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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

JOHN E. BEATHLER JR, :
 :
 Plaintiff, :
 :
 vs. : Case No. 11CVF-09-12219
 :
 STATE MEDICAL BOARD OF OHIO, : JUDGE C. SCHNEIDER
 :
 Defendant. :

NOTICE OF DISMISSAL

Pursuant to Rule 41(A) of the Ohio Rules of Civil Procedure, Plaintiff-Appellant John E. Beathler, Jr. hereby dismisses his appeal.

s/Eric J. Plinke
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Dismissal was served upon the following by regular U.S. mail, this 8th day of December, 2011:

Katherine J. Bockbrader
Melinda Ryans Snyder
Assistant Attorney Generals
Ohio Attorney General's Office
Health & Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

s/Eric J. Plinke
Eric J. Plinke

BEFORE THE STATE MEDICAL BOARD OF OHIO

John E. Beathler, Jr., M.D.
2396 Andover Road
Columbus, Ohio 43221

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215

Appellee.

11CVF 09 12219

Case No. _____

Judge _____

APPEAL FROM THE ENTRY
OF ORDER OF SEPTEMBER 14, 2011
MAILED SEPTEMBER 15, 2011

NOTICE OF APPEAL

Appellant John E. Beathler, Jr., M.D., by and through counsel, and pursuant to Ohio Revised Code § 119.12, timely submits this notice of appeal from the Entry of Order of Appellee, the State Medical Board of Ohio ("Board"), which permanently revoked Dr. Beathler's certificate to practice medicine and surgery in the State of Ohio. The Board's Entry of Order is dated September 14, 2011, and was mailed on September 15, 2011. This appeal is based on the following grounds:

1. The Board's Entry of Order dated September 14, 2011, is not supported by reliable, probative, and substantial evidence and is not in accordance with the law.

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

Respectfully submitted,

DINSMORE & SHOHL LLP

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STATE MEDICAL BOARD
OF OHIO
2011 SEP 30 PM 3:16

FILED
COMMON PLEAS COURT
FRY KALEBI CO., OHIO

2011 SEP 30 PM 3:04

CLERK OF COURTS

2011 OCT 11 PM 3:52
STATE MEDICAL BOARD
OF OHIO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of September, 2011, the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, and a copy filed with the Franklin County Court of Common Pleas, and with an additional copy served by regular U.S. mail upon the following:

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



Eric J. Plinke

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STATE MEDICAL BOARD
OF OHIO
2011 OCT 11 PM 3:52

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

September 14, 2011

John Edward Beathler, Jr., M.D.
3334 Mill Run Road
Hilliard, OH 43026

RE: Case Nos. 10-CRF-016
10-CRF-129

Dear Doctor Beathler:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 14, 2011, 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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3021 5649
RETURN RECEIPT REQUESTED

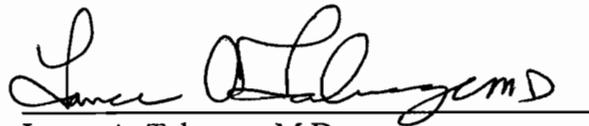
CC: Eric J. Plinke and Larry L. Lanham, II, Esqs.
CERTIFIED MAIL NO. 91 7108 2133 3938 3021 5656
RETURN RECEIPT REQUESTED

Mailed 9-15-11

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 14, 2011, 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 Edward Beathler, Jr., M.D., Case Nos. 10-CRF-016 and 10-CRF-1529, 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)

September 14, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NOS. 10-CRF-016
10-CRF-129

JOHN EDWARD BEATHLER, JR., M.D. *

ENTRY OF ORDER

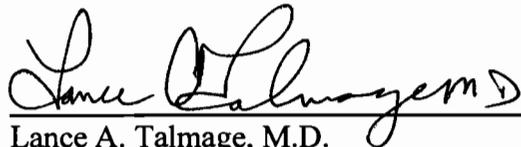
This matter came on for consideration before the State Medical Board of Ohio on September 14, 2011.

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

It is hereby ORDERED that:

The certificate of John Edward Beathler, Jr., 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 the notification of approval by the Board.



Lance A. Talmage, M.D.
Secretary

(SEAL)

September 14, 2011
Date

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BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Consolidated Matters of * **Case Nos. 10-CRF-016**
John Edward Beathler, Jr., M.D., * **10-CRF-129**
Respondent. * **Hearing Examiner Porter**

REPORT AND RECOMMENDATIONBasis for Hearing: Case No. 10-CRF-016

By letter dated March 10, 2010, the State Medical Board of Ohio [Board] notified John Edward Beathler, Jr., M.D., in Case No. 10-CRF-016, that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based upon his alleged sexual misconduct with six patients, as identified on a confidential Patient Key. The Board further alleged that such 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;
- “Violation of any provision of a code of ethics of the American medical association [AMA], the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association’s Principles of Medical Ethics; and/or
- “[V]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code.

Accordingly, the Board advised Dr. Beathler of his right to request a hearing in this matter, and received his written request on March 25, 2010. (State’s Exhibits [St. Exs.] 1A, 1B)

Basis for Hearing: Case No. 10-CRF-129

In a letter dated October 13, 2010, the Board notified Dr. Beathler that, in Case No. 10-CRF-129, it had proposed to take disciplinary action against his certificate to practice medicine and surgery in

Ohio based on his alleged sexual misconduct with two patients as identified on a confidential Patient Key. The Board further alleged that such conduct constitutes: “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code.

Accordingly, the Board advised Dr. Beathler of his right to request a hearing in this second matter, and received his written request on October 15, 2010. (St. Exs. 1D, 1E)

Consolidation of Cases

By Entry filed November 8, 2010, and with the agreement of the parties, Case Nos. 10-CRF-016 and 10-CRF-129 were consolidated for hearing.

Appearances

Michael DeWine, Attorney General, and Katherine J. Bockbrader and Melinda R. Snyder, Assistant Attorneys General, for the State of Ohio. Eric J. Plinke and Larry L. Lanham II, Esqs., for Dr. Beathler.

Hearing Dates: April 25 through 28, 2011

PROCEDURAL MATTERS

1. The Hearing Transcript was redacted from page 44, line 10, following the word “regarding” through page 44, line 11, prior to the word “in.” The unredacted page of the transcript was marked Board Exhibit A, sealed from public disclosure, and is held as proffered material. (See, Hearing Transcript at 44-45)
2. The Hearing Transcript was redacted at page 46, line 7; page 56, line 2; page 66, line 13; and page 84, line 25; which identified patients’ dates of birth. Such information in a public document could compromise the patient’s confidentiality. The unredacted pages of the transcript were marked Board Exhibit B and sealed to protect patient confidentiality.
3. Portions of Patient 3’s testimony at Hearing Transcript pages 303, 308, 312-313, 319-321, 322, 324-325, and 326 were redacted pursuant to a ruling at hearing. (See, Hearing Transcript at 360-366)
4. State’s Exhibits 1D and 2D, consisting of the initial scheduling letters for Case Nos. 10-CRF-016 and 10-CRF-129, respectively, were marked by the Hearing Examiner and admitted to the record post-hearing. (See Hearing Transcript at 503-504)

SUMMARY OF THE EVIDENCE

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

Background Information

1. John Edward Beathler, Jr., M.D., obtained his medical degree in 1995 from Wright State University in Dayton, Ohio. In 1998, Dr. Beathler completed a three-year residency in internal medicine at Riverside Methodist Hospital in Columbus, Ohio. Dr. Beathler was licensed to practice medicine in Ohio in 1997. He was board-certified in internal medicine in 2010. (Hearing Transcript [Tr.] at 18, 520-521; Respondent's Exhibit [Resp. Ex.] A)
2. Dr. Beathler testified that, in 1998, he began working as an internal medicine physician with a group practice in Columbus called Central Ohio Primary Care [COPC]. Dr. Beathler further testified that internal medicine "is general primary care for adults ages 12 and up * * *." Dr. Beathler testified that, after he became a partner in the practice around 2001, he saw approximately 25 patients per day, and performed pelvic examinations "[n]early daily." Dr. Beathler testified that some other internal medicine physicians in his practice also do pelvic examinations on a limited basis. (Tr. at 19-20)

State's Expert Witness: Dr. Kanterman

3. Leonard H. Kanterman, M.D., testified as an expert witness on behalf of the State. In 1977, Dr. Kanterman obtained his medical degree from the State University of New York in Brooklyn, New York. From 1977 through 1980, Dr. Kanterman participated in and completed a residency in internal medicine at Walter Reed Army Medical Center in Washington, D.C. He was certified by the American Board of Internal Medicine in 1980. He was licensed to practice medicine in Ohio in 1984. (Tr. at 110-114; St. Ex. 14; Ohio eLicense Center, <<https://license.ohio.gov/Lookup/>>, accessed July 18, 2011)

Dr. Kanterman testified that, after completing his residency, he spent four additional years with the Army at Fort Riley in Kansas. In 1984, Dr. Kanterman moved to Ohio and began practicing internal medicine with the Trumbull-Mahoning Medical Group, a 17-physician primary care group in the Youngstown/Warren area. Dr. Kanterman further testified that he is currently the President and CEO of the group. (Tr. at 114-115)

Dr. Kanterman testified that he currently sees between 65 and 75 patients per week and has between 1,000 and 1,500 patients in his practice. Dr. Kanterman further testified that he performs pelvic examinations in his practice, approximately one per day. (Tr. at 115-116)

4. Dr. Kanterman testified that, prior to rendering an opinion on this matter, he had reviewed Dr. Beathler's medical records for Patients 1 through 6, patient summaries for each of those

patients, AMA Standards of Practice,¹ and additional medical records from Patient 1's gynecologist. Dr. Kanterman further testified: "The instructions that I was given was that I should assume for purposes of my evaluation that the events that transpired in the patient's summary were an accurate recollection and an accurate description of what took place."
(Tr. at 148-150)

After completing his review, Dr. Kanterman prepared a written report with his findings.²
(Tr. at 150; St. Ex. 13)

Pelvic Examinations, In General

5. This matter concerns allegations that Dr. Beathler inappropriately touched seven of his female patients during the performance of pelvic examinations with respect to six patients, and during the performance of inguinal lymph node examinations with respect to one patient. The State presented no evidence with respect to an eighth patient. (St. Exs. 1A, 2A) The following is the testimony of Dr. Beathler and Dr. Kanterman concerning the performance of pelvic examinations. Inguinal lymph node examinations will be addressed in the section concerning Patient 3.

Testimony of Dr. Beathler

6. Dr. Beathler explained the meaning of some terms used during the hearing:
 - Dr. Beathler testified that a "back and forth" movement during a pelvic examination means he is moving his fingers within the patient's vagina toward the patient's head and back toward the doctor while his fingers remain in the patient's vagina. (Tr. at 594) Dr. Beathler testified, "Back and forth is when you curl your fingers within the vagina" while the hand remains mostly still. (Tr. at 595) Moreover Dr. Beathler testified:

Say, for instance, you curl your fingers back as far as they go, and you palpate a lump. You cannot get to that lump without going out, your fingers won't curl any further, it's not anatomically possible. So you have to come out a little bit. Every doctor does it, whether they realize it or not.

And the opposite is true. If you're in and your fingers are extended, and you feel a mass and you want to find out what it is, you have to go in further. Your fingers are extended fully.

(Tr. at 596)

¹ Dr. Kanterman is probably referring the AMA Code of Medical Ethics. (St. Exs. 15, 18)

² Dr. Kanterman's report was admitted to the record as State's Exhibit 13. To the extent that there is any conflict between Dr. Kanterman's testimony and the statements in his report, Dr. Kanterman's testimony is controlling. (Tr. at 506-507)

- Dr. Beathler testified that an “in and out” movement means that the doctor’s fingers are removed partially or completely from the patient’s vagina. (Tr. at 595)
 - Dr. Beathler testified that a “left and right” movement means that the doctor is moving his fingers within the vagina from the patient’s left side to the patient’s right side, and vice versa. (Tr. at 594)
7. Dr. Beathler described in detail how he performs a pelvic examination. He testified that, before he sees the patient, she has already been taken back to the exam room by a nurse, and the patient is gowned. Dr. Beathler testified that the patient is often seen for multiple complaints, and that he performs the pelvic examination last. (Tr. at 21-22)

Dr. Beathler further testified that “[I] do a visual inspection, like in between the folds for--you know, you can get HDV, herpes, you know, rashes, fungal rashes. You can get cancer, but it’s rare.” Then he places either one or two fingers into the patient’s vaginal opening, applies downward pressure (toward the patient’s back), and asks the patient to take some deep breaths and relax. The next step depends on whether a Pap or cervical examination is performed, or whether that is deferred and Dr. Beathler proceeds to the bimanual examination. (Tr. at 22-24)

Dr. Beathler testified that, in cases in which he is also performing a Pap or cervix examination, he uses a speculum.³ Dr. Beathler further testified:

[I]f I feel resistance I’ll stop for patient comfort, because the resistance—I don’t want to just push it in there and tear skin.

And I’ll, you know, slow down and come out a little and then go back—go back in. But that’s not the usual, that’s like for people who are sexually inactive or atrophic from age, or previous surgery with scar tissue and adhesions. So that’s the less common patient, but it does happen.

And I’ll open the speculum slowly; usually about two or three clicks for the average patient. And inspect the cervix for discharge, redness, discoloration, tumors.

I’ll take a brush and take a sample from inside the cervix. And also I’ll use a spatula and take a sample from the ectocervix, the outer cervix. And, thirdly, I’ll take the other end of the spatula and take a vaginal vault sample. So three samples.

And then I close the speculum and pull back slowly, watching for patient discomfort. * * *

(Tr. at 24-25)

³ The testimony is unclear as to whether Dr. Beathler inserts his fingers into the patient’s vagina prior to inserting a speculum in cases where Dr. Beathler is also performing a Pap/cervical examination. (See, Tr. at 23-24)

Dr. Beathler then proceeds to the bimanual examination.⁴ Dr. Beathler testified that he uses one or two fingers depending on the patient; for a sexually inactive patient he would use one finger. The following exchange took place:

- A. [By Dr. Beathler] I'll advance in, and I'll usually start with the ovaries because they are the hardest to find, and I'll move left or right in a sideward motion, sideward sweeping motion.

And if I palpate an abnormality I might, you know, try to figure out what it is by going—I mean, I go in all directions, you know. Might be clockwise, counterclockwise, back and forth, you know, to try to figure out what it is, because it's a difficult exam trying to find the ovaries, because a lot of times they have atrophied and they can be the size of a half a pea, or enlarged piece of sand, and –

- Q. [By Ms. Bockbrader] Would that be in a menopausal woman?

- A. Yeah, usually older. And I'll make it a point to—I was always taught to find the ovary, because a tumor can be the size of sand at early stages, ovarian cancer, and if you do not find the ovary you cannot say that they do not have a mass.

A lot of doctors never find the ovary, and thus we have 300,000 deaths a year from ovarian cancer. In my ten years of practice, I never had a one.

- Q. So you said that the checking of the ovaries involves a side-to-side sweeping motion?

- A. Yes.

- Q. Would you agree there's very little in-and-out motion of your finger?

- A. Yes. There is some, as with all physicians. For instance, if you curl your fingers back and you palpate a bump, you cannot go any further, you have to pull out.

And the opposite is true. If you go in and your fingers are extended and you feel something and you're not there yet, you have to go forward.

⁴ Dr. Kanterman testified that a bimanual examination refers to the physician's use of two hands in performing the examination. One hand is inside the patient's vagina, and the other hand is on the patient's abdomen in the suprapubic region above the pubic bone. The purpose is to palpate the organs between the examiner's hands, primarily the uterus, ovaries, and cervix. When palpating those organs, the examiner looks for enlargement, tumors, and tenderness. The inside hand does the palpating, "but the pressure from the outside brings everything into closer contact so the inside fingers feel it." (Tr. at 127-128)

All physicians go in and out. There's no other way to do it. Most of the motion is back and forth within the vagina. * * *

(Tr. at 25-27)

8. Dr. Beathler testified that he does not touch the patient's clitoris during a pelvic examination. (Tr. at 27)
9. Dr. Beathler testified that an average pelvic examination without a Pap takes about two minutes, but the exam can take longer depending on the patient, if, for example, he has trouble finding the patient's ovaries. (Tr. at 27-28)
10. When asked if he performs pelvic examinations on patients who have established gynecologists, Dr. Beathler replied: "Yes, if they come to me with a vaginal complaint, I address the issue. I usually try to defer the Pap, their annual, to their GYN." When asked if he performs a pelvic examination even if the patient has recently seen her gynecologist, Dr. Beathler replied that he would "[i]f the complaint was still present or if they had a new complaint, you know, if it didn't resolve from their visit, or if it had changed and became different where [he] felt medically it was necessary." (Tr. at 20-21)
11. Dr. Beathler testified that he has performed about five or six thousand pelvic examinations during his career, and has never had a patient tell him that his pelvic examination made her feel uncomfortable: "They might stop the exam because it hurt because they had infection, but a patient never told me directly that." (Tr. at 28, 532)

Testimony of Dr. Kanterman

12. Dr. Kanterman was asked to describe the motion that he uses to insert his hand into the patient's vagina during a bimanual examination:

[W]hat I generally do is, with one hand on the patient's abdomen, the internal hand first, I reach up into the right side of the vagina, adjacent to the uterus, push down, try to feel the ovary, and then sweep back and forth over the uterus. And then over to the left side, and then up into the left—it's what's called adnexa, so adnexa is that area of the internal organs that are next to the vagina—to feel if there are any tumors in that area.

And then I go back to the middle and I palpate the uterus, okay? And the way I palpate the uterus would involve more of an up and—with my fingers inside the patient, I would push up from inside, and down from outside, to feel the uterus between the two fingers, okay?

So I would say it's more of an in-and-up motion, and then down and back, more than an in-and-out motion.

(Tr. at 130)

Dr. Kanterman further testified that the sweeping and pushing motions he referred to are made once or twice each. (Tr. at 131)

13. Dr. Kanterman testified that, if a patient is sexually inactive, he would use the same motions in a slower, gentler manner, and would use only one finger. (Tr. at 131-132)
14. When asked if it is possible for a physician to palpate an ovarian tumor the size of a grain of sand, Dr. Kanterman replied that “[a] tumor that small would not be reliably and reproducibly palpable to the vast majority of physicians.” He further testified that a physician would not be expected to be able to detect such a small tumor on a bimanual examination. (Tr. at 129)
15. Dr. Kanterman testified that it is inappropriate for a physician to touch the patient’s clitoris during a pelvic examination, with one exception: if the physician sees something that does not look right on external examination, such as a lesion or growth. However, Dr. Kanterman further testified that he has never encountered that circumstance during his 30 years of practice. (Tr. at 134-135)
16. Dr. Kanterman testified that a pelvic examination should usually take between one and two minutes without a Pap smear, and two to three minutes with a Pap smear. Dr. Kanterman further testified that the 10- to 15-second period he gave in his written report would be the absolute, bare minimum period for a pelvic examination. In addition, Dr. Kanterman testified: “I would also say that within my personal experience, a pelvic examination has never gone beyond five minutes. The most thorough examination I’ve ever done, or most difficult examination I’ve ever performed did not take longer than five minutes.” (Tr. at 137-139)
17. Dr. Kanterman testified that, prior to November 2006, the generally accepted standard of care for performing a pelvic examination was that a chaperone should be offered to the patient and provided on request. (Tr. at 147)

Patient 1

18. Patient 1 is a female born in 1968. (St. Ex. 4 at 3)

Testimony of Patient 1

19. Patient 1 testified that she had first seen Dr. Beathler in 2000 and continued seeing him until 2006. From about 2003 on, Patient 1 had had a separate gynecologist, Dr. Donna Diaz. Dr. Diaz usually performed Patient 1’s pelvic examinations. (Tr. at 244-246)

Patient 1 testified that her last visit with Dr. Beathler occurred on August 31, 2006, and that she stopped seeing him “[b]ecause there was a sexual assault incident and I was sexually assaulted by Dr. Beathler.” (Tr. at 247-248)

20. Patient 1 testified that, on August 31, 2006, she had seen Dr. Beathler for complaints of knee problems and possible attention deficit/hyperactivity disorder [ADHD]. She was having problems with her kneecaps “catching” and “locking.” Patient 1 further testified that she had seen Dr. Diaz approximately one week before her visit with Dr. Beathler and Dr. Diaz had treated her for a yeast infection. (Tr. at 248-249)
21. Patient 1 testified that, during the August 31, 2006, visit, she had mentioned to Dr. Beathler that she had had some watery vaginal discharge. Patient 1 further testified that she had not been “overly concerned about it.” Patient 1 testified that, after she and Dr. Beathler had discussed the ADHD issue and Dr. Beathler had examined her knees and told her he would order x-rays, Dr. Beathler proceeded with a pelvic examination. She did not object to Dr. Beathler performing the pelvic examination. This was the first and only pelvic examination that Dr. Beathler performed on her. (Tr. at 249-252)
22. Patient 1 testified that Dr. Beathler did not offer a chaperone on August 31, 2006, nor did she request one. (Tr. at 267)
23. Patient 1 testified that, before he began the pelvic examination, Dr. Beathler left the room. She undressed from the waist down and had a “paper cloth covering” over her lap when Dr. Beathler returned. (Tr. at 252-253)

Patient 1 testified that, when Dr. Beathler began the examination, “the first red flag” that she noticed occurred when Dr. Beathler put lubricant on her clitoris. She knew he had applied lubricant directly to her clitoris “[b]ecause it was cold, and [she] felt it. And it was a sudden jolt.” Patient 1 further testified that she has “beat [her]self up” over the last four and one-half years because she could have stopped the examination at that point but did not. She testified that she had trusted Dr. Beathler. (Tr. at 253-254, 259)

Patient 1 testified that Dr. Beathler “targeted the clitoris area, stimulated it and then maintained constant contact with penetration going from side-to-side while he did a so-called pelvic examination.” (Tr. at 252) Patient 1 further testified, “I felt his hand was lifted up in a position that angled where he could penetrate the clitoris⁵ and keep that [in and out] motion in order to keep the clitoris stimulated.” Patient 1 demonstrated with her hand the motion she had felt, which was described on the record as “hand angled up and down, up and down, in and out[.]” Patient 1 testified that she came close to having an orgasm. She estimated that the examination took about seven to ten minutes, although it had “[s]eemed like forever[.]” (Tr. at 255-257)

⁵ Patient 1 probably meant “vagina.” (Tr. at 255)

When asked if Dr. Beathler had talked to her while this was happening, Patient 1 replied:

The only comments I recall are when he was pushing in deeply, lifting up and going over to where my—kind of my hip bone is and asking me if it hurt over there, “Does this hurt?”, as he’s pushing down with the other hand on the outside of my stomach, or abdomen. And that’s—”Does it hurt here? Does it hurt here?”

But while he’s doing that there’s the constant penetration and stimulation, just the lifting up, the whole time. There was never any letup from that stimulation of the clitoris.

That position maintained while he went from maybe the left side—not maybe, but from the left side over to the right side, asking if it hurt when he did this or that, “Does it hurt here?”, and he would stop near the hip bone area, “Does this hurt? Does this hurt?”, as he pushed down. “Does it hurt here?” And that was it.

(Tr. at 257-258)

24. Patient 1 testified that, at the end of the exam:

He stopped and left the room. I got dressed. I came out, trying to process what had just happened, feeling completely transparent that everybody that I passed in the hallway knew what had just happened in there. And I tried to play it off. I mean, I did.

I didn’t act like I had an issue with it. I didn’t say anything when we reviewed my x-rays for my knees after that.

I wasn’t sure at that point how to handle it, so I didn’t—I didn’t have any emotions at that point other than wondering if everybody knew what just happened in there.

(Tr. at 258-259)

25. Patient 1 testified that she had described the events strictly by feel; she was unable to actually see what Dr. Beathler did during the pelvic examination. (Tr. at 253)

26. In comparing the August 31, 2006, pelvic examination she received from Dr. Beathler with the approximately 20 other pelvic examinations she has had during her life, Patient 1 stated: “It doesn’t compare. I haven’t had one like this. There’s always been a speculum. If they take two fingers and go in, there’s just a press down right in the middle of the abdomen and just to feel for firmness. And that wasn’t the case in this exam.” Moreover,

Patient 1 testified that her “clitoris has never been touched in another exam.” (Tr. at 247, 252, 259-260)

27. Dr. Diaz’s medical chart for Patient 1 includes a note dated August 31, 2006, that states:

TC from pt saw primary for knee problem. pt primary did a pelvic exam. pt feels exam was inappropriate and sexual in nature. pt not hurt, no bruising. I suggested pt call police & go to ER.

(St. Ex. 5 at 187)

28. Patient 1 testified that she had also contacted the police on August 31, 2006, after speaking to Dr. Diaz’s office. Patient 1 was interviewed by the police the following day. In addition, she reported the incident to the Board and to her husband, and told one co-worker “who had to write a statement based on what [Patient 1] told her.” Patient 1 further testified that the incident has caused some stress and frustration between Patient 1 and her husband, and that she does not believe that she “ever really dealt with it the way [she] should have.” (Tr. at 260-261, 268-269)

29. Patient 1 testified that, prior to August 31, 2006, she had had no arguments or disagreements with Dr. Beathler. Patient 1 testified that she had wanted a prescription for Adderall on August 31, 2006, but that Dr. Beathler did not prescribe that for her. When asked if that had made her angry, Patient 1 testified:

I wasn’t angry, no. I mean, even his comment was it presents a stigma and that you don’t want that. And, [he was] right, I didn’t want that stigma. And I’m thinking well, weight, loss, but that was my motivation. But I wasn’t mad at him.

(Tr. at 263)

30. Patient 1 testified that the Summary of Information from Patient 1 is an accurate summary of the events that occurred on August 31, 2006. Patient 1 further testified that she had not seen the Summary of Information until the week prior to the hearing. (Tr. at 265-266, 271)

Testimony of Dr. Kanterman

31. Dr. Kanterman testified that, assuming the patient summary is accurate, Dr. Beathler’s application of lubricant to Patient 1’s clitoris, as well as Dr. Beathler’s direct contact with Patient 1’s clitoris, are clear violations of the minimal standard of care. Dr. Kanterman further testified that Dr. Beathler’s application of lubricant to, and contact with, Patient 1’s clitoris constituted an ethical violation. (Tr. at 152, 159; St. Ex. 3)

Moreover, Dr. Kanterman stated:

It is my opinion with a reasonable degree of medical probability that Dr. Beathler’s alleged acts in August 2006 do constitute an ethical violation

pursuant to Section 4731.22(B)(18), Ohio Revised Code, and would clearly violate the AMA's first principle of medical ethics, which states: "A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights." This alleged conduct would also violate the AMA's second principle of medical ethics, which states, in part, that "a physician shall uphold the standards of professionalism, be honest in all professional interactions." Further, his conduct would violate the AMA's fourth principle of medical ethics, which states [in part] that "a physician shall respect the rights of patients."

(St. Ex. 13; see, also, St. Ex. 15)

32. Dr. Kanterman testified that, during a properly performed pelvic examination, there is no possibility of incidental contact with the patient's clitoris. (Tr. at 229)
33. Dr. Kanterman testified that it had not been below the minimal standard of care to perform a pelvic examination given Patient 1's statement that she was having watery vaginal discharge. (Tr. at 153)

Testimony of Dr. Beathler

34. Dr. Beathler testified that, on August 31, 2006, he had seen Patient 1 for bilateral knee pain and questionable adult ADHD. Dr. Beathler acknowledged that he had performed a pelvic examination on that day. (Tr. at 37-38; St. Ex. 4 at 33)
35. Dr. Beathler could not recall if there had been a chaperone in the room or if he had offered a chaperone to Patient 1. (Tr. at 41)
36. Dr. Beathler testified that he had worn gloves during the pelvic exam. Dr. Beathler further testified that, prior to the exam, he had applied lubricant to his gloved hand, then used his hand to apply lubricant to Patient 1's labia. Dr. Beathler testified that he did not apply lubricant to the patient's clitoris. Dr. Beathler further testified that he has never applied lubricant to a patient's clitoris, and that he did not touch or in any way apply pressure to Patient 1's clitoris during the exam. (Tr. at 41-43)

Dr. Beathler testified that he had inserted his fingers into Patient 1's vagina during the exam. The following exchange took place:

Q. [By Ms. Bockbrader] Did you use an in-and-out motion with your fingers?

A. [By Dr. Beathler] Well, as I previously stated, the majority of the in and out is back and forth. However, all physicians use some in-and-out motion.

Q. When you say "back and forth", do you mean side-to-side?

A. Back and forth is towards me, towards her, within the vagina. And side-to-side is also used, but mainly for the ovary check.

Q. And isn't the side-to-side the primary way of doing a pelvic exam?

A. For the ovary part, yes.

Q. And you testified that very little—there's very little in-and-out motion when you perform a pelvic exam; is that right?

A. It's varying degrees, depending on the patient's body cavities.

(Tr. at 43-44)

With respect to Patient 1's testimony that Dr. Beathler had lifted his hand to contact her clitoris, Dr. Beathler testified that he does push up from the inside using his index and middle fingers to find the ovaries and cervix. Dr. Beathler further testified, "But when you move, there might be some inadvertent touch, is what I'm thinking." Dr. Beathler testified that he did not intentionally stimulate Patient 1's clitoris. (Tr. at 529-531)

37. When asked if he typically performs a pelvic examination on a patient who sees him for knee pain and ADD, Dr. Beathler replied, "No, unless it was pertinent, such as gonococcal arthritis, you know, in a sexually active female." When asked if he had taken a culture to test for that, Dr. Beathler replied: "No, there was no indication after exam due to the discharge not being green or yellow with no cervical motion tenderness. There was no indication. She had a slight white discharge, which is more indicative of vaginal candidiasis." When asked if he would have expected that her gynecologist would have examined her for gonorrhea, he replied: "Depends on what [s]he said to her. I don't know what went on during that visit." (Tr. at 39-41)

Dr. Beathler acknowledged that gonococcal knee pain is rare. (Tr. at 41)

Further Testimony of Dr. Kanterman

38. Dr. Kanterman testified concerning gonococcal arthritis:

I think I'd go a step beyond Dr. Beathler and say it's extremely rare. I haven't seen a case since residency or medical school.

It's generally seen in an inner city population. I've never seen it in a private practice situation. And it has a particular presentation, as I'm sure Dr. Beathler is aware.

Gonococcal arthritis is an acute infectious arthritis. It's usually monoarticular, which means it affects one side, it affects one knee.

So the only--the only time that gonococcal arthritis would come into my differential diagnosis⁶ is if the patient presented with a red, hot, swollen knee that was of acute onset.

If a patient comes in and said, "My knees have been aching, they have been hurting for weeks or months, and both knees are hurting", gonococcal arthritis would not even be in my differential diagnosis.

(Tr. at 156-157)

Dr. Kanterman further testified that he did not see anything in the patient's chart indicating that she presented with a red, hot, swollen knee. (Tr. at 157)

Further Testimony of Patient 1

39. When asked if Dr. Beathler had discussed with her a concern about gonococcal arthritis, she testified that she does not know what that is. She further testified that she had recently had surgery on both knees, that there was very limited arthritis, and that "[i]t was cartilage in the lateral release that [she] had on both knees for patellofemoral syndrome."
(Tr. at 250-251)

Patient 2

40. Patient 2 is a female who was born in 1950. (St. Ex. 6 at 3)

Testimony of Patient 2

41. On October 5, 2006, Patient 2 visited Dr. Beathler for a physical examination. A pelvic examination was performed as part of that examination. Patient 2 had previously had a hysterectomy, but still had her ovaries. Patient 2 testified that her gynecologist had retired and that she had needed to find another. Dr. Beathler had told her of the importance of having pelvic examinations. Patient 2 further testified, "I hesitated, but he said he would go ahead and do the pelvic." Dr. Beathler asked her if she was sexually active at that time, and she told him she was not. Patient 2 testified that Dr. Beathler did not offer a chaperone nor was one present in the room. (Tr. at 436-438; St. Ex. 6 at 81-83)

Patient 2 described the pelvic examination that Dr. Beathler had performed that day:

I do know that the lubrication was applied. You know, you're sitting, looking at the wall—or at the ceiling, and in a precarious position.

⁶ The MedlinePlus online medical dictionary defines "differential diagnosis" as follows: "[T]he distinguishing of a disease or condition from others presenting similar symptoms." (MedlinePlus online medical dictionary, <<http://www.merriam-webster.com/medlineplus/differential%20diagnosis>>, accessed July 20, 2011)

And he started the exam. And it was, you know, the—it was very rapid and very forceful, and was very quick, as I remember. And I was wondering why my stomach wasn't being palpated, because that had been my experience before with pelvic exams.

(Tr. at 439)

42. Patient 2 further testified that the “very rapid and very forceful” movement she described meant that Dr. Beathler’s fingers were “being inserted in and out in a rapid fashion.” Patient 2 was asked, “If you could, just on a scale of one to ten—we’ll say one is just a gentle touch, and ten is someone punching a wall, how much force would you say he was using?” to which Patient 2 replied, “Probably a seven or eight.” Moreover, Patient 2 testified that it had been very painful, and described it as a seven or eight on a pain scale of one to ten. In addition, Patient 2 testified that Dr. Beathler’s hand had been on her stomach but that “[i]t was just there.”(Tr. at 439-441)
43. Patient 2 testified that she has had approximately 35 pelvic examinations during her life and had never before experienced a pelvic examination such as the one Dr. Beathler performed. She further testified that she has never experienced that much pain during a pelvic examination. (Tr. at 437, 441)
44. Patient 2 testified that, after the exam, she “was told to go down the hall to get further tests done for the yearly exam.” She did so, then left. (Tr. at 442)
45. When asked how she felt when she left Dr. Beathler’s office, Patient 2 replied: “Well, I think I was still in shock. I mean, it wasn’t until I got to the car that I took a deep breath, and I believe I even said out loud, ‘Oh, my God. What has just happened to me?’ And was still having throbbing [in my vagina].” Patient 2 testified that she did not tell anyone what had happened at that time, but that she eventually told her now-husband. (Tr. at 442)
46. Patient 2 testified that she never returned to Dr. Beathler after the pelvic examination, although not too long afterward she accompanied her now-husband to an appointment with Dr. Beathler on one occasion. It was that occasion that prompted Patient 2 to tell her husband what had happened, which she did shortly before his appointment. (Tr. at 442-443, 447)
47. Patient 2 testified that she did not report Dr. Beathler’s conduct to his medical practice. She testified, “Quite honestly, I didn’t think anybody would believe me[.]” (Tr. at 449)
48. Patient 2 testified that, prior to the pelvic examination, her professional relationship with Dr. Beathler had been fine. (Tr. at 451)
49. Patient 2 testified that, after she had stopped seeing Dr. Beathler, she found another physician and told him what had happened. Her new physician advised her to contact the Board. (Tr. at 444)

50. When asked if the Summary of Information from Patient 2 accurately describes her appointments with Dr. Beathler, she replied that it's "pretty close." She noted that the only thing that she does not remember is asking Dr. Beathler "if he felt comfortable doing a pelvic examination." (Tr. at 436; St. Ex. 3)

Testimony of Dr. Kanterman

51. Dr. Kanterman testified that Dr. Beathler's treatment of Patient 2 fell below the minimal standard of care: "[T]hat opinion is assuming the patient's description of the pelvic examination as involving the finger being thrust in and out rapidly about 20 times or more resulting in great pain, in my opinion, that would be care below the minimum standard of care." Further, Dr. Kanterman stated that Dr. Beathler's conduct would violate Principles I, II, and IV of the AMA's Principles of Medical Ethics. (Tr. at 162; St. Exs. 13, 15)

52. During Dr. Kanterman's testimony concerning Patient 2, the following exchange took place:

Q. [By Ms. Snyder] [F]or a patient who has atrophy, with the in-and-out motion—do you find that an in-and-out motion is a proper way to kind of penetrate through?

A. [By Dr. Kanterman] In my experience doing pelvic examinations for 30 years, I would say that an in-and-out motion would be unusual to rare in the performance of an appropriate pelvic examination. It's usually back and forth or up and back, and more of a back and forth or up and out and down and back than an in-and-out motion.

Q. In your experience, should a pelvic exam cause great pain?

A. I have never experienced with a patient where they reported great pain. Mild to moderate discomfort is not unusual in that type of patient who may be atrophic. I've never heard it referred to as greatly painful.

Q. If there is great pain, does that indicate that the exam was not properly performed?

A. No. Pain is a patient perception, okay? So the patient may have experienced what they believe—You know, everyone has a different pain tolerance.

There are some people that, you know—It's the old "Doc, it's only a scratch" kind of thing when somebody's arm is hanging off. There are some people that will interpret mild to moderate discomfort as being extreme pain.

There are other patients for whom extreme pain—You know, you palpate somebody's abdomen and you can see that they are in extreme pain and say, "Does that hurt?", and the patient says, "Only a little bit", and you see they are

wincing terribly. So the patient's reporting of the pain is very subjective and does vary from patient to patient.

But the properly performed pelvic examination, no matter what the degree of atrophy, should not result in great pain. The patient may report they have an extremely low pain threshold. They may feel that it was greatly painful.

I have not personally experienced that or had any patient say that to me in a 30-year career, that it was greatly painful.

(Tr. at 164-166)

53. With respect to Patient 2's use of the word "thrust" in her description of Dr. Beathler's pelvic examination, Dr. Kanterman testified, "I don't think it's possible to confuse thrusting with the motion that is normally employed," particularly coupled with the patient summary description that Dr. Beathler thrust his finger "in and out rapidly about twenty or more times with great pain." (Tr. at 213-215; St. Ex. 3)

Testimony of Dr. Beathler

54. Dr. Beathler testified that, when a patient is not sexually active, he changes the manner in which he performs a pelvic examination. He uses one finger instead of two, uses more lubricant, and performs the examination more slowly "to preserve the dignity and comfort of the patient." If he were to do a Pap examination, which did not occur in this case, he would use a smaller speculum. (Tr. at 47-48)

Dr. Beathler further testified that it is very likely that he had had to use an "in and out" motion "to try to get—you know, to get into the area I need to examine. It's very hard to—Atrophy, scar tissue, adhesions, tightness, it's very likely I had to go in and out at first." Dr. Beathler further testified: "If you just go in, you tear those adhesions and it hurts. You have to go, and when you feel resistance, stop." (Tr. at 48-49)

55. When asked for his response to Patient 2's testimony that her pelvic exam had been forceful and painful, Dr. Beathler testified:

The forceful I can understand, because it was probably one of the more difficult exams I've ever done because I rarely document that patient had discomfort. That's unusual.

And I made a note about the tight introitus, the opening, and she was sexually inactive, which explains part of it. It doesn't explain adhesions and scar tissue from her hysterectomy.

So there were a lot of—There were a lot of issues doing her exam, and it was a little forceful. But rapid, I don't understand that.

There was some back and forth, because I didn't want to just go in and tear tissue and make her bleed, it would have hurt. So when I went in and I hit resistance, I stopped, because if you keep going, it would hurt. So I would come out a little and you just try to work your way in, as she relaxes, because she was kind of uptight about the whole exam, because it had been a while since her previous exam.

And I tried to work with her because I felt it more important for her to get the exam, and, you know, not risk dying from a preventable disease, than for her to have some discomfort.

At the time she did not act like it was seven or eight [on the pain scale]. I would say three or four.

(Tr. at 559-560; see, also, St. Ex. 6 at 81)

Dr. Beathler testified that he believes that Patient 2 had experienced pain during the pelvic examination, but that she had exaggerated somewhat. Dr. Beathler testified that he believes he would have stopped the examination before completing it if her pain had been as severe as she testified. Dr. Beathler further testified that he recalls certain aspects of the examination because it had been unusually difficult “[g]etting in.” Dr. Beathler testified that, after he got in, he had worked as quickly as possible, because she was having discomfort. Dr. Beathler further testified that his communication with the patient would have concerned getting the patient to relax. Moreover, Dr. Beathler testified that it is typically not normal for a patient to have a throbbing sensation in her vagina following a pelvic examination; however, in Patient 2's case, it is understandable “[b]ecause of the difficulty of the exam.” (Tr. at 561-565)

56. Dr. Beathler testified that he and Patient 2 had had a “huge” dispute concerning Dr. Beathler's treatment of her now-husband. Dr. Beathler testified that her husband had been prescribed OxyContin by another physician whose license was suspended “for alimony reasons,” and Dr. Beathler agreed to treat Patient 2's husband, including OxyContin prescriptions, but only for a short time. Two or three months later, Dr. Beathler declined to prescribe any more OxyContin to Patient 2's husband, which Dr. Beathler believes led her to become angry and leave his practice. (Tr. at 565-567)

Patient 3

57. Patient 3 is a female born in 1986. (St. Ex. 7 at 2)

Testimony of Patient 3

58. Patient 3 testified that she is now 24 years old and works as a registered nurse. Patient 3 first saw Dr. Beathler on May 25, 2006, after she became too old to continue seeing her pediatrician. (Tr. at 295, 297-298; St. Ex. 7 at 63)

59. Patient 3 testified that she had first seen Dr. Beathler because of a rash on her lower legs. At that appointment, Dr. Beathler performed a physical examination, including a pelvic examination with Pap smear. Patient 3 testified that she had had two or three pelvic examinations performed by other physicians prior to that. (Tr. at 298-299; see, also, St. Ex. 7 at 55-57)

Patient 3 testified that she had felt uneasy about having a pelvic examination at her first visit with Dr. Beathler. Afterward, she spoke with a neighbor who is a physician and asked him if that was normal. He told her that Dr. Beathler was probably doing a head-to-toe examination for her first visit and was just being thorough, which reassured Patient 3. (Tr. at 298-299)

60. Patient 3's next visit took place on January 30, 2007. She testified that she had seen Dr. Beathler for a sore throat. Patient 3 does not recall the entire examination, but testified that, during the examination, Dr. Beathler had palpated her labia majora. Patient 3 could not recall if he had palpated any other areas. Patient 3 believes that, during this part of the examination, she had been wearing clothing as opposed to a gown, and had removed them. Patient 3 testified that there was no third party in the room, and that Dr. Beathler had not offered a chaperone. (Tr. at 301-302; see, also, St. Ex. 7 at 65)

Patient 3 could not recall how much time Dr. Beathler spent palpating her labia, but that "[i]t felt like an uncomfortable amount of time." (Tr. at 302)

Patient 3 testified that she did not know why Dr. Beathler would perform "the head-to-toe assessment, again, for a sore throat." She noted that her pediatrician had usually just done a throat culture. (Tr. at 303)

Patient 3 does not recall Dr. Beathler telling her that he was checking the lymph nodes in her groin. (Tr. at 303)

61. Patient 3 testified that she has trouble remembering which exams were which, but at another visit she had seen Dr. Beathler for a physical examination for nursing school. The medical records indicate that this was her third visit, on April 17, 2007. At that visit, Patient 3 informed Dr. Beathler that she had just seen her gynecologist who would sign off on that portion of her physical. (Tr. at 303-304; St. Ex. 7 at 15-19)

Patient 3 believes that at this visit Dr. Beathler palpated her labia majora around her clitoris. Patient 3 further testified that she had lain on her back on the exam table with her legs separated and knees bent. Moreover, Patient 3 testified that there was no chaperone present and that Dr. Beathler did not offer one. (Tr. at 305-306)

62. Patient 3 testified, at her last visit to Dr. Beathler, which occurred on June 13, 2007, she had seen him for a rash on her arms and exhaustion from the advanced placement program at nursing school. She testified that she had worn either shorts or capris to the appointment.

Patient 3 further testified that, during that appointment, Dr. Beathler had pulled down her pants. When asked how far they were pulled down, Patient 3 replied: "I don't know, specifically, I mean, at least to my knees. I was exposed." Moreover, Patient 3 testified that she never wears underwear, and was not wearing underwear at that appointment or at any of her other appointments. Patient 3 further testified that she had lain on the exam table with her legs separated and knees bent. Moreover, Patient 3 testified that Dr. Beathler palpated her external genitalia at that appointment. (Tr. at 306-308; St. Ex. 7 at 41-45)

Patient 3 testified that, at this last visit, Dr. Beathler did not offer her a chaperone and none was present. She further testified that he did not tell her that he was checking her lymph nodes. (Tr. at 308-309)

63. Patient 3 testified that, when Dr. Beathler had touched her labia, it had not felt like a brushing. She further testified that "it was definitely a firm touching * * * [with] [m]ultiple fingers." (Tr. at 335)
64. Patient 3 testified that her last visit to Dr. Beathler had seemed odd. When asked what had seemed odd, Patient 3 replied: "To have any area of your pelvic region included in office visits for rashes, being tired, sore throat, a physical for school that I had explicitly said I didn't need an examination of my pelvic area." Moreover, she testified: "I didn't understand why it would be necessary at all at these appointments to do an exam like that." Dr. Beathler's repeated touching of her private area prompted her to tell her parents following the fourth appointment. (Tr. at 309, 331-332)

Patient 3 testified that, after she had complained to her parents about Dr. Beathler's exams, her mother contacted Dr. Beathler's office. She and her mother subsequently met with Dr. John W. Wulf, the medical director of COPC. (Tr. at 309)

65. When asked why she had not previously reported to COPC what was happening, Patient 3 replied:

I felt uncomfortable with the situation, but I felt like Dr. Beathler was professional,⁷ so maybe I was being, like, crazy, like making too much out of it in my head.

And again, I had never been to like an adult physician, so I thought maybe this is what you do when you go to them.

(Tr. at 323)

66. Patient 3 testified that she does not recall indicating that she had had vaginal discharge when filling out forms in Dr. Beathler's office for her first visit. However, she acknowledged that a new patient information form that was filled out by Patient 3 includes

⁷ Patient 3 testified that, in saying that Dr. Beathler was professional, she had meant that he had never said anything inappropriate to her. (Tr. at 324)

a check mark next to “vaginal discharge.” Nevertheless, she does not believe that she had been having such issues at that time. (Tr. at 327-329; St. Ex. 7 at 27-28)

67. Patient 3 testified that the Summary of Information from Patient 3 and Supplement to the Summary of Information from Patient 3 accurately describe her visits with Dr. Beathler. She further testified that she had not seen those documents prior to her testimony at hearing. (Tr. at 296-297, 318-319; St. Ex. 3)

Testimony of Dr. Beathler Concerning Inguinal Lymph Node Examinations

68. Dr. Beathler testified that the inguinal lymph nodes are located “in the crease of the area between the lower abdomen and the leg. And they run from the superior anterior iliac crest, which is kind of the hip bone that sticks out, and down to the adductor muscle, which is the ligament that sticks out, lower in the leg, mainly when you pull your legs together.” Dr. Beathler further testified that normal inguinal lymph nodes are “less than one centimeter, mobile, non-tender, [and] encapsulated.” Dr. Beathler further testified that, when examining a patient’s inguinal lymph nodes, it is ideal if the patient is wearing a gown with no undergarments. Dr. Beathler further testified that some patients do not like to remove their undergarments, which makes the examination more difficult because the nodes lie underneath the underwear line. (Tr. at 32-34)

Dr. Beathler testified that he finds the nodes using “a back-and-forth motion going down through the crease * * * [a]nd if I palpate one * * * I’ll do a round motion clockwise or counterclockwise.” (Tr. at 35)

Testimony of Dr. Kanterman

69. Dr. Kanterman agreed with Dr. Beathler’s description of the location of the inguinal lymph nodes. Dr. Kanterman testified that, when examining a female patient’s inguinal lymph nodes, he generally has the patient lower her pants but not remove her pants or undergarments. He further testified that he has the patient change into a gown only if he is also going to perform a pelvic examination. Moreover, Dr. Kanterman has the patient lie on her back with her legs closed together for “[p]atient modesty and comfort.” (Tr. at 141-143, 145) In addition, Dr. Kanterman testified:

The lymph nodes do not extend into the inner thigh, they follow the inguinal ligament from the hip to the pubic bone.

There are no lymph nodes in the inner thigh, unless you have an abscess or something where there wouldn’t be lymph nodes there, so there wouldn’t be a need for the patient to spread her legs or to examine the inner thighs.

(Tr. at 145)

70. Dr. Kanterman testified that if a patient removes her pants but leaves her underwear on, a chaperone is not required. Dr. Kanterman testified:

My general rule of thumb, as far as the presence of a chaperone, is what I like to call a bathing suit rule, which is if a patient exposed any part of her anatomy which would normally be covered by a bikini bathing suit, I have a chaperone in the room.

For example, if I have a patient remove their pants and [leave] their underwear on, I would not normally call a chaperone into the room under those circumstances.

(Tr. at 168)

When asked about a patient who is not wearing underwear, Dr. Kanterman testified, “If I asked the patient to remove her pants and she either stated to me or I saw that she did not have any underwear on, I would say, ‘Let me get you a gown, cover yourself up, and I’ll come back with the nurse.’” (Tr. at 169-170)

71. Dr. Kanterman testified that there is no need to touch a patient’s genitalia during an examination of inguinal lymph nodes. (Tr. at 145) When asked if it would be possible for a physician to inadvertently come into contact with a patient’s labia during an inguinal lymph node check, Dr. Kanterman replied:

If it’s done properly—I guess it’s, I guess, conceivable under the most far, outer imaginable circumstances that it is possible to have inadvertent transient contact with the patient’s labia.

I do not believe that would be—I think that that would be described as more of an accidental brush or touch rather than a palpation, given the word “palpation” in this report.

Palpation implies a more thorough examination than inadvertent touch. At least that’s what I took the patient’s summary to indicate.

(Tr. at 170)

72. Dr. Kanterman testified that, if Dr. Beathler palpated Patient 3’s labia majora during an examination of her inguinal lymph nodes, then that conduct fell below the minimal standard of care as well as the Board’s sexual misconduct rules. Further, Dr. Kanterman stated that Dr. Beathler’s conduct would violate Principles I, II, and IV of the AMA’s Principles of Medical Ethics. (Tr. at 167, 171, 165-176; St. Exs. 13, 15)

Further Testimony of Dr. Beathler

73. Dr. Beathler stated that, at Patient 3's second visit on January 30, 2007, Patient 3 saw him for complaints of sore throat with lymphadenopathy. Dr. Beathler testified that he believes that Patient 3 had had swollen tonsils.⁸ When asked if he had examined Patient 3's inguinal lymph nodes that day, Dr. Beathler noted that it is possible because the progress note indicates that Patient 3 was tender in her left lower quadrant. (Tr. at 53-55; St. Ex. 7 at 33)
74. With regard to Patient 3's visit on April 17, 2007, Dr. Beathler agreed that Patient 3 saw him for a physical examination she needed for nursing school. At that visit, Patient 3 deferred breast and pelvic examinations to her gynecologist; however, Dr. Beathler performed a lymph node exam which included a check of her inguinal lymph nodes. Dr. Beathler denied that he had touched the patient's labia or palpated her inner thigh. When asked if there had been a chaperone, Dr. Beathler replied: "I do not know. I doubt it, because she's a regular patient, and the regular patients never requested a chaperone. It's usually new patients that didn't know me." (Tr. at 55-59, 537; St. Ex. 7 at 15-19)
75. Dr. Beathler testified that, on June 13, 2007, when Patient 3 saw him for a rash and fatigue, "she was concerned about cancer, given her family history of cancer."⁹ Dr. Beathler testified that he did not perform a pelvic or Pap examination, but examined Patient 3's lymph nodes, including the inguinal lymph nodes. The results of this examination are documented in the section labeled, "Neck," and states: "lan <0.5 cm, mobile, nt, circumscribed R anterior and L inguinal."¹⁰ (Tr. at 59-60; St. Ex. 7 at 3, 7)

Dr. Beathler believes that Patient 3 had been wearing pants during that visit and was not gowned. When asked whether he had pulled down Patient 3's pants, Dr. Beathler replied that he would not do that, and that he has the patient unbutton her pants and fold them down.¹¹ When asked if he would leave the room when that happened, Dr. Beathler replied that if a patient is just unbuttoning her pants he would usually just stay in the room; however, if patients are to remove their garments, he would usually leave the room because the patient has to cover with a gown. (Tr. at 61-62)

Dr. Beathler believes that this had been the visit where the patient "pulled down her pants and didn't have any underwear on." Dr. Beathler further testified that that had surprised him "because most people wear underwear." Moreover, Dr. Beathler testified that that had made him nervous because he had not been certain whether the nurse had offered Patient 3

⁸ The copy of the progress note is very difficult to read. (St. Ex. 7 at 33)

⁹ Patient 3's cancer concern is not documented in the progress note for June 13, 2007. (St. Ex. 7 at 3, 5, 7, 9) In fact, the box is not checked next to the statement, "Family History Reviewed." (St. Ex. 7 at 3, 5)

¹⁰ Dr. Kanterman testified that "nt" means nontender. (Tr. at 175)

¹¹ Later during the hearing, Dr. Beathler denied that he had pulled Patient 3's pants down, but acknowledged that he may have assisted her in pulling them down. (Tr. at 543)

a chaperone. (Tr. at 62-64) Dr. Beathler further testified that, when he discovered that Patient 3 was not wearing underwear:

I kind of froze up. But I thought in the interest of the patient's dignity, what's the quickest thing? You know, to walk around the table and get a gown and cover her up, and then have to uncover it to do the exam, or just do the exam, because it only takes less than ten seconds.

(Tr. at 544) Dr. Beathler testified that he elected to just go forward with the examination. (Tr. at 544)

76. Dr. Beathler denied that he had touched Patient 3's inner thighs or her labia at this visit. (Tr. at 64-65, 537)

77. When asked if Patient 3 had questioned the need to check her inguinal lymph nodes during her last three visits, Dr. Beathler replied:

Actually, the opposite. She requested that I check her lymph nodes, because she has an extensive family history of cancer.¹²

If you look in the review—the patient summary page,¹³ there's multiple cancers in her family. And she told me that her nursing student had practiced on her and noticed lymph nodes, and she wanted me to check her.

* * *

Which I probably normally wouldn't have checked her, but I did.

(Tr. at 538-539)

78. Dr. Beathler testified that Patient 3 had never complained to him about any of his examinations. (Tr. at 539)

Additional Information

79. Dr. Beathler's medical record for Patient 3 does not document that he had palpated Patient 3's labia majora on January 30, April 17, and/or June 13, 2007. (St. Ex. 7)

80. During a Board investigatory deposition on November 20, 2007, Dr. Beathler stated under oath that there had been no chaperone in the room during his examination of Patient 3's inguinal lymph nodes on June 13, 2007. (St. Ex. 16 at 104-105)

¹² No such request is documented in the medical record for any of those visits. (St. Ex. 7 at 3-9, 15-19, 33)

¹³ State's Exhibit 7 at 11

Patient 4

81. Patient 4 is a female born in 1969. (St. Ex. 8 at 2)

Testimony of Patient 4

82. Patient 4 first saw Dr. Beathler on November 17, 2004, over concern that she could have multiple sclerosis [MS]. She had been experiencing back pain and had gone to see an orthopedic specialist. Patient 4 testified, “[H]e said that he’s seen a few patients with the same problem, I guess, that I was having, and each time it’s been MS.” Patient 4 was very concerned about this, and testified that it would have taken three months to get in see a neurologist. She wanted to see a physician sooner than that, so she made an appointment with Dr. Beathler. Her husband was a patient of Dr. Beathler’s practice partners. (Tr. at 338-339; St. Ex. 8 at 13)
83. Patient 4 recalled that she had seen Dr. Beathler on two occasions. Dr. Beathler’s medical record for Patient 4 indicates that she had first seen him on November 17, 2004, and again on December 15, 2004. (Tr. at 339-340; St. Ex. 8 at 13-15, 39, 41)
84. Patient 4 testified that she had had numerous pelvic examinations from other physicians prior to seeing Dr. Beathler. (Tr. at 341-342)
85. Patient 4 testified that, at her second visit, she had told Dr. Beathler about her back pain and MS, and that she was “terrified” that she had it. Patient 4 further testified that Dr. Beathler asked her if she had had any pain in her lower abdomen. Patient 4 testified that she did have pain there sometimes but that she thought it was just cramping. Dr. Beathler told her that he would do a pelvic examination. Patient 4 testified: “I’m trying to figure out what the pain in my back is, so if that’s an avenue that it could be, then, you know, I didn’t think anything of it.” Dr. Beathler left the room after asking her to disrobe from the waist down, cover up, and sit on the exam table. Patient 4 testified that Dr. Beathler did not offer a chaperone and that there was no chaperone in the room during the exam that followed. (Tr. at 340-341)
86. Patient 4 testified that when Dr. Beathler came back into the room, she had lain on her back on the exam table with her feet in the footrests.¹⁴ Patient 4 described Dr. Beathler performing a bimanual examination. Patient 4 testified that, at the end of the bimanual examination, “he took the—the top hand off and he started putting his fingers in and out of me like fast.” Patient 4 indicated that he had used two fingers moving “[s]traight in and out” of her vagina very quickly. Patient 4 testified that she had told Dr. Beathler that she had to urinate, but that Dr. Beathler had told her, “No, you’re okay.” Patient 4 further testified, “And then he did it, and I don’t know, apparently there was a G-spot I’ve been unaware of my whole life, and I knew oh, my God, and that’s when I completely hopped up off the table.” Patient 4 testified that she had felt as though she was going to have an

¹⁴ Dr. Kanterman testified that the proper terminology is “footrests” rather than “stirrups.” (Tr. at 119-120)

orgasm. Moreover, Patient 4 testified, "I just kind of jumped up and scooped my bottom back on the table further back, and he said, "Okay, you can go ahead and get dressed and I'll be right back in", and he just turned around and walked out." (Tr. at 342-345)

Patient 4 testified that she was in shock afterward, and that she had never had that sensation during any other pelvic examination. Patient 4 further testified:

I never dreamed a doctor would do that. I never had that happen to me before, and I was in shock. I felt dirty. I was mad. I was just freaked out.

* * *

I hurried up and got dressed as fast as I could. I was shaking so bad I could barely get my clothes back on, and hurried up and opened the door because I didn't want him to come back in.

And I opened the door and the nurse was right there and said, "He ordered some blood work", and said, "So I need you to come with me", and I just followed her, I wasn't even thinking, and sat down and she did the blood work.

I know I had tears running down my face when she was taking blood. And then she said, "Okay. You're all done," and I bolted out of there.

(Tr. at 345-346)

Patient 4 testified that, after she got into her car, she cried. She called her mother-in-law and told her what had happened. Right afterward she had to go get a brain MRI that had been ordered by the physician who thought she had MS. She testified: "So after I could pull myself together I drove right around the corner there to get the brain scan done. So I laid in there thinking about it for about an hour, it seemed like, of what just happened. And it made me sick, and then I went home." (Tr. at 346)

87. Patient 4 testified that she told her husband what happened and that he was "furious." She further testified:

And then he started looking up the number for the Medical Board, he wanted to call and report it. But I was a mess. I was too upset, and just didn't want to deal with it.

And I mean, there was a lot going on in my life right then, and I was terrified I had MS, and then this on top of that.

(Tr. at 347)

88. When asked how the incident has impacted her life, Patient 4 replied:

Well, I found a female doctor through a friend. I decided I would only see female doctors from then on.

And even—See, I've had to schedule doctor's appointments around my husband's schedule because he goes to all my doctor's appointments. Lately he's let off a little bit, because we know the doctors, it's been a few years. But for the first few years after, he sits right next to me through everything.

(Tr. at 347-348)

89. Patient 4 testified that she later learned that Dr. Beathler had left COPC. Patient 4 further testified that, a long time after the incident with Dr. Beathler, she had received a call from someone in that office "and he said that he's calling previous patients of Dr. Beathler's to let them know that he's no longer with the practice" and that they would schedule her to see another physician in the practice or help her find another physician elsewhere." Moreover, Patient 4 testified:

[I]t was so long later and I was just out cleaning the garage and the call took me by surprise, I guess. I just said right away, "So, what? He's done this to somebody else, too?" And—

* * *

* * * And he said, "Can you explain to me what you're saying?" And I just—I said, "Yeah. He touched me inappropriately, and I figured that's why you're calling, he's no longer there because he's done it again."

And the gentleman said that, "Well, yes. We're offering if there's any type of counseling you may need, and would you be willing to make a statement?" And I said, "I guess."

So [Board Investigator] Jan Sussex came—called and came to my home a while later, and I told her what happened, did a statement, and then I didn't hear anything about anything for a very long time.

(Tr. at 348-350; see, also, Tr. at 354-356)

90. Patient 4 testified that she does not know anyone else who was a patient of Dr. Beathler's. (Tr. at 350)

91. Patient 4 testified that the Summary of Information from Patient 4 is accurate. (Tr. at 339, 353; St. Ex. 3)

Testimony of Dr. Kanterman

92. With respect to Dr. Beathler's treatment of Patient 4, Dr. Kanterman testified that, "assuming that the patient's description of the events is accurate, the rapid motion of the doctor's fingers in and out of the vagina for several seconds would be below the minimum standard of care." (Tr. at 177; St. Ex. 3) Dr. Kanterman further testified:

It's the rapidly. Several seconds doesn't seem excessive. It's the rapidity. There's no need to ever perform movements with rapidity or abruptness when performing a pelvic examination.

Actually, the opposite is true because of the sensitive nature of the examination. The examination should be performed with the greatest gentleness, consistent with timely efficiency.

(Tr. at 215)

Further, Dr. Kanterman stated that Dr. Beathler's conduct would violate Principles I, II, and IV of the AMA's Principles of Medical Ethics. (St. Exs. 13, 15)

Testimony of Dr. Beathler

93. Dr. Beathler testified that he had performed a pelvic examination on Patient 4 on December 15, 2004, because she had had back pain associated with right groin pain, which could be a sign of an ovarian tumor. Dr. Beathler believes that Patient 4 had been anxious about that because her friend had recently been diagnosed with ovarian cancer.¹⁵ (Tr. at 67-69; St. Ex. 8 at 39)

94. When asked what Patient 4 could possibly have been describing as a very quick in-and-out motion with his fingers in her vagina, Dr. Beathler replied:

Back and forth movement, I do do a lot of that. I try to cover as much area as I can, as quick as I can. But to me, it's not fast. But everybody's different perception-wise.

I think maybe it's faster than what she's used to from the past, you know? I don't know for sure.

(Tr. at 527)

¹⁵ The Hearing Examiner was unable to find documentation in the chart that Patient 4 had been concerned regarding a friend's diagnosis of ovarian cancer. (St. Ex. 8)

Patient 5

95. Patient 5 is a female born in 1960. She first saw Dr. Beathler in or around early 2003, and continued to see him for about four years, until early 2007. (Tr. at 371; St. Ex. 3; St. Ex. 9)

Testimony of Patient 5

96. Patient 5 testified that she had had pelvic examinations prior to seeing Dr. Beathler, performed by both family physicians and gynecologists, and by both male and female physicians. She estimated that she has had at least 30 pelvic examinations during her life. (Tr. at 373, 377)
97. Patient 5 testified that, after she began seeing Dr. Beathler, she had asked him to refer her to a gynecologist “and initially that request was ignored.” Patient 5 further testified that she had thought that some of the earlier pelvic examination performed by Dr. Beathler had been inappropriate because he was disregarding her request for a referral to a gynecologist. Moreover, Patient 5 further testified that, later, she did not like “[t]he way that he would move his fingers” when he performed a pelvic examination. (Tr. at 385, 388-389) When asked to describe what Dr. Beathler had done to her during pelvic exams, Patient 5 stated:

Sometimes he would insert his fingers into my vagina and he would use his fingers and move them around to locate a position where I might have pain.

He would move from spot to spot and would continue moving over the same spots. And then he would find a spot that he called a nerve and he said that he was massaging the nerve.

(Tr. at 373-374)

When asked why she had kept going back to Dr. Beathler, Patient 5 replied:

It’s complicated, I guess. I was concerned. You got a doctor, you respect them. In my case, early on, I actually respected him quite a bit, because * * * he was my mother’s doctor.

And when I first got acquainted with him before he was my doctor, it was going to appointments with my mother. He actually found a spot on her lung that turned out to be lung cancer.

And then later on, having the exams and just thinking this can’t be, you know, I kind of--that’s why I told my friend. Of course, she had never gone to any appointments with me. And after a while I just decided that I wasn’t imagining things.

(Tr. at 389-390)

98. Patient 5 testified that there was no chaperone present during any of the pelvic examinations that Dr. Beathler performed, nor did he offer one. (Tr. at 374)
99. The following exchange took place concerning Patient 5's last pelvic examination with Dr. Beathler:
- A. [By Patient 5] Okay. The last time he would—he had inserted his fingers into my vagina. He was moving his fingers in and out, and it was a long exam.
- Since I had, you know, wondered and been concerned about these things, I finally got to the point where I thought that it wasn't right, and during that exam I started getting tearful and finally decided to sit up, and I reached and grabbed his hand.
- Q. [By Ms. Bockbrader] Why were you getting tearful?
- A. I was uncomfortable with the situation. I realized that something was wrong.
- Q. Was there something different that made you feel like something was wrong on that day?
- A. It was a long exam.
- Q. How long?
- A. At least five minutes.
- Q. And what part of it was five minutes, the entire time he was doing in and out or—
- A. Yes. I had actually been in the exam room longer than that.
- Q. And when he was moving his fingers in and out of your vagina, was he slow or quick, or how would you describe the speed?
- A. I would say that started out slow.
- Q. And then what?
- A. And then got faster. I wouldn't describe it as quick.
- Q. And that part of the exam you think was five minutes?
- A. Yes.

Q. Was that different than exams he had given you previously?

A. The impact of it felt different because at that point I thought that definitely it seemed like he was trying to stimulate me.

Q. And when you say “stimulate” you, do you mean sexually?

A. Yes.

Q. Can you explain why you felt like that, if you can?

A. It’s a little embarrassing. The movement—seemed like the movement that a person would experience when—

Q. Do you need to take a break?

A. —when in a sexual situation, and a person was trying to stimulate you. That’s what would happen.

Q. Did you feel like your body was becoming stimulated?

A. No.

Q. Did you ever experience another example from a different doctor that was similar to that?

A. No.

(Tr. at 375-377)

In addition, Patient 5 testified that, during the last pelvic examination, in order to get him to stop, she had told Dr. Beathler that she thought she was going to urinate, and that Dr. Beathler told her that that would not happen. (Tr. at 377-378)

100. Patient 5 testified that she may have had addition appointments following the last pelvic examination “[p]robably for blood tests, maybe a cold or something like that.” (Tr. at 378)
101. Patient 5 testified that there had been more than one occasion on which she tried to stop Dr. Beathler while he was performing a pelvic examination. (Tr. at 374-375)
102. Patient 5 testified that the Summary of Information from Patient 5 accurately reflects her visits with Dr. Beathler. (Tr. at 372; St. Ex. 3)

Testimony of Dr. Kanterman

103. With respect to Dr. Beathler's treatment of Patient 5, Dr. Kanterman testified:

[A]ssuming the patient's rendition of the events that transpired is accurate, I find that the mechanism of performance of the pelvic examination as described in the Summary of Information, specifically the movement of the examiner's fingers in an in-and-out motion for what seemed to be a prolonged period of time, and that the patient was so uncomfortable that the patient—again, this is according to the summary as has been provided to me—that the patient had to take Dr. Beathler's hand and stop the examination, if those facts are accurate, then that would be considered below the minimum standard of care.

(Tr. at 182-183; see, also, St. Ex. 3)

Further, Dr. Kanterman stated that Dr. Beathler's conduct violated Principles I, II, and IV of the AMA's Principles of Medical Ethics. (St. Exs. 13, 15)

104. Dr. Kanterman testified that he is aware of no medical treatment that involves massaging a nerve in the vagina. (Tr. at 183)

Testimony of Dr. Beathler

105. Dr. Beathler testified that Patient 5 had been a very long-time patient of his whom he saw every two to three weeks. Dr. Beathler further testified that he had likely performed several pelvic examinations on Patient 5 because of her medical problems. (Tr. at 70-71)

106. Dr. Beathler denied that he had ever told Patient 5 during a pelvic examination that he was massaging a nerve inside her vagina. (Tr. at 73-75) Dr. Beathler further testified:

She did have back pain radiating to the front through her pelvis, so I was trying to assess for causes of a mass pushing on a nerve, or something in the back pinching the nerve, which ended up being the case.

She had a pinched nerve in the back. And she had said that she had numbness in her inguinal area, so I was checking for numbness.

I was checking for numbness from a pinched nerve, but I wasn't massaging a nerve. I've never heard that term in my life.

(Tr. at 545-546)

107. With respect to Patient 5's testimony that she had grabbed Dr. Beathler's hand to stop him, Dr. Beathler testified: "I don't remember anybody grabbing my hand, ever. She may have reached for it, is what I'm thinking. I don't know what she's referring to. But I don't recall

that.” (Tr. at 76, 547) With respect to his hand movements during the pelvic exam, Dr. Beathler testified that there is “a lot of back and forth movement” in his exams:

I am going back and forth, left to right. And if there’s any area of concern I might, you know, focus in if there’s a lump or a tender spot, to look for a mass or, you know, a beginning of an ovarian cancer, a tumor, infection, abscess.

I mean, there’s lots of possibilities. Bladder infection. Vaginal infection. Cyst. Ectopic pregnancy. There’s lots of things you look for.

(Tr. at 547-548)

Testimony of Patient 6

108. Patient 6 is a female born in 1973. She first saw Dr. Beathler on January 14, 2003. She last saw Dr. Beathler on June 9, 2003. (Tr. at 475; St. Ex. 10 at 2, 17-25)

Testimony of Patient 6

109. Patient 6 testified that she has annual pelvic examinations performed by her gynecologist, and that she has seen the same female gynecologist continuously for 12 years. Patient 6 further testified that she has had at least 18 pelvic examinations in her life. (Tr. at 477-478)

110. Patient 6 testified that, on one of her visits to Dr. Beathler, she had complained of abdominal pain and Dr. Beathler offered to do a pelvic examination. Patient 6 had never before had a pelvic examination performed by a male doctor, and she asked him if there should be a chaperone. Patient 6 testified that Dr. Beathler replied to the effect that it would not be necessary. Additionally, Patient 6 had been menstruating at that time and she advised Dr. Beathler that she was wearing a tampon. Patient 6 testified:

He said, “Don’t worry about it”, or something. And I guess I just looked at him thinking what am I going to do with it.

So it was alluded for me to just take it out in there. And there was a biohazard wastebasket in there. Directed to just kind of put it in.

(Tr. at 480-481)

Moreover, Patient 6 testified that Dr. Beathler was in the room when she removed her tampon, and when she put it in the waste container. She testified that that had made her feel uncomfortable. (Tr. at 481)

111. Patient 6 testified that she next lay on the exam table. With regard to what happened next, the following exchange took place:

Q. [By Ms. Bockbrader] Did he put a hand in your vagina, or a finger in your vagina?

A. [By Patient 6] Yes.

Q. What happened? What did he do with that hand?

A. Well, I definitely recall there was no speculum or anything used. Sorry. And I don't know what finger it was, but I know it was just one, and he just poked me several times. And by the second or third time I just scooted away off the table because I knew it wasn't—it was not like any pelvic exam I've ever had.

Q. When you said he poked you a few times, did he do it quickly or slowly?

A. It was just like, "Does this hurt? Does this hurt?"

Q. How is it different from exams you've had before?

A. Any exam I've ever had by any doctor that I've had has been two hands, or them pushing on the outside. I don't know how many fingers they use or how it works, but it's a pressing and a—It feels like a medical exam. It's not—This did not feel like any exam I've ever had.

Q. Did this feel medical to you?

A. No.

Q. What did it feel like?

A. Inappropriate.

Q. Did your body have any reaction to what he did with his finger?

A. I just knew right here (indicating) something wasn't right, like you have that gut instinct or that whatever that tells you something's wrong.

Q. And then you said you scooted away.

A. Uh-huh.

Q. And then what did he do?

A. I don't remember a whole lot. I mean, I just scooted away and said, "I don't think that's where it is", and just wanted away.

Q. Was the appointment kind of over at that point?

A. As I recall, yeah.

Q. What did you do after that?

A. I got out of there and went home.

Q. How did you feel after that exam?

A. I was very upset. I took the underwear that I had that day and threw it away.

Q. Why did you do that?

A. Because I never wanted to look at it again.

Q. Did you tell anyone about—On that day or soon after that, did you tell anyone about it?

A. I finally told my sister about it. But I don't remember if I told my best girlfriend or not. I was just mortified to tell anyone.

(Tr. at 482-484)

112. Patient 6 testified that she had never personally reported the incident to Dr. Beathler's office, but that she had told her sister shortly afterward. Patient 6 further testified that, at some point in time, her sister reported it to someone who works in Dr. Beathler's office. Patient 6 noted that, in 2007, Dr. Wulf called her about the incident. (Tr. at 485, 487)

113. After reviewing the Summary of Information from Patient 6, Patient 6 testified that the information contained in that document is accurate. (Tr. at 476-477; St. Ex. 3)

Testimony of Dr. Kanterman

114. With respect to Dr. Beathler's treatment of Patient 6, Dr. Kanterman testified:

[W]ith the assumption that the patient's rendition of events as provided in the summary is an accurate reflection of the events as they occurred, the patient reported that the pelvic examination was performed with a continual in-and-out motion lasting approximately 30 seconds, then I believe that that's care below the minimum standard of care.

(Tr. at 184)

Further, Dr. Kanterman stated that Dr. Beathler's conduct violated Principles I, II, and IV of the AMA's Principles of Medical Ethics. (St. Exs. 13, 15)

115. Dr. Kanterman testified that it is appropriate to perform a pelvic examination on a menstruating patient if the patient has a specific complaint, but never for a routine screening. (Tr. at 136-137)

Dr. Kanterman further testified that, if it becomes necessary to do a pelvic examination on a menstruating patient who is wearing a tampon, he would instruct the patient to disrobe, gown, remove her tampon, and sit up on the table while he stepped out of the room. Alternatively, Dr. Kanterman testified that it would be acceptable and within the standard of care for the physician to remove the tampon during the pelvic examination. (Tr. at 184-185)

Finally, Dr. Kanterman opined that, if the patient is to remove the tampon herself, the physician should leave the room for reasons of "[p]atient modesty, dignity, and respect." (Tr. at 185)

Testimony of Dr. Beathler

116. Dr. Beathler testified that he had performed a "partial pelvic" examination on Patient 6 on May 2, 2003. That day, Patient 6 had complained of fatigue that had lasted about two weeks. Dr. Beathler further testified that Patient 6 had had chills, night sweats, and nausea, which "in a young female is commonly a urinary tract infection or an STD." He testified that she also had muscle and joint aches, which indicated a systemic problem. Dr. Beathler testified that he had performed a "partial pelvic" examination on Patient 6 "just checking for causes of infection in the urethra, uterus, for pelvic inflammatory disease, or ovaries for an abscess." Dr. Beathler further testified that he also did a urine test. (Tr. at 78-81; St. Ex. 10 at 19)
117. Patient 6 next saw Dr. Beathler on June 9, 2003, and was suffering from fever, sweats, tiredness, nausea, depression, and insomnia. Dr. Beathler testified that he did not perform a pelvic examination but did examine Patient 6's inguinal lymph nodes. (Tr. at 81-82; St. Ex. 10 at 17)
118. When asked if there could have been anything he did during a pelvic examination that would be consistent with Patient 6's description, Dr. Beathler testified:

The poking, I'm not sure what she's referring to. The only thing that comes to mind is that she's inflamed and sore in that area, so it's hypersensitive, like where it might be, you know, like texture pain sensation that normally is not there.

Because I don't poke, I go back and forth, left to right, so maybe when I went in and hit an inflamed area, it hurt. But I'm not sure what the poking means.

(Tr. at 549-550)

Dr. Beathler further testified that he always advises patients to let him know if they experience pain or discomfort during the pelvic exam. (Tr. at 550)

119. Dr. Beathler testified that he would not perform a pelvic examination while a patient is menstruating unless it was at the very end “[b]ecause it’s messy, it’s discomforting, and it’s not accurate.” (Tr. at 82)

Dr. Beathler denied that he had asked Patient 6 to remove her tampon at either the May 2003 or June 2003 visit. Moreover, Dr. Beathler denied that Patient 6 (or any other patient) had tried to stop him from examining her genital area. (Tr. at 82-83)

120. Dr. Beathler testified that he can only recall Patient 6’s last pelvic examination through his notes. He further testified that she had been on the third day of her menstrual period and that the heavy flow is usually over by then. Dr. Beathler testified that he does not recall Patient 6 having to remove her tampon at that visit, but testified generally with respect to patients wearing tampons:

It comes up fairly commonly, because people have bleeding and they don’t know if it’s their period or not. So it’s not unusual for someone to come in with a tampon in, and are there for an exam.

And at times I’ll remove it because I don’t know it’s there when I go to do the exam, and they don’t tell me, so I’ll remove it.

If they tell me up front, you know, and I have them getting in a gown, I’ll just tell them to remove it their self while I step out.

(Tr. at 553-554)

121. When asked if he could have done things differently during Patient 6’s pelvic exam with him, Dr. Beathler replied:

When she went to remove the tampon, I could have said, “Wait, I’ll step out.” It kind of just happened real fast.

I could have had a chaperone there. I could have communicated to her during the exam more about what I was looking for, what I was doing.

There is some communication, but I try not to get too medical with a lay person. They get anxious sometimes when you mention checking for possible ovarian cancer. You know, they get all freaked out.

So I could have given her more information, but not—not gotten too technical. Also, maybe more gentle exam. If she said it felt like poking, it must have hurt.

I think of poking as sharp pain, so I'm assuming it hurt. She didn't relay that to me, but from her testimony.

(Tr. at 555-556)

122. Dr. Beathler testified that he had not been aware of Patient 6's complaint until he received the March 2010 notice of opportunity for hearing. (Tr. at 554)

Patient 7

123. Patient 7 is a female born in 1981. Dr. Beathler had been her family physician from around 2004 until July 2007. (Tr. at 402-403; St. Ex. 11 at 3)

Testimony of Patient 7

124. Patient 7 testified that she had had pelvic examinations prior to seeing Dr. Beathler, beginning in 1999 when she was 17 years old, and has had annual pelvic examinations ever since. Patient 7 further testified that she had had a separate gynecologist during the time she saw Dr. Beathler. (Tr. at 403-404)
125. Patient 7 testified that she had had a pelvic examination by Dr. Beathler at her initial visit in 2004. (Tr. at 405; St. Ex. 11 at 37-39)
126. Patient 7 testified that she stopped seeing Dr. Beathler following an appointment with him in July 2007.¹⁶ She had gone to see him for her annual physical examination and to revisit an infection she had had in her right big toe. She testified that she had seen him previously in 2006 concerning the infected toe but that she had been unable to take medication because she had been pregnant at that time.¹⁷ (Tr. at 403, 405-406)
127. Patient 7 testified that, during the July 2007 physical examination, Dr. Beathler had told her to change into a gown because he was going to do breast and pelvic examinations. Patient 7, who had recently given birth, asked him why he would perform a breast examination on a nursing mother, and Dr. Beathler replied that he knew what he was doing. Patient 7 testified that she consented to the examination, and changed into a gown. (Tr. at 407)

Patient 7 testified that, after Dr. Beathler came back into the room:

I asked him, "Is the nurse coming?", and he asked me, "Well, do you want a nurse?", and I said, "Yes." So he went out to the hallway and he came back, and he said, "There's not one available."

¹⁶ According to the medical records, this visit occurred on July 16, 2007. (St. Ex. 11 at 9)

¹⁷ The Hearing Examiner was unable to find a record of a previous visit to Dr. Beathler concerning an infected toe or toenail fungus. (St. Ex. 11 at 9-19)

So I asked him--I told him I would be more comfortable with a nurse, and he was like, "Well, there's not one available." And I was like, "Well, isn't the nurse there for my protection?" And he was like, "No, they are really there for the doctor's protection and the doctor's comfort. And I'm comfortable."

(Tr. at 407-408)

128. Patient 7 testified that her two small children and her infant had accompanied her to the examination room. She further testified that she had tried to turn the children's chair around but that, being children, they were getting up, walking around, and asking questions. (Tr. at 406, 408-409)

Patient 7 testified that Dr. Beathler proceeded with the breast examination, and Patient 7 began to express milk. She testified that she does not recall Dr. Beathler reacting to that. Patient 7 further testified that Dr. Beathler then proceeded with the pelvic examination. Patient 7 testified that he used a speculum and, while doing so, she could hear Dr. Beathler moaning. Patient 7 testified, "I couldn't see his face because you're in the stirrups and you're laying down. And he was inside me touching me, and I could just hear the low groans, the little moans." Patient 7 testified that Dr. Beathler removed the speculum. He placed his hand in her vagina and was touching her clitoris, but his second hand was not on her abdomen as is typical during a pelvic examination. When asked what Dr. Beathler was doing with his inside hand, Patient 7 replied, "It was touching me, stoking me, feeling around inside me." Patient 7 testified that she leaned up on her elbows, then Dr. Beathler "stood up straight abruptly and left the room" while she was still in the footrests. (Tr. at 408-412)

Patient 7 testified that, after Dr. Beathler left the room, she grabbed some tissues and cleaned herself off. She asked a nurse in the hallway if she was finished and told the nurse she needed the prescription for her toe. (Tr. at 414-415) Moreover, Patient 7 testified:

I was upset. I knew something wasn't right because I've never had a doctor abruptly leave like that before. I've never had a doctor groan or grunt during an examination.

And I just felt gross. I mean, granted, yes, physically you have the goop on you from doing the thing—from doing the pelvic exam, but I felt violated. I felt bad. I felt horrible.

And then the fact that my kids are there and they are seeing this, you wonder how much did your kids see.

(Tr. at 415)

129. Patient 7 testified that the pelvic examination had seemed to go on for a long time, and said it could have been five minutes or 20 minutes long. She testified, "It just felt abnormally long." (Tr. at 414)

130. When asked if she had had an orgasm during the pelvic examination, Patient 7 testified, “I did. Not that I wanted to, but I did.” Patient 7 testified that she had never before been stimulated during a pelvic examination. (Tr. at 412)
131. Patient 7 testified that Dr. Beathler behaved differently during this examination than he did during a previous pelvic examination: “I believe I had an examination with Dr. Beathler when I first became his patient. He talked to me, he engaged in conversation. Not this time. It was basically me there, you know, he wasn’t talking, he wasn’t engaged in conversation.” (Tr. at 413)
132. Patient 7 testified that she has had a number of pelvic examinations during her life and that there is no way that she has misconstrued the July 2007 pelvic examination. (Tr. at 415)
133. Patient 7 testified that, when she left the building, she was leaking breast milk and her “breast pads were soaked.” She put her children in the car and called her husband to let him know what had happened. She further testified that she also called the friend who had referred her to Dr. Beathler to find out if it was normal for her to have pelvic examinations without a chaperone present. Moreover, Patient 7 testified that she twice tried to report the incident to Dr. Beathler’s office—once in August 2007 and again in September 2007—but was told he was not there and that there was nothing they could do. Patient 7 also testified that no one from Dr. Beathler’s office contacted her afterward. (Tr. at 416-417, 424-426)
134. Patient 7 testified that she never returned to Dr. Beathler. (Tr. at 415)
135. When asked how the incident with Dr. Beathler has affected her, Patient 7 replied:

I don’t do any doctor’s visits without a nurse. Any kind of anything where the doctor would have to touch me, check something, look at anything, there has to be a nurse present.

Around 2007, after it happened, I hadn’t been intimate with my husband yet. So I asked my—After our last child, we weren’t intimate, we weren’t at the point of having sexual contact yet.

So to have to go from—from giving birth to our child, to telling my husband that I didn’t violate our marriage vows, I didn’t violate our marriage vows, but another man has touched me, you have to—that’s hard.

So you have to work through it. You have to deal with it. You have to know that—I mean, it’s hard. I have to tell myself I didn’t do anything wrong.

You do question yourself. Why didn’t I push harder for a nurse? What was I thinking? You know, why would I let this happen to me? But to know, realistically, I did nothing wrong.

He's an authoritative figure. It makes you look at all doctors differently, male or female. And it makes you—it makes you lose hope that someone in that profession, someone so highly esteemed, someone who you tell problems and issues to, that they can violate you in that way and in that manner and think nothing of it. It is life changing.

You have to deal with it. You have to learn how to become intimate with your husband again, knowing that another person has touched you.

(Tr. at 427-419)

136. Patient 7 testified that she had observed at her last visit that Dr. Beathler had had a small tray that had Q-tips and a speculum on it. Patient 7 believes that the speculum that she saw on the tray in the exam room had been metallic and silver. (Tr. at 429)
137. The progress note for Patient 7's final visit with Dr. Beathler on July 16, 2007, does not indicate that a pelvic examination had been performed. However, Patient 7 believes that it is not possible that the exam she complained of had actually occurred during her first visit in 2004—the only visit that Dr. Beathler documented a pelvic examination—because it had occurred the last time she saw Dr. Beathler. Patient 7 further testified that she had had her three children with her at that visit, including a child born in 2007. (Tr. at 431-432; St. Ex. 11)

Testimony of Dr. Beathler

138. Dr. Beathler testified that Patient 7 had seen him on July 16, 2007, for a complaint of foot fungus and questions about breastfeeding. The progress note indicates that Patient 7's liver function tests were normal and that Patient 7 had seen her gynecologist one month earlier. (Tr. at 84-85; St. Ex. 11 at 9-13)

Dr. Beathler further testified that his medical records do not indicate that he had performed a pelvic examination on Patient 7 in July 2007, only that he had performed one in 2004. When asked if the 2007 exam had occurred, Dr. Beathler testified: "No. It's not in the record, so it's highly unlikely, as I document in the room and immediately thereafter. I think she's mistaking which date she had the exam." (Tr. at 85-86, 568-569; St. Ex. 11 at 9-13)

139. Dr. Beathler testified that he would not perform a breast examination on a breastfeeding patient because it would be painful and would express milk. (Tr. at 85-86, 569-570)
140. Dr. Beathler disputed Patient 7's testimony that she had seen a tray in the examination room when she had her pelvic examination. Dr. Beathler testified: "I don't use the tray. I have a drawer below [the end of the exam table] where the female's genitalia are, with lubricant, brushes, bottles, and I just pull that drawer open. And we try to keep the speculum warm, like

a warming drawer.” Dr. Beathler further testified that he has used plastic specula for as long as he can remember, and not metal ones as Patient 7 had testified. (Tr. at 571-572)

Dr. Beathler further disputed Patient 7’s testimony that she had called COPC twice to complain about the exam and was told there was nothing they could do. When asked if that reaction was consistent with his understanding of how COPC deals with such calls, Dr. Beathler replied:

No, it’s the exact opposite. COPC is a 500-employee, hundred-million dollar a year company, with a very structured CEO, CFO, medical director, compliance office, salaried attorneys, accountants. There’s no reason to believe that that is what happened.

It contradicts what the other patients said, how they were called back, sent letters, and directed elsewhere. She’s the only one that said that.

(Tr. at 569)

Finally, Dr. Beathler testified with respect to Patient 7: “I don’t know if she’s misinterpreting the date [of the pelvic examination], or she’s lying to make the story fit, as many things in her story did not make sense.” (Tr. at 591)

Patient 8

141. Dr. Beathler provided testimony concerning Patient 8 during which he denied having performed a pelvic examination on Patient 8 at any time. No further evidence was presented by the State concerning Patient 8. (Tr. at 88-91; St. Ex. 12)

Board Investigation; Patient Reports to COPC

Testimony of Dr. Beathler

142. Dr. Beathler testified that in November 2006 he had been contacted by Board Investigator Jan Sussex who indicated that a patient, identified in this matter as Patient 1, had complained about a pelvic examination Dr. Beathler had performed. Dr. Beathler further testified that Investigator Sussex had spoken with him on two occasions, and on one of those occasions she asked him about his policy with respect to chaperones during breast and pelvic examinations. Dr. Beathler testified that “at that time our policy was the patient could have a chaperone if they requested. And my experience, one in 30 patients would request a chaperone. It was rare.” (Tr. at 28-29, 583-584)
143. Dr. Beathler testified that, at first, after meeting with Investigator Sussex, he told his nurse to make sure she offered a chaperone to patients and determine whether the patient wanted one. Subsequently, he made chaperones mandatory. Later, within the last two and one-half years, he started doing pelvic examinations only in emergencies, such as if the patient would not go to an ER or a gynecologist. Dr. Beathler stated that, within the last

two and one-half years, he had performed three pelvic examinations. Dr. Beathler testified, "I felt it to be malpractice to send them out of the office without an exam." However, Dr. Beathler testified that, after he received a notice of opportunity for hearing from the Board, he decided to discontinue performing pelvic examinations altogether. (Tr. at 30-32)

144. Dr. Beathler testified that, after meeting with Investigator Sussex, he had talked to one of his colleagues. Dr. Beathler further testified:

I had talked to Dr. LaHue, after the first visit by [Investigator Sussex], about what his take was on doing Paps and pelvics in your office. You know, I told him, you know, I had a problem with a patient, but he didn't know I talked to [Investigator Sussex].

* * *

I was embarrassed. And he told me—he told me, "You don't want to do Paps and pelvics so you don't have to deal with all the drama." And he further said, "Just write 'referred to GYN' to cover yourself."

And I thought—I thought wow, after all the training, that primary care doctors are the gatekeepers to keep costs down, and they had trained us to do Paps and pelvics and prostate exams and flexible sigmoidoscopy, and here he is saying don't do them, it's not worth it.

And I thought of all those patients you refer to GYN, how many actually go, you know? Less than half. And, you know, some of them are going to have cancer that don't go, ovarian cancer.

They come in with right lower quadrant pain, they don't go to the GYN, and it spreads. I thought that's easily preventable if you do an exam.

And he—he said, "Oh, don't worry, you're covered." I thought yeah, I'm covered, but the patient's dead, you know. It's not good medicine.

(Tr. at 541-542)

145. Dr. Beathler testified that, subsequently, in February 2007, he had met with Investigator Sussex a second time and was made aware of Patient 2's complaint. (Tr. at 541)

Testimony of Dr. Wulf

146. John W. Wulf, M.D., testified that he has been a licensed physician in Ohio since 1986. Dr. Wulf is the Corporate Medical Director of COPC, a duty that occupies about 60 percent of his time. The other 40 percent of his time is spent practicing medicine. Dr. Wulf

testified that he is familiar with Dr. Beathler, and that he has known him since Dr. Beathler trained at Riverside Hospital. (Tr. at 458-459)

147. Dr. Wulf, testified that, as Corporate Medical Director, he had learned of a complaint about Dr. Beathler that had been made by Patient 3's mother following Patient 3's last visit with Dr. Beathler on June 13, 2007. (Tr. at 460; see, also, Tr. at 309, 331-332) Dr. Wulf further testified: "The initial complaint came via the office. A patient's mother was concerned about the frequency of pelvic exams—pelvic exams that her daughter had received over a period of time." Moreover, Dr. Wulf testified that he had called Patient 3 the day he received the complaint and met with Patient 3 and her mother that afternoon. (Tr. at 460-462) Furthermore, Dr. Wulf testified:

That afternoon I went to Dr. Beathler's office and met with John and just let him know that we had had a complaint, and that I had interviewed a patient who had concerns about her exams, and asked John if he had been doing either pelvic or breast exams without chaperones, and he reported that he did.

And I then asked him to not perform any pelvic or breast exams going forward without a chaperone, while I investigated this further. And I just let him know there had been a complaint and I was going to do further investigation.

* * *

[Dr. Beathler responded] that he typically did a very thorough exam, and he referenced doing thorough exams of inguinal lymph nodes, and that he would agree not to do un-chaperoned exams going forward.

(Tr. at 462-463)

Dr. Wulf testified that his meetings with Patient 3 and her mother, and with Dr. Beathler, occurred on June 28, 2007. (Tr. at 463)

148. Dr. Wulf testified that, the following day, he contacted the office manager at Dr. Beathler's office and inquired whether any complaints or concerns were received with respect to Dr. Beathler over the last couple of years, and was given three names. During the next two weeks, Dr. Wulf made contact with each of the patients who had voiced concerns. (Tr. at 462-464)

Dr. Wulf testified that Patient 6 was among the patients he spoke to who had voiced concerns about Dr. Beathler. Dr. Wulf recalled that Patient 6 had indicated that she had been in counseling concerning the incident. Dr. Wulf further testified that, after speaking to Patient 3, Patient 6, and two other patients, he found their stories to be consistent. Dr. Wulf then approached COPC's executive committee with the information, and the decision was made to suspend Dr. Beathler from the practice pending further action by the board of directors. Dr. Wulf then met with Dr. Beathler and his partners to apprise them of

the suspension. Finally, Dr. Wulf testified that, in late July or early August 2007, Dr. Beathler resigned from the practice. (Tr. at 465-467)

149. Dr. Wulf testified that, after suspending Dr. Beathler, he had contacted the Medical Board and later met with Investigator Sussex. (Tr. at 468)
150. Dr. Wulf testified that, prior to receiving the complaint from Patient 3, he had never had any problems concerning Dr. Beathler. Dr. Wulf further testified that he had been surprised by Patient 3's complaint. (Tr. at 464)

Additional Information

151. Dr. Beathler testified that he has never failed to honor a request for a chaperone, although his patients rarely asked for one. However, Dr. Beathler further testified that "[i]t's hard to get a chaperone" because everyone in his office was so busy. (Tr. at 557-558; see, also, Tr. at 573, 599)

Dr. Beathler acknowledged that all of the patients who testified stated that there was no chaperone in the room, "[b]ut that that doesn't mean it's true." Dr. Beathler further acknowledged that there is no documentation in the medical record to indicate that chaperones had been present; however, Dr. Beathler testified that, at that time, he did not document the presence of chaperones. (Tr. at 584)

152. Dr. Beathler testified:

I came down here [to the hearing] thinking that the patients would be glad to be here and that they wanted to get me in trouble, that they were after me. And that's not what I found.

I found that they were—that they were reluctant to be here, that they did not hate me, for the most part, and that their stories were pretty credible, other than Patient No. 3 and Patient No. 5—I'm sorry, 3 and 7.

They were pretty credible stories for the most part, and I heard stuff that I didn't think I would ever hear.

* * *

No patient had ever told me that they were stimulated. They never made any sound like they were stimulated. They never made a movement, other than a jolt which could be perceived as pain. So I just—I couldn't believe what I heard, if it's true. I'm assuming it's true.

If it's true, I was—I was taken back when I left here yesterday. And I was pulling up to the pay the guy, I started crying. And I was embarrassed as I wiped my face, and I thought I must be doing something wrong.

My technique, my—I must be thorough to the point of fault, and I need to change the way I do things. I need to be gentler, move slower, quicker exams. Have a chaperone. And maybe retrain some of my technique.

I think I'm thorough to a fault, and I've been that way my whole life. When I mow the yard, I edge every border, I trim every tree, I round every tree, I do the driveway. I edge the driveway.

And I do that when I shovel snow. I do all the sidewalks. I salt everywhere. And it's my German perfectionist father, who is now deceased, who died right before all this happened back in '06.

(Tr. at 520-523)

153. Dr. Beathler testified that, prior to receiving the March 2010 notice of opportunity for hearing, he had been aware that some patients had complained. Dr. Beathler testified that he had been aware of Patient 3's complaint as a result of his discussion with Dr. Wulf. Further, Dr. Beathler testified that he had discussed Patients 1 through 5 with Investigator Sussex. However, Dr. Beathler testified that Investigator Sussex had not given him any details concerning the patient's complaints: "There was more a questioning [of] me, not telling me what" the patients complained of. Moreover, Dr. Beathler testified that he lacked any detailed knowledge concerning what the patients testified about: "I made guesses, you know. * * * I didn't think I would hear what I heard." (Tr. at 528-529)
154. Dr. Beathler testified that he found Patient 1 to be sincere in her testimony that she had felt that she was being constantly stimulated during the pelvic examination. Dr. Beathler further testified that that surprised him because Patient 1 had not said anything or made any sound or movement that had suggested that to him at the time. (Tr. at 535-536)
155. Dr. Beathler testified that he was especially affected by Patient 4's testimony. Dr. Beathler believes that she was sincere in her testimony. He further testified:

When she testified, I was blown away. I don't think she wanted to be here. She was shaking. And I don't think she hated me. She just wanted to get her story out.

That's the feeling I got, and that's the opposite of what I came down here thinking. I thought they were out to get me, you know.

(Tr. at 524)

156. Dr. Beathler testified that he was not trying to stimulate Patient 4 or the other patients.
(Tr. at 525-526)

157. When asked what in his technique might cause a patient to feel like she is being stimulated, Dr. Beathler replied:

I check everything, like the book says. It says, you know, find the ovary.
And I look until I find the ovary, because I was taught if you don't find the
ovary, you can't truly, in your mind, say they don't have a mass.

Now, from my experience, most physicians look for a mass, you know, and if
they don't find the ovary, so what, so be it.

And I think—I personally think that's why there's 300,000 deaths a year from
ovarian cancer, because they are not taking the time to look. And I check
every—every area in there. I'm very thorough.

(Tr. at 526-527)

158. Dr. Beathler testified that, after listening to the patients' testimony, he believes that he has
been doing some things wrong:

I think I'm thorough to a fault, is the feedback I've gotten. I think I need to
communicate better, have a chaperone regardless of whether the patient wants
one or not, be more gentle, and explain things as I go, better.

I'm not much of a talker, I'm a thinker. My mind is always thinking; thus,
internal medicine. That's what it is.

(Tr. at 582-583)

159. When asked if there was anything else that he wanted the Board to consider with respect to
his case, Dr. Beathler replied:

Yes, there is. I failed to mention two public stories. I was at a social event in
Upper Arlington, where I lived at the time, and—at a fund raiser, drinking
wine, and a patient came up to me in a group of people and said, "Hi, Doctor."
And then he told his friend, he said, "I came to see this doctor and had a sinus
infection, and he did a prostate exam on me." And he said, "Thank you for
saving my life."

He was 39, and the age for a prostate exam was 40, is the usual. And he
ended up having prostate cancer, and went up to Detroit at the Ford Medical
Center and had a robot take it out. He was one of the first, when they first had
robotic prostatectomy.

And he said, "I'm alive today because of you." * * *

* * *

And he said, "If you weren't thorough, I wouldn't be here." And [I did the prostate examination because] I thought this guy won't be back. He's a tough, "I own my own company guy", and I could tell he wasn't coming back for a physical, so I did his prostate check a year early, and every time I see him he looks at me with gratefulness.

Another story is a homosexual male who came up to me and said, "We should have kissed before you checked my prostate, as thorough as you checked it." And I was kind of offended by his statement, embarrassed.

But it made a point. It made a point that I am thorough on male and females.
* * *

(Tr. at 580-582)

RELEVANT RULES

1. Rule 4731-26-02(A), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010, stated:

Sexual behavior between a licensee and a patient is never diagnostic or therapeutic.

(A) A licensee shall not engage in sexual misconduct with a patient, key third party, or chaperone.

2. Rule 4731-26-01(G), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010, defined "sexual misconduct," in relevant part, as follows:

(G) "Sexual misconduct" means behavior that exploits the physician-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes the following:

* * *

(2) Sexual contact by a licensee, including but not limited to, the following:

- (a) Touching a breast or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate examination or treatment * * * [.]

CREDIBILITY OF WITNESSES

Patients 1 through 6

Patients 1, 2, and 4 through 6

There are significant similarities in the accounts given by Patients 1, 2, 4, 5, and 6. (Patient 3's account of her experiences with Dr. Beathler differed from the other witnesses inasmuch as hers centered on his inguinal lymph node examinations rather than pelvic examinations.)

- Patient 1 described Dr. Beathler using an in-and-out motion with his hand while maintaining contact with her clitoris during a pelvic examination. She further described being sexually stimulated by the examination. She testified that she has had approximately 20 pelvic examinations during her life and that this one was different from any other pelvic examination she had had. Dr. Beathler did not offer a chaperone nor did Patient 1 request one. Patient 1 reported the incident to her gynecologist the day it happened, and her gynecologist's records confirm that.
- Patient 2 described Dr. Beathler rapidly and forcefully moving his finger in and out of her vagina during a pelvic examination, causing great pain. Patient 2 stated that she has had approximately 35 pelvic examinations during her life and that this was unlike any other that she has experienced. Dr. Beathler did not offer Patient 2 a chaperone nor was one present during the examination.
- Patient 4 described Dr. Beathler moving two fingers straight in and out of her vagina very quickly during a pelvic examination. She further described becoming sexually stimulated during the examination, causing her to move away from Dr. Beathler and get off the table to stop the exam. Patient 4 testified that she has had numerous pelvic examinations during her life and has never experienced that sensation during any other pelvic exam. Dr. Beathler did not offer a chaperone nor was one present during the exam.
- Patient 5 testified that she had felt uncomfortable during more than one pelvic examination with Dr. Beathler because of the way he moved his fingers. Patient 5 described her last pelvic examination with Dr. Beathler stating that he had inserted his fingers into her vagina and moved them in and out for a long period of time. She further described Dr. Beathler's hand movement during the last examination as similar to the movement a sexual partner would make. Moreover, to get Dr. Beathler to stop, Patient 5 told him that she had to urinate and, when that did not stop him, she sat up and grabbed his hand. Furthermore, Patient 5 testified that she has had at least 30 pelvic examinations during her life and that she has never had a pelvic examination like that performed by any other physician. Dr. Beathler did not offer a

chaperone nor was one present during any of her pelvic examinations with Dr. Beathler.

- Patient 6 described Dr. Beathler poking his finger into her vagina several times until she sensed something was wrong and she moved off the exam table to stop the exam. Patient 6 testified that she had had at least 18 pelvic examinations during her life and none were like that one, and that Dr. Beathler's pelvic examination seemed inappropriate and did not feel like a medical examination. Moreover, Patient 6 testified that she had asked Dr. Beathler if a chaperone should be present and that Dr. Beathler replied that it was unnecessary.

Although details differ, each of these witnesses described Dr. Beathler using an in and out motion with his fingers. Further, each witness testified that she had had previous pelvic examinations and that the pelvic examinations in question were different from any other pelvic examination she had received. Additionally, some of the witnesses described being sexually stimulated during their examinations. Moreover, each testified that Dr. Beathler did not offer a chaperone and that no third party was in the room. Finally, Dr. Beathler himself acknowledged that these five patients were believable witnesses.

Patient 3

During Patient 3's last three visits to Dr. Beathler in January, April, and June 2007, Dr. Beathler performed inguinal lymph node examinations during which he palpated her external genitalia. During each of the inguinal lymph node examinations, Patient 3 was required to lower her pants. Patient 3 testified that she never wears underwear, which meant that her genitalia had been exposed during each of these exams. Dr. Beathler neither offered nor provided chaperones during these visits. Notably, Dr. Beathler was Patient 3's first physician after she became too old to see her pediatrician. She had accepted the examinations at first because she surmised that such examinations on adults might be normal. After the third such occurrence, however, Patient 3 told her parents about Dr. Beathler's examinations, and the matter was reported promptly to Dr. Beathler's employer.

Further, in November 2006, Dr. Beathler met with a Board investigator concerning his treatment of Patient 1. They discussed Dr. Beathler's policy concerning chaperones. Therefore, Dr. Beathler had been aware at the time of Patient 3's inguinal lymph node examinations that he was being investigated by the Board for alleged sexual misconduct issues. He nevertheless proceeded with the examinations, without chaperones.

Credibility Finding Concerning Patients 1 through 6

The Hearing Examiner found Patients 1 through 6 to be very credible witnesses. The demeanor and tone of voice of each of these witnesses was sincere and appropriate, and their testimony was powerful and compelling. Further, each witness' testimony was internally consistent, and consistent with summaries of information prepared by Board staff based upon information that each witness had provided in the past. Moreover, each of these witnesses answered questions unequivocally and without hesitation during both direct

and cross-examination. Accordingly, the Hearing Examiner finds the testimony of Patients 1 through 6 to be wholly credible, and believes that each of them testified truthfully concerning Dr. Beathler's conduct.

Patient 7

Patient 7 is addressed separately from the other patients because the allegations that concern her were set forth in a notice of opportunity for hearing issued several months following the original notice. It is noted that she had an opportunity to see news reports concerning the existing allegations and to review the earlier notice letter, although the evidence in the record does not indicate whether that occurred.

There are some issues concerning Patient 7's account of the events that caused the Hearing Examiner to question the veracity of her testimony:

- She testified that she saw an instrument tray and metal speculum in the exam room. If Dr. Beathler's testimony is to be believed, he did not use an instrument tray for pelvic exams and he used plastic speculums. However, the incident occurred nearly four years before Patient 7 gave her testimony. It is possible that she confused this minor detail with other pelvic examinations she has had. By itself, this issue is insignificant.
- Patient 7's testimony that she heard Dr. Beathler moaning during the pelvic examination is a departure from the accounts given by the other witnesses.
- Patient 7 testified that Dr. Beathler had performed a breast examination during a time when she was a nursing mother and had reported no specific complaint about her breasts.
- Patient 7 testified that she had seen Dr. Beathler on July 16, 2007, in part as a follow-up to an earlier, 2006 visit to treat an infected toe. However, Dr. Beathler's medical record for Patient 7 does not document a previous visit regarding an infected toe.
- Dr. Beathler did not document performing a pelvic examination on July 16, 2007. This by itself proves nothing because that was totally within Dr. Beathler's control, and he could well have chosen not to document an inappropriate exam. Assuming that Patient 7 is to be believed, the likelihood that Dr. Beathler *would* choose not to document the examination is increased by the next bulleted issue.
- The July 16, 2007, exam occurred a little over two weeks after Dr. Beathler's June 28, 2007, meeting with Dr. Wulf. Therefore, in order to believe Patient 7, one must believe that Dr. Beathler had taken the risk of performing an unchaperoned and inappropriate pelvic examination two weeks after being called into Dr. Wulf's office and being warned not to perform pelvic examinations without a chaperone. However, the Hearing Examiner is persuaded that Dr. Beathler took a similar risk when he

examined Patient 3 on three occasions in 2007 after his November 2006 interview by a Board Investigator.

Patient 7 appeared to be a very credible witness. Like the other patients, her demeanor and the tone of her voice were sincere and appropriate. Moreover, she answered all questions unequivocally and without hesitation during both direct and cross examination. She offered compelling testimony that she had not yet resumed intimacy with her husband at the time of the incident, and she expressed in a very earnest and convincing manner the misplaced guilt she feels for having allowed such an incident happen to her. She became emotional during this testimony and her emotions appeared to be genuine. Additionally, the medical records indicate that the July 16, 2007, visit had been Patient 7's final visit to Dr. Beathler.

In the end, the Hearing Examiner cannot ignore the power of Patient 7's testimony and the simple fact that he believes her. Accordingly, the Hearing Examiner finds that Patient 7 is a credible witness.

Dr. Beathler

For the reasons that follow, the Hearing Examiner finds that Dr. Beathler is not a credible witness. First, Dr. Beathler made an unpersuasive assertion that the patients misconstrued his legitimate pelvic examinations because he is simply too thorough. He, in essence, asks the finder of fact to believe that he gave these women such thorough pelvic examinations that they simply did not understand what was going on. This is not credible. It is difficult to believe that Dr. Beathler is substantially more thorough when performing pelvic examinations than the other physicians who have examined these women during their lives, which includes specialists in gynecology. Moreover, the Hearing Examiner believes that these adult women could accurately discern that Dr. Beathler had tried to stimulate them sexually.

Second, in his testimony concerning Patient 1, Dr. Beathler had indicated that he had performed a pelvic examination on her due to his concern that her bilateral knee pain could have been the result of gonococcal arthritis, an extremely rare condition that would likely affect only one knee. This testimony is not credible.

Third, during his testimony concerning Patient 3, Dr. Beathler expressed surprise that, during the last inguinal lymph node examination out of the three he performed, he discovered that Patient 3 was not wearing underwear. However, Patient 3 testified that she *never* wears underwear, and that she had not been wearing underwear at any of her prior examinations. Accordingly, Dr. Beathler's testimony is not credible. Also, Dr. Beathler testified that Patient 3 had asked him to check her lymph nodes because of concern about a family history of cancer. However, this basis for checking her lymph nodes is not documented in the medical record and is not credible.

Fourth, the Hearing Examiner was not persuaded by Dr. Beathler's testimony on direct examination that he came to realize during the patients' testimony that the patients were

telling the truth, and that he must have been doing something wrong, such as being too thorough, to have made them feel that his exams had been inappropriate. He then related a story about how he had cried when he left the hearing the day before. However, as counsel for the State pointed out during closing arguments,¹⁸ Dr. Beathler had not shown in his demeanor any sympathy for those patients during their testimony, which is consistent with the Hearing Examiner's observation. Furthermore, although Dr. Beathler became visibly emotional when he testified about his supposed epiphany, his *words* included no expression of remorse or sympathy for the patients he had just realized that he had hurt. Instead, he testified how thorough he is in everything he does, which includes caring for his lawn and shoveling snow. Thus, Dr. Beathler's assertion that he had been moved by the patients' testimony rings hollow and is not credible.

FINDINGS OF FACT

Case No. 10-CRF-016

1. During the course of his practice, John Edward Beathler, Jr., M.D., undertook the care of Patients 1 through 6, as identified on a Confidential Patient Key.
2. On August 31, 2006, Dr. Beathler conducted an inappropriate pelvic examination on Patient 1, during which he rubbed and stimulated the patient's clitoris.
3. On October 5, 2006, Dr. Beathler conducted an inappropriate pelvic examination on Patient 2, during which he rapidly thrust a finger in and out of her vagina.
4. On January 30, April 17, and June 13, 2007, Dr. Beathler conducted inappropriate physical examinations on Patient 3 during which he palpated the her labia majora while purporting to examine the lymph nodes in the inguinal region. Further, Dr. Beathler failed to document in the patient record for Patient 3 the fact that he had palpated the patient's labia majora during his examinations on January 30, April 17, and June 13, 2007.

Further, when Dr. Beathler was interviewed by a Board investigator in November 2006 or January 2007, he stated that it was his protocol to have a chaperone or third party present in the examination room during a pelvic or breast examination. However, during a November 20, 2007, Board investigatory deposition, Dr. Beathler acknowledged under oath that there was no chaperone in the room on June 13, 2007. Moreover, the evidence supports a finding that Dr. Beathler failed to offer Patient 3 the opportunity to have a chaperone in the room during his examinations of her inguinal lymph nodes on January 30, April 17, and June 13, 2007.

¹⁸ Tr. at 613

5. On December 15, 2004, Dr. Beathler conducted an inappropriate pelvic examination on Patient 4, during which he rapidly moved his fingers in and out of her vagina until she moved away from Dr. Beathler to stop the examination.
6. Dr. Beathler undertook the care of Patient 5 from in or around 2002 until 2007. During that time period, he performed pelvic examinations on Patient 5. On at least one such examination, Dr. Beathler inappropriately moved his fingers in and out of her vagina until she sat up and grabbed his hand to stop the examination.
7. During one of Patient 6's office visits in 2003, Dr. Beathler conducted an inappropriate pelvic examination during which he poked a finger into her vagina several times until she moved away from Dr. Beathler to stop the examination.

Further, prior to that examination, when Patient 6 asked Dr. Beathler if someone else needed to come into the room during the aforementioned pelvic examination, Dr. Beathler responded that it was not necessary.

Case No. 10-CRF-129

8. From 2004 through 2007, Dr. Beathler undertook the care of Patient 7, as identified on a Confidential Patient Key.

On July 16, 2007, Patient 7 presented to Dr. Beathler's office for an appointment. During that visit, Dr. Beathler engaged in behavior that constituted "sexual misconduct" as that term is defined in Rule 4731-26-01(G), Ohio Administrative Code. Such sexual misconduct included stimulating the patient while he was purportedly conducting a pelvic examination.

In addition, although Patient 7 specifically asked for a chaperone, Dr. Beathler told Patient 7 that a chaperone was not available and proceeded with the examination without a chaperone being present.

9. The State presented no evidence with respect to the allegations concerning Patient 8.

CONCLUSIONS OF LAW

Case No. 10-CRF-016

1. The acts, conduct, and/or omissions of John Edward Beathler, Jr., M.D., as described in Findings of Fact 1 through 7, 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.

2. The acts, conduct, and/or omissions of Dr. Beathler as described in Findings of Fact 1 through 7, above, individually and/or collectively, constitute “[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association’s Principles of Medical Ethics.
3. The acts, conduct, and/or omissions of Dr. Beathler as described in Finding of Fact 4, above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code.

Case No. 10-CRF-129

4. The acts, conduct, and/or omissions of Dr. Beathler as described in Finding of Fact 8, above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code.
5. The evidence is insufficient to support a finding that Dr. Beathler’s acts, conduct, and/or omissions as described in Finding of Fact 9, above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code, as in effect from November 30, 2006, through November 29, 2010.

RATIONALE FOR THE PROPOSED ORDER

The evidence overwhelmingly establishes that Dr. Beathler sexually abused seven of his patients. He demonstrated no remorse or sympathy even when he acknowledged that he had (supposedly inadvertently) caused them harm. Dr. Beathler’s conduct was predatory. For the sake of public safety, he should not be allowed to continue practicing medicine in Ohio.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of John Edward Beathler, Jr., 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 the notification of approval by the Board.



R. Gregory Porter
Hearing Examiner



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 14, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Suppan announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: John Edward Beathler, Jr., M.D.; Francis Emile Dumont, M.D.; Jerome David Homish, D.O.; Venkat Krishna Mothkur, M.D.; Jessica Neimeister, L.M.T.; William Francis Pomputius, Jr., M.D.; Corey Douglas Schneeman, P.A., and Amjad Shidyak, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further

participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert and Dr. Amato served as Supervising Members. However, the cases of Corey Douglas Schneeman, P.A., and Amjad Shidyak, M.D., are non-disciplinary in nature and only concern the respondents' credentials for licensure. Therefore, Dr. Talmage and Dr. Amato may vote in those matters

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....
JOHN EDWARD BEATHLER, JR., M.D., Case Nos. 10-CRF-016 and 10-CRF-129

.....
Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the consolidated matters of John Edward Beathler, Jr., M.D. Mr. Hairston seconded the motion.

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Amato	- abstain
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

The motion to approve carried.



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

October 13, 2010

Case number: 10-CRF-129

John Edward Beathler, Jr., M.D.
6350 Frantz Road, Suite E
Dublin, OH 43017

Dear Doctor Beathler:

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

- (1) On or about March 10, 2010, the Board issued to you a Notice of Opportunity for Hearing related to Patients 1 through 6, and the hearing is currently pending.
- (2) From in or around 2007 to 2010, you also undertook the care of Patients 7 and 8, as identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure).
 - (a) In or around 2007, Patient 7 presented to your office for an appointment. While in the exam room with Patient 7, you engaged in behavior that constituted "sexual misconduct" as that term is defined in Rule 4731-26-01(G), Ohio Administrative Code. Such sexual misconduct included stimulating the patient while you were purportedly conducting a pelvic examination.

In addition, while Patient 7 specifically asked for a chaperone/third party, you proceeded with the examination without a chaperone/third party being present as you told Patient 7 that no one was available.
 - (b) In or around 2009 and/or 2010, Patient 8 presented to your office for an appointment. While in the exam room with Patient 8, you engaged in behavior that constituted "sexual misconduct" as that term is defined in Rule

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4731-26-01(G), Ohio Administrative Code. Such sexual misconduct included touching the patient's clitoris while you were purportedly examining her in connection with a possible urinary tract infection.

Your acts, conduct, and/or omissions as alleged in paragraphs (2)(a) and 2(b) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code.

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

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

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

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

John Edward Beathler, Jr., M.D.

Page 3

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage MD". The signature is fluid and cursive, with the "MD" clearly visible at the end.

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3050 4422
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
Dinsmore & Shohl LLP
191 W. Nationwide Blvd.
Columbus, OH 43215

CERTIFIED MAIL #91 7108 2133 3938 3050 4415
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
JOHN EDWARD
BEATHLER, JR., M.D.**

10-CRF-129

**OCTOBER 13, 2010, NOTICE OF
OPPORTUNITY FOR
HEARING PATIENT KEY**

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

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 10, 2010

Case number: 10-CRF- 016

John Edward Beathler, Jr., M.D.
6350 Frantz Road, Suite E
Dublin, Ohio 43017

Dear Doctor Beathler:

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

- (1) From in or around 2002 to 2007, you undertook the care of Patients 1-6, as identified in the attached Patient Key (Key is confidential and shall be withheld from public disclosure).
- (2) In or around August 2006, you conducted an inappropriate pelvic examination on Patient 1, during which you rubbed and stimulated the patient's clitoris.
- (3) In or around October 2006, you conducted an inappropriate pelvic examination on Patient 2, during which you rapidly thrust a finger in and out of her vagina.
- (4) In or around January 2007 and June 2007, you conducted inappropriate physical examinations on Patient 3, during which you made contact with the patient's labia majora while purporting to examine the lymph nodes in the inguinal region. You also conducted an inappropriate physical examination on Patient 3 in or around April 2007, during which you externally palpated her inner thighs and labia majora after the patient had deferred a gynecological exam. Further, you failed to document in the patient record for Patient 3 the fact that you palpated the patient's labia majora during your examinations of her in January 2007, April 2007 and June 2007.

Further, when you were interviewed by a Board investigator in or around November 2006, you stated that it was your protocol to generally have a chaperone or third party present in the examination room during a pelvic or intimate examination. However, you stated under oath in or around November 2007 that during your intimate examination of Patient 3 on or about June 13, 2007, there was no chaperone/third party in the examination room and that you did not offer the patient the opportunity to have a chaperone/third party in the

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room during that examination. In addition, you failed to offer Patient 3 the opportunity to have a chaperone/third party in the room during your intimate examinations of her on or about January 30, 2007, and on or about April 17, 2007.

- (5) In or around late 2004 or early 2005, you conducted an inappropriate pelvic examination on Patient 4, during which you rapidly moved your fingers in and out of her vagina for a period of time that lasted several seconds.
- (6) You provided treatment to Patient 5 from in or around 2002 until 2007. During the aforementioned time period, you performed pelvic examinations on Patient 5 and at least one such examination was inappropriate, during which you moved your fingers in her vagina with an "in and out" motion.
- (7) In or around 2003, you conducted an inappropriate pelvic examination on Patient 6, during which you moved your fingers in her vagina with an "in and out" motion, and it lasted for at least thirty seconds.

Further, when Patient 6 asked you if someone else needed to come into the room during the aforementioned pelvic examination, you responded in the negative.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (7) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) through (7) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02(A), Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must

be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Handwritten signature of Lance A. Talmage, M.D. in black ink, with the initials "L.A.T." and "M.D." clearly visible.

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3069 5160
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.
Graff & Associates, LPA
604 East Rich Street
Columbus, Ohio 43215

CERTIFIED MAIL #91 7108 2133 3936 3069 5153
RETURN RECEIPT REQUESTED