

24. Regarding the incident described by Dr. Schechter during which Dr. Schechter touched her panties, Patient 1 testified as follows:

I was—we were talking sexual. I lifted up my skirt and pulled my panties aside, and he got up and closed the blinds and came over to me and said, 'Lay back,' and, like, took my shoulders and laid me back, and he knelt down next to me, and he touched my vagina, my panties were pulled aside, and said, 'Do you like when I touch you there?'

And then he got up and said, 'I have to stop now. I've gone farther with you than anyone else.' And he was standing right in front of me, and his erection was bulging out of his pants and put my face on there. And then he went over to the wall and stood there, and I went over. We were like hugging a little bit.

(Tr. 80) Moreover, Patient 1 testified that she had telephoned Dr. Schechter after the incident. She told him that what had happened was really affecting her. She stated that Dr. Schechter had yelled at her, shouting that he had not raped her and that he had not exposed himself to her. He told her that he could get into a lot of trouble for what had happened between them. (Tr. 80-81)

25. Patient 1 testified that her hospitalization from April 5 to April 19, 2001, had been necessary because she had been unable to handle her relationship with Dr. Schechter. She said that she had been having difficulty not telling anyone about that part of her life, and that she had needed help. Nevertheless, she stated that Dr. Schechter had been her treating psychiatrist during that hospitalization. (Tr. at 90-91, 95)

Patient 1 testified that she had told Dr. Schechter that she was feeling with him the way she had felt with her father as a child. She stated that Dr. Schechter had responded that her

relationship with her father differed significantly from her relationship with Dr. Schechter. (Tr. 106)

26. Patient 1 also testified regarding the incident that had occurred on April 17, 2001. Patient 1 testified that she had been sitting on the couch in Dr. Schechter's office and had given him another letter from her. Patient 1 testified that Dr. Schechter had sat on the couch next to her to read the letter. Patient 1 laid her head on Dr. Schechter's thigh and he rubbed her back while he was reading. When he finished reading, he went back to his chair. Patient 1 said that he had sat down, thrust his groin, and, with a disappointed look, said, "You kept your clothes on." Patient 1 responded, "Oh, you spoke too soon." Patient 1 started removing her clothes, and Dr. Schechter got up to lock the office doors. When he came back, Patient 1 was simulating masturbation, as she had done before. She stated that he had watched, holding his erection. She stood, and they started kissing and rubbing their genital areas together. Dr. Schechter told her to bend over the credenza and entered her from behind. He stopped shortly thereafter, and she offered fellatio. He accepted. (Tr. 81-84)

Patient 1 testified that, after that incident, she had been "very hyper-sexed," which is one of the symptoms of her bipolar disorder. She further stated that she had been obsessed with him, as if she was under his control. She stated that she had been unable to work for the following week. (Tr. 84-85)

27. Finally, Patient 1 testified about the incident during which Dr. Schechter slapped her. Patient 1 testified that she had had an appointment with Dr. Schechter earlier that evening. She stated that,

It was a very awful night. During a psychiatric sex session with him I was asking him, 'Why this is going on, why is this off and on? Why is this hugging, these erotic hugs,' and I was always trying to figure it out. And I had been telling him a sexual story, and he was sitting there clearly touching his erection, and I noticed, and I came over, and I like laid on him, and he like leaned back in the chair and he was like holding me.

And I said, 'Why does this go on? Why is this gong on?' I couldn't understand it. And he said, 'Because I wanted you and maybe I still do.' And when I heard those words, I once again got very hyper-sexed. I got very, very turned on by those words and what he had said to me.

(Tr. 85-86)

Patient 1 testified that Dr. Schechter had told her that he had one more patient that evening. Therefore, because she had felt that "there was so much more there," Patient 1 waited for him in the stairwell. When Dr. Schechter saw her, he had asked her why she was there.

She said that she wanted to talk to him about the things he had said, and he invited her back into his office. In the office, Patient 1 was very provocative and told him that she wanted him. She admitted that she had been grabbing at his groin, and may have touched him there. He said, "Get out of here"; "You're harassing me"; and, "Leave me alone." Patient 1 was confused, and asked him why he only wanted it when he wanted it. He responded, "What if my wife finds out?" (Tr. 85-87, 100-101)

Patient 1 continued,

And with that he hit me across the face. My earring flew out of my ear, and I bent back, and I turned around, and I said, 'Why do you want to fight?'

And with that he took and threw me and pushed me, and I hit a wall that was like a corner sticking out wall. My head hit that, and I fell to the ground. And he bent down and said, I was just going to call an ambulance, and then he got up. I was still on the ground in shock and pain, and he walked out, and he paused. And before he left he said, 'Go ahead. Turn me in. Sue me if you have to.' And he left me there in the open offices.

(Tr. 87-88) (See also 100)

28. Patient 1 testified that she had been afraid to tell anyone about the relationship between her and Dr. Schechter. She stated that Dr. Schechter had threatened her that, if she told anyone, he would never speak to her again, that he would have only hate feelings for her, and that he would not hold a special place for her in his heart. She stated that he had also threatened to kill himself. He also told her that no one would believe her over him anyway. Moreover, she stated that Dr. Schechter had threatened to ruin her by exposing her pictures and letters. Patient 1 testified that she could not tell anyone because she wanted his approval and felt that she was under his power. She stated that his threats of suicide had devastated her, and that she had almost sought hospitalization. (Tr. 89-92)

Patient 1 testified that she had finally confessed to Dr. McGraw in April 2002. She said that Dr. McGraw had confronted Dr. Schechter, and Dr. Schechter had denied it. Patient 1 said that Dr. Schechter had instructed Dr. McGraw to record in Patient 1's records that Patient 1 was delusional. Two days later, Patient 1 received the termination letter from Dr. Schechter. (Tr. 92-94; St. Ex. 3)

A few days later, Dr. Schechter telephoned Patient 1. They arranged a meeting. At the meeting, Dr. Schechter told her that he had been feeling sorry for himself. He told Patient 1 that he would confess to Dr. McGraw. He also promised to remove any reference to Patient 1 being delusional from her medical records. Finally, Dr. Schechter promised Patient 1 that he would not kill himself. (Tr. 94)

Patient 1 testified that Dr. Schechter did, in fact, admit his conduct to Dr. McGraw.
(Tr. 101)

29. Patient 1 testified that she had been hospitalized again in October 2002. She stated that,

It was through therapy and trying to deal with [my relationship with Dr. Schechter], I realized what happened, that I was abused and exploited, and I just got angry, and I felt rage, and I just had to get help. I've never felt like that before, and it was directed at Dr. Schechter and I wanted - - I still had feelings, very mixed feelings. * * *

The whole time it was exacerbated by my illness, my bipolarity. I was like on a roller coaster. It was up and down. I never knew what was going to happen. I was in love. I told him I don't know how many times. I didn't want to be with anyone but him. My husband, my marriage suffered. * * * [M]y work suffered. And * * * I don't know if I will ever get over this.

(Tr. 96)

THE AMA'S GUIDELINE, E-8.14, "SEXUAL MISCONDUCT IN THE PRACTICE OF MEDICINE"

30. The American Medical Association's guideline, E-8.14, "Sexual Misconduct in the Practice of Medicine," provides as follows:

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship. (I, II, IV)

(St. Ex. 5 at 2)

TESTIMONY AND REPORT OF DAVID BIENENFELD, M.D.

31. David Bienenfeld, M.D., testified at hearing on behalf of the State. Dr. Bienenfeld testified that he had received a medical degree in 1978 from the University of Cincinnati College of Medicine in Cincinnati, Ohio. He completed an internship and residency in psychiatry in 1981, and a fellowship in geriatric psychiatry in 1982, all at the University of Cincinnati. Dr. Bienenfeld is currently a Professor in Psychiatry and Vice-Chair of the Department of Psychiatry at the Wright State University School of Medicine. Dr. Bienenfeld also maintains a private practice that is related to his university appointment. Dr. Bienenfeld is board certified in general psychiatry, with subspecialty certification in geriatric psychiatry. (Tr. 118-122; St. Ex. 8)
32. Dr. Bienenfeld testified that Dr. Schechter's encounters with Patient 1 went far beyond the realm of medication management. He stated that, "there was much more of an intrusive investigation into elements of the patient's thoughts, feelings, behavior and past than would be necessary for medication management." Dr. Bienenfeld further testified that he would have great difficulty describing Dr. Schechter's conduct toward Patient 1 as psychotherapeutic. As examples of such conduct, Dr. Bienenfeld cited Dr. Schechter's allowing Patient 1 to expose herself and sexually stimulate herself in Dr. Schechter's office. (Tr. 144-145, 151)
33. Dr. Bienenfeld testified that Dr. Schechter's sexual conduct with Patient 1 violated the American Medical Association's Principles of Medical Ethics, I, II, and IV. (Tr. 134-136) He added that the medical profession, in general, bans sexual contact between a physician and a patient. Dr. Bienenfeld explained,

The relationship between doctor and patient is inherently unequal. The doctor is always the more powerful figure of the two, and a sexual relationship between a physician and a patient is almost by its nature exploitative of the patient.

Beyond that, it clouds the physician's judgment about being able to make competent, accurate, proper medical decisions with regard to the patient. In the psychiatric realm, the issues are even more complex because patients predictably will view their physicians through a kind of natural distortion of personal history, temperament, [and] current needs.

(Tr. 136) Dr. Bienenfeld added that, with a psychiatric patient, the patient's vulnerability is greater and the nature of the relationship tends to make possible more distortions. He explained that a psychotherapeutic relationship generally involves transference of the patient's personal history, current needs, and expectations to the psychiatrist. He explained

that a patient with Patient 1's history would likely enter the therapeutic relationship with a pre-disposition to affection toward the psychiatrist. He added that the relationship between the psychiatrist and patient is part of the healing element of psychiatric therapy when handled properly. He stated that, "when that relationship becomes polluted by a sexual encounter, than what should be a therapeutic relationship becomes a destructive one." (Tr. 138, 145-150, 153-156; St. Ex. 4)

Dr. Bienenfeld further stated that a psychiatrist must conduct him or herself with propriety because the patient tends to model his or her behavior after that of the psychiatrist. In addition, the intensity of the therapeutic relationship "may tend to activate sexual and other needs and fantasies on the part of both patient and psychiatrist, while weakening the objectivity necessary for control." Accordingly, "the inherent inequality in the doctor patient relationship may lead to exploitation of the patient." Dr. Bienenfeld concluded that sexual activity with a patient is unethical. (St. Ex. 4 at 2)

34. Dr. Bienenfeld testified that Dr. Schechter's conduct fell below the minimal standards of care of similar practitioners under the same or similar circumstances. (Tr. 139) He stated,

Sexual contact between a psychiatrist and a patient is never within the standard of care. Aside from ethical prohibitions, the psychiatric patient's perception of the physician is shaped by transference, i.e. a normative distortion in expectations and perceptions growing from the patient's past history and current needs. This transference is ideally used to provide the therapeutic leverage, but can be misused to exploit patients. It is widely considered incorrect to interpret a patient's sexual attraction to a psychiatrist as an uncomplicated manifestation of adult affection. Acting in to such a distortion by engaging in sex with a patient often traumatizes the patient. Even when the avowed purpose of the treatment is for sex therapy, there is no standard by which having sex with one's patient is considered permissible.

(St. Ex. 4 at 3)

Dr. Bienenfeld testified that there is a tenet of psychotherapy known as "the rule of abstinence." He stated that the rule of abstinence states that, "the patient can say anything but not act." Dr. Bienenfeld further stated that it is a rule taught to psychiatric residents during their training. He added that, because the relationship between a psychiatrist and patient is so intimate, it is a concept that is "unequivocally" important to understand and utilize. Dr. Bienenfeld added that Dr. Schechter's rule that, 'A patient can do or say anything in therapy as long as the patient remains in his or seat' is an incorrect paraphrase of the rule of abstinence. (Tr. 150-151, 179-180, 200-202)

Dr. Bienenfeld testified that, when Patient 1 started to behave in a sexually demonstrative manner, it would have been appropriate for Dr. Schechter to explain to Patient 1 that he

would be unable to help her if she continued to behave in that manner. Dr. Bienenfeld stated that Dr. Schechter should have encouraged Patient 1 to share her feelings with Dr. McGraw, her psychotherapist, and then directed the session back to medication management and target symptoms. (Tr. 197-199)

Moreover, Dr. Bienenfeld testified that Dr. Schechter's conduct with Patient 1 was inappropriate, in part, because, as admitted by Dr. Schechter, after the incident during which he touched Patient 1's panties, Dr. Schechter had lost the therapeutic advantage. Moreover, Dr. Bienenfeld testified that it is not appropriate to continue to treat a patient without getting "considerable outside communication." Dr. Bienenfeld concluded that, after the incident during which Dr. Schechter engaged in sexual intercourse and fellatio with Patient 1, there are no conceivable circumstances under which it would have been acceptable for Dr. Schechter to continue treatment of Patient 1. Dr. Bienenfeld added that, at that point, Dr. Schechter was "a party to the problem and cannot by any means present himself as a solution to the problem." (Tr. 170-173)

Dr. Bienenfeld added that it was inappropriate for Dr. Schechter to fail to document the extent of the sexual content and conduct of his sessions with Patient 1. It was also inappropriate for Dr. Schechter to fail to advise Dr. McGraw of such things. (Tr. 178-180, 192-195)

Dr. Bienenfeld stated that Dr. Schechter's conduct was even more inappropriate because, "When the affair began to unravel, Dr. Schechter was in a position to admit his error and seek to set things right. Instead, he perpetuated the secrecy of the affair. When seeking assistance for his own depression, he concealed the true reason, protecting his own interests first." Dr. Bienenfeld noted that some of Dr. Schechter's behavior "highlights the self-serving and sometimes malicious nature of Dr. Schechter's treatment of [Patient 1]." As examples, Dr. Bienenfeld cited Dr. Schechter's threats to Patient 1 should she reveal the true nature of their relationship and his lying to Dr. McGraw regarding his diagnosing Patient 1 as delusional. (Tr. 139-140, 174-175, 176-178, 183; St. Ex. 4)

Finally, Dr. Bienenfeld noted that the fact that Patient 1 had been a prior victim of sexual abuse had made her even more vulnerable to Dr. Schechter's activities, and a reasonable practitioner should have been aware of that fact. (Tr. 140-142, 177-178; St. Ex. 4)

35. Dr. Bienenfeld testified that Dr. Schechter had failed to use reasonable care in the selection and administration of drugs or other modalities, in this case psychotherapy, for the treatment of disease. He stated that, "the behavior enacted under the guise of therapy was not appropriate for the patient's diagnosis and condition, nor for any patient." (St. Ex. 4)

TESTIMONY AND REPORT OF STEPHEN B. LEVINE, M.D.

36. Stephen B. Levine, M.D., testified at hearing on behalf of Dr. Schechter. Dr. Levine testified that he had received a medical degree in 1967 from the Case Western Reserve University School of Medicine. Thereafter, he completed a psychiatric residency at University Hospitals of Cleveland. For the next twenty years, Dr. Levine worked within the Department of Psychiatry at Case Western Reserve University. Since 1993, Dr. Levine has practiced in a private practice, The Center for Marital and Sexual Health, specializing in relationship and sexual abnormality. Dr. Levine testified that fifty percent of the practice is devoted to general adult psychiatry and fifty percent is devoted to the special interest, including sexual identity difficulties, sexual offending behaviors, sexual dysfunction, and marital relationship problems. Moreover, since its development in the 1980s, the practice has operated a program for treating professionals who sexually offend during the course of their practice. (Tr. 392-399)
37. Dr. Levine testified that he had first met Dr. Schechter in April 2002. Dr. Levine stated that he had received a telephone call from Dr. Schechter's wife who stated that Dr. Schechter was planning to kill himself. Dr. Levine testified that Dr. Schechter's intended act had been a response to the ramifications of his boundary crossing with Patient 1. (Tr. 399-400; Resp. Ex. B)

Dr. Levine testified that his treatment of Dr. Schechter focused, first, on keeping Dr. Schechter alive. Once that issue was conquered, the therapy centered on Dr. Schechter dealing with what was his "technical incompetence" or clinical incompetence in dealing with Patient 1. (Tr. 407-408, 450)

Dr. Levine testified that he meets with Dr. Schechter weekly. (Tr. 409)

38. Dr. Levine described Patient 1's behavior toward Dr. Schechter as "erotized transference." Dr. Levine testified that erotized transference differs from than the more common "erotic transference." He stated that erotized transference is more insistent, compulsive, demanding and relentless. Dr. Levine described Patient 1's erotized transference as follows:

[Patient 1] was relentless in her insistence that she loved him, [that she] wanted to have sex with him, and intended to do everything in her power to bring that about. Despite Dr. Schechter's repeated refusals and attempts to redirect her to more productive use of their time together, he succumbed to her unrelenting barrage of letters and fantasies about what she sexually wanted to do with him, and seductive displays of her underwear, anatomy, and sexual excitement.

(Resp. Ex. B) Dr. Levine testified that it is very difficult to deal appropriately with an eroticized transference. He further stated that eroticized transference is something that most psychiatrists never experience in the course of their lives. (Tr. 402-403, 453; Resp. Ex. B)

Dr. Levine testified that almost half of practicing psychiatrists would say that a patient such as Patient 1 is untreatable, because she has a resistance to using interpretations to understand her behavior. Those psychiatrists would say that her treatment should be terminated “because she’s making you very uncomfortable and you’re not going to make any progress.” He added that the other fifty percent would say that you should not terminate the patient because you should not abandon a patient “in the midst of her acting out this center of her psychopathology.” Dr. Levine concluded that, ideally, once Dr. Schechter made the decision to continue treating Patient 1, he should have sought consultation with Dr. McGraw, and with a psychiatrist who had had experience with eroticized transference. (Tr. 404-407, 422, 452-456)

Dr. Levine further testified that his is not the case of a physician who takes advantage of a patient who is manifesting love or affection toward that physician. Instead, Dr. Levine testified that,

[T]his is a case of a woman who manifestly professes love and uses her body to * * * seduce the doctor, but the underlying dynamics are quite hostile. And the hostility has to do with, I think, turning around her own victim experiences as a youth, when she was sexually victimized, probably recurrently, by someone in her family. And she was able to make Dr. Schechter feel helpless and sexually excited in the same way that someone made her feel helpless, frightened, and sexually excited.

And because Dr. Schechter didn’t recognize that, his behavior was incompetent and he then eventually succumbed. He did not see that and, therefore, he could not use that to advance therapy. And all that happened, over and over again, was this pornographic, salacious presentation of the patient, trying to get the doctor to be a man, not a doctor, and to respond to her seduction.

(Tr. 419-420)

39. Dr. Levine testified that Dr. Schechter continues to have “a nobility about him” regarding Patient 1. Dr. Levine testified that, despite all of the agony of his current life, Dr. Schechter continues to feel badly for Patient 1. Dr. Levine stated that he has discussed the following with Dr. Schechter on a number of occasions:

For Patient 1 to get better, she has to acknowledge that she’s a grown-up person, and she has to recognize that she had some role in creating the chaos

that has ensued. That's just not about this matter, she has to take responsibility in her life for when she goes into any situation and chaos comes out at the other end. She had some role.

She is not just a victim of life circumstances, you see. And when we respond to her like she was, you know, just a minor nervous person, a minor disturbed, nervous person, and then this bad doctor did that to her and now her life is in shambles temporarily, we deprive her of the opportunity of getting better, because we tell her a lie that she knows is a lie.

And so Mike, Dr. Schechter, somewhat enigmatically, to me, persists in feeling badly for Patient 1 because she doesn't seem to be on the path of getting better. That is, she has declared herself to be his legal enemy, he persists in feeling badly for her pain and suffering and the missed opportunity to do better.

(Tr. 426-427)

40. Dr. Levine testified that, during the course of his treatment of Dr. Schechter, Dr. Levine has assessed Dr. Schechter's nature and character, to make a determination as to "whether the person is given to unethical behavior or to virtue." Dr. Levine testified that he has concluded that Dr. Schechter "had a very strong aspiration to be a noble physician, and that he had a very strong conscience." Dr. Levine further concluded that Dr. Schechter's conduct with Patient 1 was "an aberration, that he is given to virtuous behavior as a physician and that he has the best of intentions." (Tr. 413-416)

Dr. Levine testified that there are two factors underlying Dr. Schechter's technical incompetence in dealing with Patient 1. Dr. Levine stated that one of those is Dr. Schechter's "naive concept that, he's never to be angry in the course of his psychiatric practice with patients." As a result of that, Dr. Schechter denies his anger and fails to recognize when he is being abused. (Tr. 416)

Dr. Levine concluded that, unlike most boundary crossers, Dr. Schechter has the intellectual, emotional, and motivational capacity to use his own agonizing and humiliating life experience to teach others about boundary crossing. Dr. Levine testified that he has encouraged Dr. Schechter to return to psychotherapy with all people, including women. Dr. Levine stated that Dr. Schechter is a "psychiatric resource" regarding boundary violations. (Tr. 428-432)

41. When asked if Dr. Schechter's treatment of Patient 1 was harmful to Patient 1, Dr. Levine testified that he was "hesitating about this question because it is a big one." He explained that Patient 1 was very sick, had a long history of decompensation, and bore many symptoms of her illness. Dr. Levine stated that Dr. Schechter had had an opportunity to

help her “do a little better in life.” Dr. Levine added that, “The harm that came to Patient 1 is that, at the end of this relationship, it was clear that no great accomplishment came as a result of the years working with Dr. Schechter.” (Tr. 424)

TESTIMONY OF GREGORY ALAN PETERSON, M.D.

42. Gregory Alan Peterson, M.D., testified at hearing on behalf of Dr. Schechter. Dr. Peterson testified that he had received his medical degree in 1978 from The Ohio State University College of Medicine. He completed an internship in psychiatry at University Hospital in Columbus, Ohio, and, in 1982, a residency in psychiatry at the University of Virginia in Charlottesville, Virginia. Thereafter, he completed a fellowship in Law Psychiatry at the University of Virginia. Dr. Peterson has been practicing in Akron, Ohio, for the past eleven years. Dr. Peterson testified that he is currently the Director of Clinical Services for Community Support Services, Inc., in Akron. (Tr. 272-275)

Dr. Peterson testified that, in his role as Director of Clinical Services for Community Support Services, he is responsible for the quality of all medical care provided through the agency. Dr. Peterson testified that Community Support Services is a large agency that employs approximately fourteen psychiatrists, in addition to psychologists, nurses, social workers, and others. The agency treats just under 3,000 clients, primarily on an outpatient basis. He stated that the majority of the agency’s clients are people with long-term mental illness, such as schizophrenia. (Tr. 275)

Dr. Peterson testified that he has known Dr. Schechter professionally for the past ten years. Moreover, Dr. Schechter has been employed by Community Support Services for the past five years and, as such, Dr. Peterson is Dr. Schechter’s supervisor. Dr. Peterson testified that he and Dr. Schechter frequently discuss administrative and medico-legal issues and controversial issues pertaining to patient care. In addition, they often share patients in the course of their practices. Finally, Dr. Peterson testified that he often seeks Dr. Schechter’s counsel regarding geriatric issues, because Dr. Schechter is “recognized in [that] community as one of the best minds as far as geriatric psychiatry goes and has a great deal of experience in treating geriatric patients.” (Tr. 277-279)

Dr. Peterson further testified that, approximately one year ago, Dr. Schechter had asked to meet with him and the associate clinical director at Community Support Services. At that time, Dr. Schechter revealed the incidents that had taken place during his care and treatment of Patient 1. Dr. Schechter advised that he had reported, or would be reporting, his conduct to the Board. Dr. Peterson testified that Dr. Schechter had been quite critical of himself and remorseful for his conduct when he reported it to Dr. Peterson. (Tr. 280-284)

Dr. Peterson testified that, after listening to Dr. Schechter, he had undertaken measures to determine whether the incident with Patient 1 was an isolated incident, and whether any similar incidents had occurred with clients of Community Support Services. During the

course of the investigation, Dr. Peterson spoke with Dr. Levine. Dr. Peterson testified that, as a result of the investigation, he had come to the conclusion that Dr. Schechter's inappropriate conduct with Patient 1 had been an isolated incident. (Tr. 284-286)

Dr. Peterson testified that he believed that Dr. Schechter had behaved the way he had with Patient 1 because his pride had "[run] amuck." He stated that Dr. Schechter had been one of the brightest residents in his residency program and had been considered to have great potential. Dr. Peterson stated that he believed that, when Dr. Schechter found himself in a position that he was unable to handle, he was not prepared to deal with it. Dr. Schechter should have asked for help, but his pride prevented him from doing so. (Tr. 289-290)

Moreover, Dr. Peterson testified that a decision had been made at Community Support Services to impose no discipline against Dr. Schechter. He stated that that decision had been made because they were aware that the matter was being investigated by the Board, and they believed that "due process should be followed." In addition, they felt comfortable that Dr. Schechter was not a threat to the agency's clients, based on their past knowledge of Dr. Schechter, the conversations with Dr. Levine, the nature of the Board's allegations, and the benefit Dr. Schechter provides to patient care. (Tr. 286-287) Dr. Peterson testified that Dr. Schechter has continued to practice at Community Support Services without limits or safeguards on his practice and without direct supervision. (Tr. 315-316)

Dr. Peterson testified that he has never questioned Dr. Schechter's character. He added that Dr. Schechter's conduct with Patient 1 was "quite inconsistent" with Dr. Schechter's clinical skills and character. (Tr. 280, 288-289)

Dr. Peterson testified that Community Support Services is affiliated with Northeast Ohio University College of Medicine, and that Dr. Schechter has an appointment there. Dr. Peterson testified that Dr. Schechter is an excellent lecturer, an exemplary teacher, and a good role model. Dr. Peterson further testified that, after Dr. Schechter's conduct with Patient 1 became known, there had been discussions regarding using Dr. Schechter to teach students about ethical violations and boundary issues. (Tr. 291-293) (See also Respondent's Exhibit L)

On cross-examination, Dr. Peterson admitted that, had he been aware of Dr. Schechter's conduct with Patient 1, he probably would not have hired Dr. Schechter to work at Community Support Services. (Tr. 310-311)

FINDINGS OF FACT

1. In the routine course of his practice, John Michael Schechter, M.D., undertook the treatment of Patient 1. Dr. Schechter began treating Patient 1 in 1996 on referral from her psychologist for elements of mood disorder and difficulties associated with childhood

sexual abuse. Dr. Schechter initially diagnosed Patient 1 with cyclothymia, hypomanic, and later changed her diagnosis to bipolar disorder. During the time she was Dr. Schechter's patient, Patient 1 was hospitalized twice for psychiatric decompensation. Moreover, Patient 1 was hospitalized once following Dr. Schechter's treatment of her.

2. During the course of her treatment with Dr. Schechter, Patient 1 reported to Dr. Schechter that she had a history of sexual abuse, self-mutilation, and problems with her marriage. After beginning treatment with Dr. Schechter, Patient 1 declared her love for Dr. Schechter, expressing feelings of sexual attraction and becoming increasingly flirtatious and provocative. During his psychiatric sessions with Patient 1, Dr. Schechter listened to Patient 1's sexual fantasies involving him, allowed Patient 1 to expose herself to him, and allowed her to rub her genitals in his presence.
3. In or about the year 1999, in Dr. Schechter's office during a psychiatric session with Patient 1, while Patient 1 was exposing her panties to Dr. Schechter, Dr. Schechter touched Patient 1's panties. On April 17, 2000, during a psychiatric session in Dr. Schechter's office, Dr. Schechter engaged in sexual relations with Patient 1.
4. Following sexual relations with Patient 1, Dr. Schechter continued to treat her as his psychiatric patient for approximately two more years. During this time, Dr. Schechter's behavior toward Patient 1 was dictated, in part, by fear that, if he angered her, she would disclose his sexual activities with her. During this time and shortly following his termination of Patient 1 as his psychiatric patient, Dr. Schechter inappropriately discussed his personal feelings with Patient 1. Moreover, Dr. Schechter discussed the consequences of her revealing his conduct and stated, among other things, that he would deny that any sexual activity had occurred. At some point following sexual relations with Patient 1, and during the time she was under his care as a psychiatric patient, Dr. Schechter slapped Patient 1 in the face.

CONCLUSIONS OF LAW

1. The conduct of John Michael Schechter, M.D., as set forth in Findings of Fact 2 through 4, 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 clause is used in Section 4731.22(B)(6), Ohio Revised Code."
2. The conduct of Dr. Schechter, as set forth in Findings of Fact 3, constitutes "[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: the American Medical Association's Principles of Medical Ethics I, II, and IV.

* * * * *

When Dr. Schechter initiated treatment with Patient 1, he told her that she could do anything she wanted to do in therapy, so long as she remained in her seat. From that point on, Dr. Schechter's treatment of Patient 1 deteriorated. Although it is troubling in itself that a psychiatrist would instruct a patient in that manner, it is even more disconcerting that he did not realize the inappropriateness of his instruction as Patient 1's behavior became more unmanageable.

For the remainder of his care and treatment of Patient 1, however, Dr. Schechter's conduct was deplorable. Among the worst of the incidents which occurred during his treatment of her were the following:

- Dr. Schechter allowed Patient 1 to expose herself and touch her genitals during the course of therapy.
- Dr. Schechter allowed Patient 1 to see that her conduct sexually aroused him.
- Although he knew such conduct would cost him his license to practice medicine, Dr. Schechter engaged in sexual intercourse with Patient 1. Moreover, when his conscience overwhelmed him because he realized the extreme inappropriateness of his conduct, he nevertheless allowed Patient 1 to engage in fellatio with him. He justified that decision by reasoning that he had had an erection and was, therefore, helpless.
- Dr. Schechter did not seek help in his treatment of Patient 1, although he was fully aware that he had lost all therapeutic control, because he was ashamed to admit his misconduct.
- Dr. Schechter failed to maintain medical records accurately documenting the course of his treatment with Patient 1.
- Dr. Schechter failed to advise Dr. McGraw, Patient 1's treating psychologist, of the very important and relevant issues Patient 1 was confronted with in her therapy with Dr. Schechter.
- Dr. Schechter pressured Patient 1 to hide the sexual relationship, despite the emotional and psychological cost to Patient 1 to do so.

- Dr. Schechter threatened Patient 1 in various ways to prevent her from revealing the sexual relationship. Dr. Schechter even used the threat of his own suicide in an attempt to control Patient 1's behavior and protect his own interests.
- Dr. Schechter slapped Patient 1 when she was emotionally distraught due to the inappropriate relationship between Dr. Schechter and Patient 1.
- Dr. Schechter lied to Patient 1's primary caretaker, and fabricated a new psychiatric diagnosis for Patient 1 in order to protect his interests.

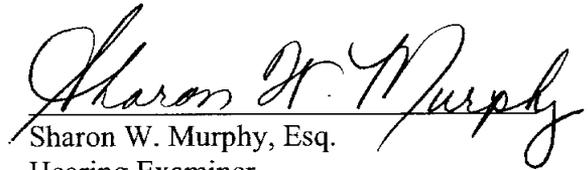
Dr. Schechter's clear disregard for the welfare of his patient affords this Board little choice but to permanently revoke his license to practice medicine and surgery in this state.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of John Michael Schechter, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF MARCH 10, 2004

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Teodoro C. Navarro, M.D.; Erdulfo Paz Paat, M.D.; German V. Prada, M.D.; Francisco I. Regueyra, M.D.; and John Michael Schechter, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Sloan	- aye

Ms. Sloan 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. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Ms. Sloan	- aye

Ms. Sloan 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.

Ms. Sloan stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....
JOHN MICHAEL SCHECHTER, M.D.

.....
DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY’S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOHN MICHAEL SCHECHTER, M.D. DR. STEINBERGH SECONDED THE MOTION.

.....
A vote was taken on Dr. Bhati’s motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

May 14, 2003

John Michael Schechter, M.D.
5300 Fairfield Oval
Solon, Ohio 44139

Dear Doctor Schechter:

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

- (1) In the routine course of your practice, you undertook the treatment of Patient 1, identified on the attached Patient Key, which is confidential and to be withheld from public disclosure. You began treating Patient 1 in 1996 on referral from her psychologist for elements of mood disorder and difficulties associated with childhood sexual abuse. You initially diagnosed Patient 1 with Cyclothymia, hypomanic, and later changed her diagnosis to Bipolar Disorder. During the time she was your patient, Patient 1 was hospitalized twice for psychiatric decompensation, and was hospitalized once following your treatment of her.
- (2) During the course of her treatment with you, Patient 1 reported to you that she had a history of sexual abuse, self-mutilation, and problems with her marriage. After beginning treatment with you, Patient 1 declared her love for you, expressing feelings of sexual attraction and becoming increasingly flirtatious and provocative. During your psychiatric sessions with Patient 1, you allowed Patient 1 to expose herself to you, listened to her sexual fantasies involving you, and allowed her to rub her genitals in your presence.
- (3) In or about the year 1999, in your office during a psychiatric session with Patient 1, while Patient 1 was exposing her panties to you, you touched Patient 1's panties. On or about April 17, 2000, in your office during a psychiatric session with Patient 1, you engaged in sexual relations with Patient 1.
- (4) Following sexual relations with Patient 1, you continued to treat her as your psychiatric patient for approximately two more years, although your behavior toward Patient 1 was dictated by fear that if you angered her, she would disclose

Mailed 5/15/03

your sexual activities with her. During this time and/or shortly following your termination of Patient 1 as your psychiatric patient, you inappropriately discussed your personal feelings with Patient 1 and discussed the consequences of her revealing your conduct, including that you would deny any sexual activity occurred. At some point following sexual relations with Patient 1, and during the time she was under your care as a psychiatric patient, you slapped Patient 1 in the face.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) through (4) 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 (3) 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: the American Medical Association’s Principles of Medical Ethics I, II and IV.

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 (30) 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 (30) 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 or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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

John Michael Schechter, M.D.

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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,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 1127
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Attorney at Law
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215-6194

CERTIFIED MAIL # 7000 0600 0024 5148 1134
RETURN RECEIPT REQUESTED