



# State Medical Board of Ohio

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med.ohio.gov

October 14, 2015

Mark E. Hostettler, M.D.  
1401 South Arch Avenue  
Alliance, OH 44601

RE: Case No. 15-CRF-011

Dear Doctor Hostettler:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Ronda Shamansky, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 14, 2015, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, and adopting an Amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Any such appeal must be filed in accordance with all requirements specified in Section 119.12, Ohio Revised Code, and must be filed with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within (15) days after the date of mailing of this notice.

THE STATE MEDICAL BOARD OF OHIO



Kim G. Rothermel, M.D. *KGR*  
Secretary

KGR:jam  
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7034 8383 9760  
RETURN RECEIPT REQUESTED

Cc: J. Ryan Williams and Daniel Todd Baumgartner, Esqs.  
CERTIFIED MAIL NO. 91 7199 9991 7034 8383 9777  
RETURN RECEIPT REQUESTED

*Mailed 10-28-15*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Ronda Shamansky, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 14, 2015, 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, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mark E. Hostettler, M.D., Case No. 15-CRF-011, 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.

  
Kim G. Rothermel, M.D. 1A96.  
Secretary

(SEAL)

October 14, 2015  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 15-CRF-11

MARK E. HOSTETTLER, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 14, 2015.

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

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Mark E. Hostettler, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 180 days. During the thirty-day interim, Dr. Hostettler shall not undertake the care of any patient not already under his care.
- B. **INTERIM MONITORING:** During the period that Dr. Hostettler's certificate to practice medicine and surgery is suspended, Dr. Hostettler shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Hostettler shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Declarations of Compliance:** Dr. Hostettler shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Hostettler shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Required Reporting of Change of Address:** Dr. Hostettler shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Hostettler's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Hostettler shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Personal/Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Hostettler shall submit acceptable documentation of successful completion of a course or course dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

The Board may consider the course "Medical Ethics, Boundaries and Professionalism," presented by Case Western Reserve University School of Medicine and University Hospitals Case Medical Center, on September 10 and 11, 2015, that Dr. Hostettler registered to take as evidence of compliance with this reinstatement condition.

3. **Course(s) Concerning Physician/Patient Boundaries:** At the time he submits his application for reinstatement or restoration, Dr. Hostettler shall submit acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact

number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Hostettler submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he learned to his practice of medicine in the future.

4. **Additional Evidence of Fitness to Resume Practice:** In the event that Dr. Hostettler has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of the fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Hostettler's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Hostettler shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
  2. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Hostettler is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Hostettler's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Hostettler violates the terms of this Order in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Hostettler shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Hostettler shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Hostettler receives from the Board written notification of the successful completion of his probation.

In the event that Dr. Hostettler provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Hostettler receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Hostettler shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Hostettler shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

This requirement shall continue until Dr. Hostettler receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Hostettler shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated

report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

*Kim G. Rothermel, M.D.*

Kim G. Rothermel, M.D. *K.G.R.*  
Secretary

(SEAL)

October 14, 2015

Date

SEP - 9 2015

STATE MEDICAL BOARD  
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 15-CRF-011

Mark E. Hostettler, M.D.,

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Hearing Examiner Shamansky

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated January 14, 2015 ("Notice"), the State Medical Board of Ohio ("Board") notified Mark Hostettler, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio.

The Board's proposed action was based on an allegation that, from approximately 2011 through July 2013, Dr. Hostettler engaged in sexual misconduct with Patient 1 on multiple occasions despite an ongoing patient-physician relationship.

The Board further alleged that Dr. Hostettler's acts, conduct, and/or omissions, , individually and/or collectively, constituted "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 Ohio Revised Code Section ("R.C.") 4731.22(B)(20), to wit: Ohio Administrative Code ("Rule") 4731-26-02. Pursuant to Rule 4731-26-03(A), a violation of Rule 4731-26-02 also violates R.C. 4731.22(B)(6), which is "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."

The Board advised Dr. Hostettler of his right to request a hearing, and he requested one through his counsel's letter dated February 9, 2015. (State's Exhibits ("St. Exs.") 1a, 1b, 1c).

Appearances

Mike DeWine, Attorney General, and Kyle Wilcox, Assistant Attorney General, on behalf of the State of Ohio.

J. Ryan Williams, Esq., and Daniel Todd Baumgartner, Esq., on behalf of Dr. Hostettler.

Hearing Dates: July 30 and 31, 2015

## PROCEDURAL MATTER

Upon review of the evidence, Respondent's Exhibit A had not been placed under seal even though it contained Patient 1's medical records. As such, Respondent's Exhibit A is hereby placed under seal to protect patient confidentiality.

## SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

### Medical Education and Practice

1. Mark E. Hostettler, M.D., was born and raised in Akron. Although there were no physicians in his family, Dr. Hostettler testified that a career in medicine was "the only thing [he] ever thought of." He earned a medical degree in 1984 from the Northeast Ohio University College of Medicine, and then completed an internship and residency in internal medicine at Akron City Hospital between 1984 and 1987. Following his residency, Dr. Hostettler stayed on with Akron City Hospital, serving as the Chief Resident from 1987 to 1988. He has been board-certified in internal medicine since 1987. (Respondent's Exhibit ("Resp. Ex." E); Hearing Transcript ("Tr.") at 19-20, 33)
2. After his tenure with Akron City Hospital, Dr. Hostettler was recruited to join a hospital-based practice with another internist and a cardiologist, and in that position, he served as the director of a 12-bed Intensive Care Unit at Alliance Community Hospital. He was eventually appointed to be the Medical Director of the hospital. In that role, he oversaw the hospital's medical records, its pharmacy, and its infection control procedures, but he also maintained his outpatient clinical practice, providing general medical care for patients ages 14 and up. (Tr. at 22-23; Resp. Ex. E)
3. Dr. Hostettler testified that he organized an internal medicine practice, Premier Health Associates, Inc., in about 2006. The practice was wholly-owned by the Alliance Community Hospital, however, and Dr. Hostettler found that he did not like being governed by the hospital's budget constraints and its requirements with respect to how many patients he saw and how much time he could spend with each patient. He testified that he then returned to his initial practice group, which by that time, consisted of about 15 physicians, and served as the Medical Director of that practice from 2007 to 2008. Dr. Hostettler explained that the practice dissolved in bankruptcy after its founder made some unwise financial decisions, and in 2008, he started his own practice, Internal Medicine Physicians. (Tr. at 22-27; Resp. Ex. E)
4. Dr. Hostettler testified that Internal Medicine Physicians has three internists, as well as two certified nurse practitioners, serving patients in three offices located in Alliance, Canton, and Minerva, Ohio. In November 2014, Dr. Hostettler also began working with MDVIP [Medical Doctors Value in Prevention], a group of physicians that guarantees patients availability of a physician 24/7, a same day or next day appointment, and a nationwide

network of consulting internists and specialists to coordinate patient care in any situation. He declined to use the term, “concierge medicine,” explaining that he finds that term “elitist,” and opted to characterize the service as one that provides more personalized patient care. In this new role, Dr. Hostettler sees only about 10 patients a day, working with them to assess their overall wellness and disease risks, with an emphasis on prevention. (Tr. at 26-33)

### **Physician-Patient Relationship with Patient 1**

5. Dr. Hostettler is a gay physician who has been in a committed relationship with his partner, Michael Knapik, for over 22 years. In his testimony at the hearing, he described Michael as his “soulmate.” Dr. Hostettler explained at the hearing that he does not publicize in his physician profile that he is gay, but if a patient asks, he will acknowledge that he is gay and offer to transfer that patient’s care to another physician in the practice if the patient believes his sexual orientation will impact their relationship. (Tr. at 35, 46-47, 64, 186-187)
6. Sometime in 2005, Dr. Hostettler saw Patient 1 for a new patient exam at his medical practice in Alliance.<sup>1</sup> Dr. Hostettler insisted that Patient 1 told him during their introduction that he had networked in the community to find a physician who was a gay provider. He testified that this was very unusual, adding, “I remember distinctly that he told me he was seeking a gay physician. That’s not something I would forget.” (Tr. at 190-191) Dr. Hostettler estimated that, in his 31 years of practice, he could recall “maybe two other times” when a patient told him he had been selected because he was a gay physician, and he believed those patients were thinking that he might be more sensitive to the needs of the gay population. Dr. Hostettler testified that, when Patient 1 told him this, he validated that he was a gay physician, but that it was not otherwise a topic of discussion during the patient’s appointment. (Tr. at 190-193)
7. Patient 1, on the other hand, testified that he was not seeking a gay physician when he chose Dr. Hostettler, and that he selected him “just sheer out of geographic reasons” because the practice was close to his home. He stated that he randomly chose Dr. Hostettler when he was required to choose a new provider after his insurance benefits changed, and that in 2005, he had not even “come out” as gay. (Tr. at 74-76, 102-103, 172) Patient 1 maintained that he did not even know Dr. Hostettler was gay until he had treated with him for some time:

Q: You didn’t get any impression when you first met him during your visits when you interacted with him during those first couple years, you never had an impression that he might be gay?

A: Like I said, I’m kind of a poor judge of that. I’m a poor judge.

(Tr. at 171)

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<sup>1</sup> Dr. Hostettler was not able to produce records from, or provide the exact date of his first appointment with Patient 1 in 2005 because those records were destroyed, consistent with the record retention policy at that time. However, Patient 1 also agreed that he began seeing Dr. Hostettler as his physician in 2005. (Tr. at 76, 194)

8. Dr. Hostettler continued treating Patient 1 sporadically between 2005 and 2007, seeing him at office visits about 4 or 5 times a year for general medical concerns. In the fall of 2007, Patient 1 moved to Buffalo, New York, and transferred his medical care to a physician in that city. Dr. Hostettler did not see Patient 1 again until he moved back to Northeast Ohio in 2010 and re-established a doctor-patient relationship with him. (Tr. at 36-38, 45-46, 77, 80)
9. Patient 1 testified that he decided to return to Ohio because his father had been diagnosed with lung cancer, and he had been driving from Buffalo back to Louisville, Ohio, to be with his parents on the weekends. After living in Buffalo for about 3 years, he moved back to North Canton in 2010. He stated that he decided to re-establish his medical care with Dr. Hostettler because he had found him to be a good physician when he was in Dr. Hostettler's care from 2005 to 2007. The medical records that were introduced into evidence at the hearing show that Patient 1's first visit with Dr. Hostettler after he moved back from Buffalo was on August 31, 2010. (Tr. at 77-80; Resp. Ex. A at 1-2)
10. Dr. Hostettler testified that Patient 1 called his office in the summer of 2010 and requested a personal call-back from him. He related that Patient 1 told him that he was moving back to Northeast Ohio, and asked if he knew a gay realtor who could help him find housing in a gay-friendly community. Dr. Hostettler testified that, although he returned the patient's call, he was not able to supply the name of a realtor because he did not know a gay realtor at that time. (Tr. at 195-196)
11. When Patient 1 returned to Dr. Hostettler's care in 2010, he was applying for workers' compensation and disability benefits due to a knee injury that he had sustained during his work as a flight attendant. Dr. Hostettler helped supply some of the clinical data that Patient 1 needed for his claims. (Tr. at 45-46, 79-81) At the hearing, Patient 1 described how he began developing a social relationship with Dr. Hostettler:

Q: \* \* \* How did the social interactions develop?

A: Very subtly. After 2010, and sometime after my first office visit and maybe my second office visit, he said something to the effect that it was nice to see me back, he was glad I'm a patient of his, that he had been attracted to me since my first block of time there as – as a patient. \* \* \* And that it would nice to maybe – it would be nice to have friends outside of his medical profession.

(Tr. at 81-82)

12. Patient 1 stated that it "rattled [his] frame" when Dr. Hostettler expressed interest in him. (Tr. at 82) He explained, "I was very leery of why would my doctor want to develop a friendship with someone like me, who kind of really didn't have that much to bring to the table at that point in life. You know, unemployed, living on disability." (Tr. at 82)

13. Dr. Hostettler flatly denied telling Patient 1 that he was attracted to him at an office visit, insisting, "I absolutely did not say that. That would be inappropriate and out of character for me in a clinical setting." (Tr. at 197) He stated that he welcomed the patient back to town, ordered some lab work for him, and requested that the patient return in two weeks to discuss his lab results. By looking at the records of the office visit on August 31, 2010 and the documentation of the issues they discussed, Dr. Hostettler estimated that he likely spent 30 to 45 minutes with Patient 1 during that appointment. (Tr. at 196-199; Resp. Ex. A at 1-2)
14. Patient 1 returned for his follow-up appointment two weeks later on September 15, 2010. By this time, the office had transitioned to an electronic medical records system. Dr. Hostettler's records show that they discussed the patient's chronic history of hyperlipidemia, as well as a long history of cluster headaches, for which he was in treatment with a specialist at the Cleveland Clinic. The records note that Patient 1 was on disability leave from his job as a flight attendant after he sustained a knee injury when he slipped on some carpet. Dr. Hostettler recommended that Patient 1 see a dermatologist concerning multiple nevi (moles) on his skin, and also made a surgical referral for evaluation of an umbilical hernia. At the hearing, Dr. Hostettler estimated that he spent 20 to 25 minutes with the patient at that appointment. He also confirmed that his notes on the last page show that he authorized some prescription refills. Dr. Hostettler testified that the prescriptions would have been for routine drugs such as high blood pressure medication, adding that a prescription for a controlled substance would have necessitated a copy of the prescription in the file, and could not have been handled by a nurse, as these prescriptions were. Dr. Hostettler concluded that he did not remember anything out of the ordinary at that appointment, although he stated that they may have discussed erectile dysfunction, since the notes of the next appointment indicate that the patient also had that diagnosis. (Tr. at 199-202, 217; Resp. Ex. A at 3-5)
15. Dr. Hostettler testified that after the September 15, 2010 office visit, he did not see Patient 1 again in any capacity until sometime in August 2011, when his partner, Michael, was hospitalized. He stated that, if he had seen Patient 1 for an office appointment, he would have had a medical record of that visit. Although he did not recall giving Patient 1 his personal cell phone number during his office visits in August or September 2010, he acknowledged that he might have provided that number to him earlier, when he called the patient to discuss whether he could refer him to a gay realtor to help with his housing search. (Tr. at 198-199, 203-206)

#### **Development of a Sexual Relationship with Patient 1**

16. Patient 1 testified that, within three to five months of re-establishing his doctor-patient relationship with Dr. Hostettler, they began developing a personal relationship that ultimately turned into a sexual relationship. He estimated that, sometime in early 2011, he and Dr. Hostettler began interacting by texting and through telephone calls. (Tr. at 82-84) Patient 1 related, "When things got out of hand from my perspective, he was texting, asking me to text him quite a bit, many times during the day; 15, 20 times during the day." (Tr. at 83) Patient 1 stated that he and Dr. Hostettler exchanged explicit text messages, and

that when Dr. Hostettler requested that he send him “a fratty photo of [his] erect penis,” he sent the photo by text. (Tr. at 86) On cross-examination and in responding to later questions, Patient 1 testified that he had never attempted to get copies of his texts with Dr. Hostettler. (Tr. at 167)

17. Patient 1 recounted an incident in which he alleged that Dr. Hostettler dropped off some samples of an erectile dysfunction (“ED”) medication at his home, which he admits he took for recreational purposes. He testified that they engaged in kissing and some sexual touching at that time. (Tr. at 84-85, 169) He gave the following account of that incident:

A: \* \* \* He came into my condominium. And – and I knew that he was going to be delivering the ED medication. \* \* \* It was later in the evening that this occurred. And jokingly, I said, you know, “How long does this take to work?” And he said, “Well about 20 minutes.” So I – I took one to see – I had never taken anything like that before since I hadn’t needed anything like that. And he kissed me.

Q: Okay. Did sexual activity occur?

A: Yes.

Q: And did that involve you touching him in a sexual way and him touching you in a sexual way?

A: Correct.

(Tr. at 85-86)

18. Dr. Hostettler, on the other hand, maintained that he did not have any social or sexual relationship with Patient 1 until after his partner, Michael, suffered a heart attack in late August 2011. He acknowledged that he believed he had provided Patient 1 with some Viagra samples after Patient 1 asked for them, at a time when the patient was already using that medication. Dr. Hostettler explained that at that time, his office did not track medication samples through electronic medical records, and he freely handed out samples to patients who were on the medications of which he had samples. He stated that he had not made the diagnosis of ED, but that that diagnosis appeared in Patient 1’s records as of the May 8, 2012 office visit, listed as “psychosexual dysfunction.” (Resp. Ex. A at 6) Dr. Hostettler stated that he believed that the risk of the Viagra affecting Patient 1’s health was “extremely low” since the patient did not have active angina. He said that he did not know if another provider had prescribed Viagra for Patient 1, or if Patient 1 was obtaining that medication without a prescription, commenting, “[T]hose are readily available in -- in friends networks and on the streets if you want them \* \* \* That's a very commonly shared medication, especially on college campuses and -- and out in the public.” (Tr. at 287) Dr. Hostettler insisted that he never delivered Viagra samples to Patient 1’s condo, and that he never suggested that Patient 1 take Viagra to enhance his sexual functioning. However, he acknowledged being at Patient 1’s condo at one point later in 2012, and he conceded that he and Patient 1 engaged in oral sex during that time when he was still serving as Patient 1’s physician. (Tr. at 45-46, 50-51, 217, 223, 252-253, 269-272, 277-278, 283-287; St. Ex. 3 at 14)

**Hospitalization of Dr. Hostettler's Partner, Michael, in August 2011**

19. In August 2011, Dr. Hostettler's partner, Michael, had a health crisis. Dr. Hostettler recounted that Michael suffered a heart attack on a Friday afternoon. Dr. Hostettler testified that he immediately went home and accompanied Michael to the hospital, where it was discovered that he had had a mild heart attack. On the following day, Saturday, August 27, 2011, Michael underwent a 6-vessel bypass surgery.<sup>2</sup> (Tr. at 47, 56, 206-208, 254, 310-311; Resp. Ex. C)
20. Dr. Hostettler testified that, on the Friday night when Michael went into the hospital, he and another physician that Michael worked with were the only ones at his bedside. However, on the day of Michael's surgery, Patient 1 came to the hospital. Dr. Hostettler testified that he had "absolutely no recollection" of how Patient 1 came to know that Michael was having surgery. He stated that many others came to the hospital that day to offer support, including Michael's sister, Jeannie Hoffman, and a "crew of family," as well as their pastor and the pastor's wife. Dr. Hostettler said that he did not talk to Patient 1 about Michael's clinical state, and that there was absolutely no flirtatious conduct or sexual innuendo between them at that time. (Tr. at 206-209, 281-282) He testified that Patient 1 voluntarily came to the hospital to offer his assistance:

Patient 1 brought coffee and came to the hospital, knowing that Michael was having a surgical procedure. I don't know how he got that information. But he came to offer comfort as well as offer any care that he could help in the recovery phase.

(Tr. at 47)

21. After staying as an inpatient for several days, Michael was faced with needing care while he recovered from surgery. Dr. Hostettler testified that, at the age of 48, Michael was not happy about the idea of being sent to a rehabilitation center for his recovery. Dr. Hostettler added that he could not go to work in his medical practice without someone to stay at home with Michael, in case he needed care or if there was an emergency. They had no other family living in town, and although they had "voluminous resources" in terms of friends as well as acquaintances from church, most of those people worked during the day. Patient 1, on the other hand, was not working at that time, and Dr. Hostettler related that Patient 1 told him this would give him something productive to do. Dr. Hostettler insisted that Patient 1 volunteered that he could come to their home to stay with Michael during the day and that he did not ask him for his help, maintaining, "I know I did not request the assistance, no." In addition, Dr. Hostettler presented an affidavit from Michael's sister, Jeannie Hoffman, attesting that she witnessed Patient 1 volunteering his help because he was not working at the time. She stated in the affidavit that she was not aware of Michael or Dr. Hostettler or anyone else asking Patient 1 to stay with Michael after his release from the hospital. (Tr. at 47-49, 209-210; Resp. Ex. C)

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<sup>2</sup> Administrative notice is taken that August 26, 2011 was a Friday, and that August 27, 2011 was a Saturday.

22. Contrary to Dr. Hostettler's testimony, Patient 1 testified that Dr. Hostettler called him or texted him to inform him of Michael's admission to the hospital. Patient 1 stated that he had previously met Michael through social interactions, and on the day before Michael's surgery, Dr. Hostettler asked him if he could help with Michael's recovery. He insisted that he did not volunteer to help. Patient 1 acknowledged that he was not working at the time, and testified that he agreed to stay with Michael during the daytime because Dr. Hostettler had no one else who could stay with him. Patient 1 also acknowledged that he did not ask to be paid for his help, and that Dr. Hostettler made no promises in exchange for his agreement to help with Michael's care. Patient 1 testified that he had already had sexual contact with Dr. Hostettler prior to this time, on the night when Dr. Hostettler brought the Viagra samples to his condo. (Tr. at 88-89, 131-137, 171-172)
23. Dr. Hostettler testified that he accepted Patient 1's offer to help with Michael's care, and that there was no talk of paying him, as he understood that Patient 1 was offering to help out of friendship. At the hearing, he explained that Patient 1's primary duty in that role was to be in the home during the day in case Michael needed anything. Because Michael was sleeping in a recliner and using a walker during this time, Patient 1 assisted him with mobility and prepared lunch for him. Dr. Hostettler maintained that he had not yet had any sexual contact with Patient 1 at the time Michael was hospitalized. (Tr. at 48-50, 210-211, 283-284)
24. Dr. Hostettler related that, while Michael was in the hospital, Patient 1 had offered a key to his condo, which was in close proximity to the hospital. Dr. Hostettler testified that he never accepted the key from Patient 1, even though it was offered several times. However, he and Michael both testified that, when Patient 1 was helping take care of Michael at home, Patient 1 brought the key and left it on their counter. Michael testified that Patient 1 told him that he could stop by the condo to take a nap, if he found that he needed to rest once he began working again, since the condo was close to where Michael worked in Canton. Michael and Dr. Hostettler both testified that they never used the key, and that they threw it away when they later found it in their key drawer. Patient 1, on the other hand, testified that he never gave them a key to his condo. (Tr. at 163, 253-254, 314-315)
25. Dr. Hostettler and Patient 1 also differed in their testimony about how long Patient 1 continued helping Michael during the day. Both agreed that Patient 1 stayed with Michael from the time Dr. Hostettler went to work in the morning until he got home in the afternoon or until someone else was available to stay with him. However, Dr. Hostettler testified that Patient 1 stayed with Michael about three days a week for 2 to 3 weeks; Patient 1 testified that he stayed with Michael for a total of five consecutive days. (Tr. at 90-92, 138, 210-211)

#### **Alleged Sexual Encounters at Dr. Hostettler's Home**

26. Patient 1 testified that, during the five days when he was helping care for Michael, there were two occasions when he had sexual interactions with Dr. Hostettler at the home. (Tr. at 92) He provided the following account of an incident in Dr. Hostettler's hot tub:

Q: \* \* \* There was sexual contact between you and the doctor at some point during those five days?

A: Twice.

Q: And what type of sexual contact?

A: The first one was he invited me to sit in the hot tub after he had gotten home from – from work. And it's like, okay, but I don't have a swimsuit. He said, well, they don't go in with swimsuits. So we went in naked. And there he was grabbing at me with his hands.

Q: Okay. Did you reciprocate Dr. Hostettler's sexual advances?

A: That time I did, yes.

(Tr. at 92-93)

On cross-examination, however, Patient 1 testified that he did not remember if the incident in the hot tub occurred while he was taking care of Michael, or if it occurred before that time. (Tr. at 141-142)

27. In contrast, Dr. Hostettler testified that he stopped maintaining the hot tub when Michael went to the hospital, and it was not being used while Michael was recuperating. He insisted that he had never been in his hot tub with Patient 1. (Tr. at 256)
28. Patient 1 testified that the second sexual interaction at Dr. Hostettler's home took place in a shower area in Dr. Hostettler's basement. (Tr. at 93-94) He recounted the following events:

A: In the downstairs he has like a dressing room/shower area in the downstairs of their home. And every morning when I got there he would kind of go over things that needed – you know, pay special attention to this, or, you know, Michael's got a doctor's appointment at this time, you know, just make sure and take him. So every morning we went over kind of the day's agenda just really, really quickly.

Well, he asked me to come downstairs because there was a can of something that I need to bring upstairs to start dinner with, in like, a downstairs pantry that they had off of this finished basement in their house. And then he proceeded to continue to talk and disrobe to take a shower. And during the course of the shower, he became erect and asked me to perform oral sex on him.

Q: And did you do that?

A: Yes, I did.

(Tr. at 93-94)

29. On cross-examination, Patient 1 maintained that Dr. Hostettler solicited him to perform oral sex in the shower, and that he would not have gone down to the shower area in the basement uninvited. He stated that he had previously been in Dr. Hostettler's basement on the night of, or the night after Michael's heart attack, when Dr. Hostettler wanted him to

come over to be with him so that he would not be alone. (Tr. at 138-139) He claimed that Dr. Hostettler made advances towards him that evening but that he did not participate, explaining, "He just wanted to fool around, which I chose not to do \* \* \* because that was a little creepy." (Tr. at 139)

30. Dr. Hostettler testified that the only sexual encounter in his basement was a single occasion in which Patient 1 exposed himself to him. He stated that, on one morning when he was downstairs showering and most likely did not even know Patient 1 had arrived, Patient 1 appeared in the basement shower uninvited. (Tr. at 211-213) Dr. Hostettler described the event as follows:

A: \* \* \* On one occasion, while in the shower, he just appears in the bathroom. So I have a walk-in shower with a rainfall showerhead, there is no door. And I would not have thought to close the bathroom door because I'm the only person in the basement.

Q. Okay. So he -- Patient 1 voluntarily steps into the bathroom while you're showering and proceeds to undress?

A. He either pulled his athletic trunks down, or -- or up if they were short-legged, to expose himself.

Q. Okay. What was your reaction?

A. Startled isn't the right word. I -- I guess taken aback.

Q. Did you put an end to that episode?

A. I did. I told him that Michael was upstairs.

(Tr. at 212)

31. Dr. Hostettler testified that he did not touch Patient 1 at that time, and Patient 1 did not touch him. Instead, he continued his shower, and then went upstairs and told Michael about the incident. Dr. Hostettler said that he and Michael concluded that Patient 1 might have had voyeuristic tendencies. Michael also testified at the hearing that he recalled Patient 1 telling him one morning while he was staying at the home that he had just gone downstairs and flashed Dr. Hostettler while he was in the shower. He related that Dr. Hostettler then told him about the incident on the same morning that it happened. However, Michael explained that he did not take the event very seriously because he considered it to be "banter" that is not unusual in the gay community. (Tr. at 214-215, 313-314, 327-328)
32. Dr. Hostettler testified that, after Patient 1 helped with Michael's care for two or three weeks, he did not see him again until his next office visit more than one year later, on May 8, 2012. He stated that, during the interim, he had email and text messages from Patient 1 that were "consistently sexual in nature." Dr. Hostettler estimated that Patient 1 sent 75% of the text messages, and he sent 25% of them. When he was asked if he ever responded to Patient 1's texts in a sexually suggestive way, Dr. Hostettler admitted, "I'm certain I did." However, he maintained that the texts were sporadic and not continuous, and that he never sent sexually-oriented pictures to Patient 1. He explained that he typically responded to Patient 1's texts with the word, "Nice." (Tr. at 57, 243) Also during this time, Dr.

Hostettler testified that Patient 1 sent him several gifts through the postal mail, including several packages of underwear and some sex toys. Dr. Hostettler agreed on cross-examination that he never asked Patient 1 to stop sending the text messages, and never blocked Patient 1's texts or changed his cell phone number. (Tr. at 215-217, 243, 255, 263-264, 281) He explained that he believed these incidents by Patient 1 were "the epitome of someone who was acting out as a gay man." (Tr. at 273-274)

### **Sexual Encounter During Ride Home from the Airport**

33. Both Patient 1 and Dr. Hostettler acknowledged that there was a sexual encounter when Patient 1 picked Dr. Hostettler up at the Akron-Canton airport to give him a ride home, but their accounts of the incident differed dramatically. Dr. Hostettler testified that he attends Harvard University's Intensive Review of Internal Medicine every fall. He explained that the course is designed as a review for physicians preparing to take the board certification exam, and that he has gone to the course annually for decades in order to stay current in the practice, even though he was "grandfathered" and does not have to recertify. (Tr. at 28-30, 33, 86-88, 224-229, 266-267)
34. Dr. Hostettler testified that, in late July or early August 2012, he was trying to return home after attending the Harvard Internal Medicine review, but his flight from Boston Logan Airport kept getting delayed because of bad weather. He testified that his partner, Michael, suggested that Patient 1 might have access to a database showing any flights that were leaving Boston for the Northeast Ohio area, since Patient 1 had previously worked as a flight attendant, so Dr. Hostettler reached out to Patient 1. Dr. Hostettler recounted that it was late in the evening when his flight finally left, and by this time, Michael had a headache. He stated that Patient 1 offered to pick him up from the airport, telling him that he had no plans for the entire evening and that this would allow Michael to go to bed. Michael also testified that he had suggested that Dr. Hostettler ask Patient 1 to pick him up from the airport because he (Michael) had to go to work the next morning at 4:45 a.m., and he needed to get some sleep that night. Dr. Hostettler testified that he accepted Patient 1's offer to pick him up at the airport, and that even though Patient 1 had exposed himself to Dr. Hostettler in his basement and they had exchanged sexually-oriented text messages, he was not apprehensive about letting Patient 1 give him a ride home. He explained that the texts they exchanged that night had no sexual undertones, and he was not expecting that there would be any sexual interaction with Patient 1 that evening. Instead, he said that he was thinking in desperation, "[T]his is a Sunday night – I need to be in the office tomorrow and I have a way to get home." (Tr. at 224-228, 267-268, 316-317)
35. Dr. Hostettler acknowledged that he did, in fact, have a sexual encounter with Patient 1 in the car on the way home from the airport, describing the incident as follows:

So my flight got in after midnight, but the weather was clear back here. Patient 1 picked me up at baggage claim, obviously, because I had a large bag, having been there for eight or nine days. We talked about the difficulty with my flights, and I was able to stay on the same airline finally and get home without losing my bag.

It's about a 30-minute drive from the airport to get to my home. Approximately halfway there is when he pulled into the Kmart parking lot and proceeded to unzip his pants, telling me that he had been there many times in high school, that this was a safe place. I remember only his hand on my zipper. I did pull my zipper down. But at the time that I was exposed, my only thought, and that's vivid in my memory, is a police cruiser pulling up behind the car. And I said, "This -- We have to get home." And -- And that's all I remember.

(Tr. at 228-229)

36. Dr. Hostettler testified that he engaged in sexual touching, but not oral sex, with Patient 1 in the car that night, and that after he ended the encounter, Patient 1 drove him home. Dr. Hostettler maintained that this was the first time he had ever participated in any sexual activity with Patient 1. (Tr. at 44-45, 282-283)
37. On cross-examination, Dr. Hostettler conceded that by this time, he knew Patient 1 was sexually interested in him, and that he nonetheless contacted Patient 1 and then accepted his offer to pick him up at the airport. He testified that he could not take a taxi home because the airport has no taxi stand, and to his knowledge, no cab companies run from the Akron-Canton airport. (Tr. at 268-269) Dr. Hostettler also acknowledged that by contacting Patient 1 and accepting a ride from him, he encouraged Patient 1's advances:

Q. So you contacted someone who you thought was acting inappropriate toward you?

A. I did.

Q. So it's safe to say that you encouraged his contacts because you kept contacting him; is that true?

A. Encouraged is a stronger word than allow, but I would have to say it's true.

Q. Well, you had the power to cut it off.

A. I did.

(Tr. at 268)

38. Patient 1's account of the same incident was quite different. He stated that Dr. Hostettler initiated the encounter, after asking him to pick him up from the airport because Michael had a headache and he had no other way home. (Tr. at 86, 144-145) Patient 1 described the following events of that night:

Q: Tell us what happened.

A: On the drive from the airport to his house in Alliance, he began kissing me. And then while I was still driving, performed oral sex on me. And that -- at that point, it just was not real safe for me to be driving. I pulled over into a department store parking lot and things continued from there.

Q: And you performed oral sex, or do you recall?

A: Yes, I did.

Q: Did he in any way stop or cut off this incident?

A: No, he did not. I mean, I was uncomfortable because it was in a – a public parking lot.

(Tr. at 87-88)

Patient 1 testified that, after he parked the car in the parking lot, Dr. Hostettler continued to perform oral sex on him, and at Dr. Hostettler's request, he reciprocated. He testified that there was more kissing and sexual touching when they arrived in Dr. Hostettler's driveway that night. (Tr. at 146-148)

### **Sexual Encounter at Patient 1's Home**

39. Although Dr. Hostettler's records demonstrate that he did not see Patient 1 at a medical appointment for about a year after the parking lot incident, he admitted that he had one additional sexual interaction with Patient 1, in the early fall of 2012, when he voluntarily went to Patient 1's condo. (Tr. at 229-231; Resp. Ex. A at 6) Dr. Hostettler related the following events leading up to this sexual encounter with Patient 1:

By September-October, I began to receive texts again, this time telling me repeatedly that his partner had to work this weekend and that I needed to find a way to get to Canton. I constantly reminded him that that was not going to happen. He would then tell me that I should find some time like after office, just tell Michael I was going to a meeting. I told him that wouldn't happen.

He constantly spoke of his sex room in his condo. This is before Fifty Shades of Grey, but that's what it reminds me of. He described leather slings, other things that I had never seen. And in a moment of weakness, for lack of better, after a meeting that I did have in Canton that unexpectedly let out early, I did say, "I'm in Canton," and he said, "Drop by."

On that one occasion that I was at his apartment, for any sexual encounter, I expected to sort of see what this room was all about. I was not picturing in my mind that we, ourselves, would engage in any other sexual activity.

That activity did start with him slipping his -- his trousers down. I remember an array of sex toys being displayed and a movie -- a pornographic movie on the television, everything already playing by the time I got there.

And so for a brief period of time, maybe five minutes at the most there was oral stimulation, at which point I freaked and said, "This -- This is, like, never happening again," and left.

(Tr. at 229-231)

40. Dr. Hostettler testified that he did not recall any communications with Patient 1 after that incident until about two weeks later, when Patient 1 appeared at his office near the end of the day and asked to speak with him. Dr. Hostettler stated that they had a "very level-headed discussion" about the incident at Patient 1's condo for about 10 minutes in an exam room. He related that they discussed the fact that both of them had relationship partners, with Dr. Hostettler's being of a very long duration, and that they did not want to compromise those relationships. For those reasons, they agreed that there would be no more sexual activity between them. Dr. Hostettler characterized the discussion as a cordial one, with both of them apologizing for what had occurred between them. He emphasized that there was no sexual conduct of any kind during that conversation, and that Patient 1 did not tell him he felt coerced, intimidated, or deceived in any way, concluding, "Not a word of any of those." (Tr. at 232-233, 241)
41. Patient 1 also testified about his recollection of this event, stating that he invited Dr. Hostettler to stop by his condo for a drink after he finished a professional meeting in Canton. He related that Dr. Hostettler came to his home and they had a drink, afterwards engaging in kissing and fondling that he described as "passionate." Patient 1 stated that he did not believe he initiated the encounter, but he stated that he also did not recall either of them asking the other to stop. Patient 1 recalled making an apology after that incident, and although he could not remember if that occurred in person or by text message, he denied appearing at Dr. Hostettler's office to apologize, explaining, "I remember apologizing for something, but not just randomly showing up at someone's place of employment." (Tr. at 149-152)

#### **Other Alleged Incidents of Sexual Activity**

42. While Dr. Hostettler maintained that he had sexual interaction with Patient 1 on only two occasions – once on the way home from the airport and once in Patient 1's condo -- Patient 1 claimed that there were numerous other incidents. Patient 1 testified that early on in their relationship, he and Dr. Hostettler had gone out for dinner and then to a theatre production at Playhouse Square with their respective partners and several other people. He related that someone in the group had arranged for a shuttle van to take them from the restaurant to the theatre, so that they would not have to re-park their cars. Patient 1 testified that Dr. Hostettler had "grabbed him" in a way that was not accidental, but involved "hands on genitals" at both the restaurant and in the shuttle van. (Tr. at 40-41, 82-83, 90, 139-141) He gave the following account of that incident:

Q: And did something occur at the restaurant?

A: Yes. I was sitting beside Dr. Hostettler. And the tablecloths were long; they fell probably a foot below the surface of the table along – down the side. He reached over underneath the tablecloth and grabbed my genitalia.

Q: Did you grab or touch him in any way at the table?

A: No. I was too stunned in – basically, in front of my partner and my friends. I would – No, I did not.

Q: Okay. Anything else occur that he –

A: On the shuttle bus from the restaurant to the theatre, as we were getting in – there were three rows of seats in the shuttle bus. People got in the first two rows, and then Dr. Hostettler kind of moved me to the very back row of the shuttle bus, even though there were seats available in the first two rows. So he and I were sitting in the back seat of the shuttle bus. And he again grabbed me on the way to the theatre.

(Tr. at 91-92)

43. According to Dr. Hostettler's testimony, he insisted that he did not grab Patient 1's genitals at the restaurant. He recalled an incident in a restaurant, when he was out to dinner with Patient 1, Michael, and several other people. Dr. Hostettler testified that he and Patient 1 were seated beside each other on a banquette at the restaurant, and that when Patient 1 placed his hand on his (Dr. Hostettler's) thigh, he reflexively placed his hand on Patient 1's thigh. Although he acknowledged that this was out of the view of the others seated across the table, he maintained that it was not sexual and that he did not touch Patient 1's genitals. Dr. Hostettler stated that he did not recall going to the theatre with Patient 1, or any incident in a shuttle van. (Tr. at 41-43, 251-252)
44. Patient 1 also claimed that Dr. Hostettler engaged in sexual activity with him during office visits, on two occasions. He testified that Dr. Hostettler scheduled his visits as his last appointments of the day, around 4:15 to 5:00 p.m., and that Dr. Hostettler told him there was no one else in the office except the receptionist. While Patient 1 could not specify the dates of those appointments, he stated that they were not his first two appointments after returning to Dr. Hostettler's care in 2010. Since Dr. Hostettler's records show that Patient 1 had only four appointments with him between 2010 and 2013, these encounters presumably took place at his last two appointments in that time period, May 8, 2012 and April 16, 2013. Patient 1 agreed during cross-examination that the last appointment on April 16, 2013 was "probably one of the visits where there was more than just a medical exam going on." He recounted that, during those appointments, there was sexual touching and oral sex initiated by Dr. Hostettler. Patient 1 added that he felt "extremely uncomfortable" with this in the exam room, and that he asked Dr. Hostettler to stop. (Tr. at 95-96, 99-100, 142-143, 152-156; Resp. Ex. A)
45. Dr. Hostettler, for his part, adamantly denied ever having any sexual interaction with Patient 1 at his medical office. He disputed Patient 1's claim that his appointments were the last of the day, referring to the records of his last two appointments on May 8, 2012 and April 16, 2013, which were both scheduled at 3:00 p.m. Dr. Hostettler testified that his office would have been fully staffed during and after those appointments, even if he

had been running late and the appointment ended as late as 4:30 p.m. He added that it would be “insanely unusual” for him to run 30 minutes behind schedule. Finally, Dr. Hostettler stated that he was never alone in the office with patients, and that even when his office staff left for the day, a cleaning crew came into the office. (Tr. at 218-220, 245-246, 280; Resp. Ex. A)

46. Although Patient 1 claimed that he believed the April 16, 2013 visit was not his last visit to Dr. Hostettler’s medical office and that he had another visit in July, he also testified that a letter he wrote to Dr. Hostettler, which was dated July 18, 2013, was written about two months after his last office visit. (Tr. at 155-156, 159-160; St. Ex. 2)
47. Dr. Hostettler’s partner, Michael, serves as the practice administrator for Dr. Hostettler’s medical practice group. Michael testified that Dr. Hostettler’s practice uses the Athena Health software for patient scheduling. He explained that, when a patient schedules an office visit, the system records the appointment. If the patient calls to cancel or does not show up for the appointment, the system records that, too. When a patient checks in for an appointment, the visit is recorded and the system creates a billing cycle. Michael emphasized that it is not possible for a patient to be seen in the office without a record of that visit being made. He also emphasized that the software does not allow anyone to delete a patient encounter. Finally, Michael corroborated Dr. Hostettler’s testimony that 3:00 p.m. is not his last appointment of the day, and that his last appointment is usually at 4:50 p.m. He added that even if Dr. Hostettler leaves for the day earlier than usual, his office staff is present until the end of the day. (Tr. at 306-309)

#### **End of Physician-Patient Relationship**

48. Sometime in 2013, Patient 1 ended the physician-patient relationship he had with Dr. Hostettler. He testified that he last saw Dr. Hostettler at an appointment to go over routine test results, but that he happened to have a severe cluster headache at that time, as well. He stated that he was nervous about having to see Dr. Hostettler for the appointment and that the visit was very short, adding, “I was just so preoccupied with, one, getting out of there; and two, just trying to get my headache treated as soon as – as soon as I could. That was the last time I had ever seen him.” (Tr. at 96-97)
49. Patient 1 identified a letter that he wrote to Dr. Hostettler several months after that appointment. At the hearing, Patient 1 testified that he was “Extremely angry \* \* \* [o]ver being manipulated into doing things that [he] never in [his] character would have done.” (St. Ex. 2; Tr. at 97) Patient 1 explained that he began to feel “duped” when Dr. Hostettler offered him a \$25 gift card, which he found insulting. (Tr. at 137) He elaborated on why he was angry with Dr. Hostettler at this point in the relationship:

He tricked me. He duped me into doing things, for making excuses as to why I couldn’t be somewhere because he said he was going to come over to my condo and have a drink after – after work or after a meeting or something, and then just never showing up.

For knowing full well that I'm a carrier of hepatitis B, that we had unprotected sex all the time. On the occasions that sex occurred – I shouldn't say all the time – on those occasions when sex occurred, we had unprotected sex. And he knew, because he diagnosed me with hepatitis B, so he knew that I was, you know, a carrier of that, even though I had been in treatment. And how could he go home to his partner of I don't know how many years and possibly pass that on or pass it on to other patients.

(Tr. at 97-98)

50. The letter that Patient 1 provided to the Board was addressed to Dr. Hostettler and was dated July 18, 2013. (St. Ex. 2) It provided in pertinent part, as follows:

After months of counsel, soul searching and countless sleepless nights I have come to realize what a toxic person you are and I need to purge you from my life and fire you as my doctor. As my dr., now former, you took advantage of me emotionally and sexually and you have tainted my life forever.

In order for nothing to be misinterpreted or as you claimed “you never saw it” I need to make things crystal clear to you so you can fully understand the negative impact you have had upon me.

I'm sure as a dr. you should have not allowed your power over me to convince me to have sex with you many times: my car from picking you up at the airport, twice at my condo, your basement shower and feeling me up at a group dinner and in the theatre van. Plus the hundreds of hours of sexting I felt I was baited into. These events still haunt me that I was put in those situations. Even before those sexual contacts I was led to believe by you that you were interested in developing a friendship. I know [*sic*] realize that I was being groomed to be your play toy and you never had any intention of a true friendship.

When you asked me to take care of Michael after his heart attack I truly thought you were asking me as a real friend to help care for your partner and I willingly and with a pure heart and no expectation for any money or gifts in return was flattered that you asked me. When you told me you didn't have many friends I now know why. I'm guessing no one in your circle would help you out so you saw me as an easy, naïve guppy who thought that it would be such an honor to cook, baby-sit and haul Michael about at his and your leisure. Even on the days I was suffering from some of the most intense cluster headaches I had had I kept my word to you as I felt I had a real responsibility to you in caring for Michael.

When you later threw a \$25.00 gift card at me that was a real slap in the face. I took care of Michael out of the goodness of my heart and not for a gift card you probably had laying around to a place you would never go.

Needless to say I threw it away. I'm guessing the woman who scrubs your toilets would not have done the step and fetch gig I was tricked into doing for \$5.00 a day. When you called and needed Starbucks coffee runs for you and Michael while he was in the hospital I did so because I thought I was a friend helping a friend. It sure would have been nice to have been offered to be repaid for the expensive coffee, even though I would not have take [sic] the money. At that point I truly realized what a player you really are. While I was caring for Michael he very freely told me about your DUI and visit to Oriana House, your brother in prison and how he dislikes your mother as well as her issues and the vast differences you had told me about your sex life with him. As much as I dislike Michael how did you justify having unprotected oral sex, like all the other times you had sex with me, knowing full well that I use to have hepB and you were the dr. that discovered it?

I have secured a new physician and have asked him not to get me [sic] medical records from you. I don't want you to know who my dr. is for obvious reasons.

I'm sure you will be rushing this letter off to your attorney so you can let them know what an unbalances or disgruntled former patient I am. But both you and I know that everything in this letter is true. I am not taking horrible issue this [sic] any further than this letter to you. But you need to know what havoc you have wreaked on my life.

(St. Ex. 2)(Reprinted as in original)

51. On cross-examination, Patient 1 conceded that although his letter listed the places where he had sexual interactions with Dr. Hostettler, his letter did not mention the sexual encounters that allegedly took place in Dr. Hostettler's medical office at his appointments. He nonetheless stated that he "didn't intentionally omit anything." (Tr. at 160-161)
52. Patient 1 stated that after he wrote the letter to Dr. Hostettler, he received a letter by certified mail, informing him that he was no longer a patient of Dr. Hostettler's medical practice and that he would have to sign a release if he wanted his records to be transferred. (Tr. at 98-99)
53. Patient 1 testified that prior to his letter, he had also told Dr. Hostettler that he felt taken advantage of, but he could not recall when that conversation occurred. He said that he felt that he had been "played for a fool," and had been manipulated into doing things he would not do with his physician. On cross-examination and in his responses to later questions, Patient 1 testified that he believed that conversation took place on the telephone, and that Dr. Hostettler responded in a caring way. (Tr. at 162-165) However, he explained that he believed Dr. Hostettler was only reacting that way to further manipulate him:

Q: \* \* \* [H]ow did Dr. Hostettler respond?

A: Very caring, very nurturing. "Oh, I didn't take it that way." You know,

“I need more friends in my life. I want to keep you as a friend.” Just kind of keeping the web open so I’d keep coming back, telling me all the things I wanted to hear, I needed to hear at that point.

(Tr. at 165)

54. Dr. Hostettler admitted that he never ended the physician-patient relationship with Patient 1, even though he had become sexually involved with him. He testified that he last saw Patient 1 at the April 16, 2013 office visit, and that after that visit, he got sporadic text messages from Patient 1. He related that one of the text messages was an invitation for Dr. Hostettler and Michael to join Patient 1 and his partner on his partner’s pontoon boat. Dr. Hostettler and Michael initially agreed to go, but on the morning of the outing, Michael awoke with a migraine headache, and they cancelled. Dr. Hostettler testified that after he told Patient 1 they could not go, he got “a litany of inflammatory texts” to the effect of “I knew we could never be friends. I don’t know how you could do this to me.” He testified that the tone of the messages was so alarming that he showed them to Michael. (Tr. at 247-248, 280)
55. Dr. Hostettler said that the next communication he got from Patient 1 was a handwritten letter sent to his office, after he and Michael cancelled their plans to go on the outing on the pontoon boat. He testified that the content and tenor of the letter were similar to the letter admitted as State’s Exhibit 2, but it was not the same letter. Dr. Hostettler testified that in the letter, Patient 1 told him he was transferring his medical care to another doctor, criticized him for not offering to reimburse Patient 1 for gas and coffee while he stayed with Michael, and disparaged his relationship with Michael. He stated that he did not keep a copy of the letter because he believed it contained “the rantings of a madman,” and instead, he shredded it. (Tr. at 248-250)

### **Insight Into the Relationship**

56. At the hearing, both Patient 1 and Dr. Hostettler offered explanations of how each of them was drawn to the other. Patient 1 testified that he was attracted to Dr. Hostettler “in a very needy type of way.” (Tr. at 94) He explained:

He told me things that nobody, man or woman, had ever said to me. Very flattering, very kind words. Things that made me feel very, very good about myself. But also questioned myself, like this is not me that you’re really describing. I don’t know why you would want to be friends with me or convince me to have sex with you. So it was a dichotomy for me.

(Tr. at 94-95)

57. Patient 1 conceded that he was never threatened or pressured by Dr. Hostettler, and that he never felt as though Dr. Hostettler conditioned his medical care on Patient 1’s participation in the sexual encounters. (Tr. at 131-132) He described himself as someone who tends to be “overly trusting,” and as a result, he is often taken advantage of, adding, “I have been duped more times than I am proud to say. That’s part of my character.” (Tr. at 162)

58. Patient 1 testified that he has a current relationship partner, whom he had been seeing for about a year when he became involved with Dr. Hostettler. He only recently told his partner about his relationship with Dr. Hostettler. (Tr. at 171) Patient 1 asserted that his relationship with Dr. Hostettler had negatively impacted his health and his relationship with his partner. He explained, "I think my weight gain in the past five, six years has contributed to the horrible relationship. My partner and I have a non-existent sex life because I just am not prepared, willing, and able to enjoy that with him." (Tr. at 99)
59. Patient 1 testified that, as a result of the injury to his left knee and his cluster headaches, he is now totally disabled and does not work. He is currently receiving workers' compensation benefits, but he applied for disability through Social Security while he was in Buffalo, and was declared totally disabled and Medicare-eligible. (Tr. at 111-112, 167)
60. Dr. Hostettler also offered his insight into why he entered into a sexual relationship with Patient 1, while also serving as that individual's physician. Dr. Hostettler asserted that it was Patient 1 who pursued the relationship, and that when a sexual interaction occurred, it was "the result of a request from Patient 1 and a lack of integrity on [his] part." (Tr. at 53) He acknowledged throughout the hearing that, regardless of who initiated the personal relationship, he was wrong to become sexually involved with his patient. He conceded numerous times that, as the professional, he had the obligation to determine that such a relationship could not occur, and he accepted full responsibility for the fact that it did occur. Dr. Hostettler testified that he has never before had any sexual involvement with a patient, and has never had a patient claim that he was involved with him or her outside of the physician-patient relationship. (Tr. at 54, 62, 68, 281-282)
61. Despite his long professional career, Dr. Hostettler characterized himself as "naïve," and said that, in hindsight, he should have been more alert to signs that this patient was interested in a personal relationship with him. He conceded that when Patient 1 sent text messages that were inappropriate for their professional relationship, he should have told the patient that he did not want to receive those, and if it continued, he would have to end their relationship. (Tr. at 60-62) Dr. Hostettler admitted that by the May 2012 office visit, he and Patient 1 had already engaged in sexually-oriented text messages, but he continued treating Patient 1 as his physician and did not think of asking a colleague to assume his care. He stated that he believed at the time that the text messages were merely social interactions, adding, "I didn't have the perception clinically at that time that outside social interaction was having any impact on medical care that was delivered." (Tr. at 272-273) He further stated that he believed he could keep his sexual relationship with Patient 1 "divided and separate" from his professional relationship with him. Dr. Hostettler conceded, however, that he had never interacted with any other patients by exchanging sexual messages or pictures, and that he now understands it is not just a social interaction if a patient sends a sexually-oriented text message. (Tr. at 217-220, 273)
62. Dr. Hostettler suggested that he began to feel drawn to Patient 1 during the time when his long-term partner, Michael, was recovering from a serious health crisis and was, in many ways, unavailable to him for several months. (Tr. at 60-62, 284) He offered the following

explanation:

My introspection tells me that, at a period of time when I was vulnerable, there was someone at my home for some several weeks who more than constantly offered everything in support to me, including a key to his own condominium in case I was on call and I had to stop and take a nap at his house. Which, by the way, never did occur.

But I just took the bait. And I hadn't seen him in the office for some time. The fact that he was a patient seemed not to be present in – in my consciousness, and what occurred is what occurred.

(Tr. at 61)

63. Dr. Hostettler testified that he was also drawn to Patient 1 because the stories he told about his exploits as a flight attendant revealed a lifestyle that was exciting and unfamiliar to him:

Some of those texts were about his life as -- as a -- in the airlines industry with veritably sex, drugs, and rock and roll every time you had a layover. And I vicariously listened to those stories because they were stories I had -- I'm not -- I don't believe myself naïve to the world, but I didn't realize that life was really like that out there.

(Tr. at 266)

As a person in a long-term monogamous relationship, Dr. Hostettler summarized, “[Patient 1] reflected a shade of gay life that I had never experienced.” (Tr. at 266) He also acknowledged that at times, he felt flattered by Patient 1's attention to him. Finally, he offered that when the sexually-oriented text messages began, he initially thought little of them, because texts of that nature would not necessarily be unusual between people who know each other socially in the gay community. However, he accepted the notion that his return of the text messages encouraged Patient 1 to continue expressing interest in him. (Tr. at 276-277, 280)

64. Dr. Hostettler fully admitted that he never told Patient 1 he could not have a relationship with him outside of their physician-patient relationship, and that he never ended his physician-patient relationship with Patient 1 after becoming personally involved with him, even though he had ample opportunity to do so. (Tr. at 275, 285) He agreed that he had never even had such a conversation with Patient 1 about professional boundaries, conceding, “[E]mbarrassingly, that did not hit my radar.” (Tr. at 233-234)
65. Dr. Hostettler conceded that when a physician has a sexual relationship with a patient, the physician's judgment could be affected in making the best decisions for his or her patient. He fully agreed that he had engaged in sexual misconduct as it is defined by the Board's rules, and that by violating those rules, he had also violated the rules regarding the standard

of care owed to patients. (Tr. at 51-53) Although he stated that he did not believe he was doing anything inappropriate at the time he was engaging in this conduct with Patient 1, he stated that his “brain finally kicked in” and he acknowledged at the hearing, “I do believe it was absolutely inappropriate, morally and ethically.” (Tr. at 54) Dr. Hostettler concluded that he is now “intensely aware” of the Board’s rules regarding personal relationships with patients, and that it is now “crystal clear” that it is his duty to refrain from such involvement, no matter what a patient might do or say to invite such interactions. (Tr. at 51-55)

66. Dr. Hostettler expressed an understanding of the balance of power in a physician-patient relationship, and while he said that he did not believe he exploited that power in his relationship with Patient 1, he understood that he did not demonstrate awareness of that balance. He testified that he was deeply remorseful for the impact that his conduct had on Patient 1, and that he had prayed for comfort for anyone affected by his crossing of boundaries. Dr. Hostettler agreed that one of the tenets of his practice as a physician is to do no harm, and that his behavior with Patient 1 was “100% contrary” to that philosophy. He testified that he has been working with his psychiatrist, Stephen Levine, M.D., to understand why this occurred, and to ensure that it never happens again. (Tr. at 256-259) He offered the following assurance:

Q: \* \* \* In your mind, did you exploit that power?

A: I don’t believe I exploited it. I believe that I didn’t give it the weight of awareness that I should have, if that makes sense.

Q. Do you -- Do you understand and appreciate -- or, how -- maybe you can talk about your understanding or appreciation of the balance of power and how it could have affected Patient 1.

A. And so educating myself throughout this process and with very productive meetings at Dr. Levine's office, I have come to be aware that you can't -- you cannot keep separate the -- the social and the clinical or medical aspect of -- of your persona. And I fully appreciate how that could have, and I believe did, impact Patient 1.

Last evening after Michael had gone to sleep, I – I spent some time in my reflections where I am with my life now, where I go further, and what this has – has meant to me. And so my – my evening prayer was that I be forgiven for crossing boundaries, aware or unaware; and that I be given an enlightened path of awareness and acknowledgement that such actions would never ever happen again in the future.

And I know that my prayer was answered because when I opened my email this morning, my morning devotion was from Matthew and it spoke to keeping promises. I am a changed man become – because of this. I believe I’m a better person. And I can make a 100 percent yes promise that such behavior will never manifest itself for me again.

(Tr. at 257-258)

67. Dr. Hostettler testified that if a patient in his practice today expressed a personal interest in

him, he would respond differently:

I would address it directly with a comment about, "My observation is that you may be interested in me in a way that is not professional and would not be consistent with our professional relationship. And if that's the case, I'd like to offer you another provider within the practice or within the community." And I would not be remiss to actively discharge a patient if they didn't accept that guidance.

(Tr. at 288)

68. Dr. Hostettler concluded that he had learned from this experience and would not repeat his mistakes:

I now have a newfound commitment that, having gone through this, and having felt myself to be very well educated and somebody who has kept current with guidelines, rules and responsibilities, I mean, as medical director of the hospital, I worked with attorneys over cases within the hospital on a – on a monthly basis, and, yet, I failed to perceive within myself the – the deficiency of misunderstanding interpersonal communications.

And so along with my new personalized health care approach, which incorporates mind, body and soul, I think it is one of my charges that I in some form become a leader or a role model, no differently than somebody who may have, say, used opiates who now speaks before a crowd and says: I – I was guilty, this is how it happened to me, and this is what you need to be careful of, and this is how you avoid it in the future. \* \* \* This has made me a better, stronger person.

(Tr. at 67-68)

### **Investigation by State Medical Board**

69. Dr. Hostettler testified that the Medical Board first contacted him about an investigation sometime in the fall of 2014. He said that when he first met with the Board's investigator, he did not know what the investigator was coming to speak to him about, recounting, "I was absolutely caught off guard and panicked." (Tr. at 59) Dr. Hostettler acknowledged that he was not forthcoming with the investigator at the first meeting because his initial thought process was to "awfulize everything." At the second meeting with the investigator, he admitted that he had had a sexual relationship with Patient 1. (Tr. at 58-60, 284)
70. The Board then sent Dr. Hostettler a set of Interrogatories, requiring his answers no later than December 11, 2014. In his answers to the Interrogatories, Dr. Hostettler admitted that he had engaged in sexual conduct with Patient 1 on two occasions, during a time when

he was also serving as Patient 1's physician. At the hearing, when he was asked if there were any other sexual encounters besides those he described, Dr. Hostettler testified, "I believe solidly that there were not any," asserting that he was not simply unable to recall any others, but that he was sure no other incidents occurred. (Tr. at 36-41, St. Ex. 3)

### **Mitigation Evidence**

71. Dr. Hostettler stated that, in his 31 years of practice, he has never had any prior disciplinary action taken against his license, and he has never been subject to discipline from any employer. He stated that he has never been sued civilly by a patient, and, to his knowledge, there have been no previous issues with the quality of his care. He emphasized that he had never before crossed boundaries and engaged in a sexual relationship with a patient, and that no patient had ever made such a claim against him. (Tr. at 34, 185-186, 256-257, 281-282)
72. Dr. Hostettler testified that he has registered to take a continuing education course titled, "Medical Ethics, Boundaries and Professionalism," presented by Case Western Reserve University School of Medicine and University Hospitals Case Medical Center, on September 10 and 11, 2015, and he presented a brochure about the course. He said that he has also educated himself with readings about this topic, and that he attended a presentation at his Harvard review course that dealt with boundaries, with a focus on electronic media. Dr. Hostettler also testified that he has implemented a policy for his medical practice, which will include his employees. He emphasized, "[T]he research that I put into it gives me a very keen awareness of where the boundaries stop." (Tr. at 62-64, 259-260; Resp. Ex. F)
73. Dr. Hostettler has also been in therapy with Stephen Levine, M.D., a psychiatrist who works with professionals concerning sexual issues. He characterized his treatment with Dr. Levine as a "life-changing event," explaining that Dr. Levine helped him understand how the relationship may have impacted Patient 1. Dr. Hostettler asserted that he had already incorporated Dr. Levine's suggestions into his practice and his daily life. He further testified that he intended to continue seeing a psychiatrist for further therapy and that he will comply with any recommendations made for him. (Tr. at 259-262, 345-349)

### **Testimony of Timothy Muse**

74. Timothy Muse is the pastor at St. Paul's Lutheran Church in Alliance, Ohio, where Dr. Hostettler and Michael are church members. He testified that he has known them since May 2009, when he was appointed as the pastor there, and that they have been active members of the church since then. Pastor Muse testified that Dr. Hostettler serves on the church's council, in addition to serving as a lector, an usher, and a communion assistant. (Tr. at 292-294)
75. The pastor described Dr. Hostettler as a compassionate person of good character, who never fails to get involved when he can be of service. He stated that he also sees Dr.

Hostettler for his own medical care, and that he absolutely trusts him.<sup>3</sup> Pastor Muse recounted two incidents in which Dr. Hostettler jumped into action when a church member had a medical emergency during the service, including one incident involving the pastor's own mother. He added that during those events, Dr. Hostettler could have refrained from getting involved and allowed the EMS crew to handle the emergency, but that he attended to those people while emergency help was called for them. (Tr. at 295-298)

76. Pastor Muse testified that people in the church greet Dr. Hostettler and Michael graciously, and that he has never witnessed anyone react negatively to Dr. Hostettler's leadership within the church. He stated that, as the pastor, people often confide in him, but that he had never heard anyone say anything negative about his or her interactions with Dr. Hostettler. He testified that he had interrupted his vacation to testify in person at the hearing, adding, "Some people are worth that." (Tr. at 298-300)

### **Testimony of Michael Knapik**

77. Michael Knapik is Dr. Hostettler's partner of more than 22 years, and he also manages the business aspect of Dr. Hostettler's medical practice, in addition to several other practices. He testified that he believes Dr. Hostettler is an excellent physician, as well as an "awesome life partner," and he stated that he was overwhelmed by Dr. Hostettler's care and support when he was going through his recent health crisis. (Tr. at 304-306, 321-322)
78. Michael described Dr. Hostettler as an exemplary parent and family man. Dr. Hostettler has an adult daughter, Ashley, who serves in the Air Force and is preparing to deploy to Afghanistan, where her husband is currently serving. Michael testified that he has a close relationship with Dr. Hostettler's daughter. He added that he and Dr. Hostettler still maintain a very good relationship with Ashley's mother, and that they have a good circle of family support. (Tr. at 187, 306, 321-322)
79. Michael also related that he has a nephew who came to live with him and Dr. Hostettler as a troubled 13-year old, on the verge of "going down the wrong path." He testified that Dr. Hostettler was there to help the young man with anything he needed, serving as a father to him, and that their nephew is now a successful college graduate and a responsible young adult. (Tr. at 321-322)
80. Michael testified that he believes that the incident with Patient 1 was an aberration, and that Dr. Hostettler is remorseful. He stated that he believed Dr. Hostettler has learned from the experience, and that he will never again cross boundaries with a patient in his care. Michael explained that he is able to forgive Dr. Hostettler because he loves him dearly, and because they have a strong foundation, having been through a great deal in their lives together. (Tr. at 323, 328-329)

### **Letters from Patients and Colleagues**

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<sup>3</sup> Pastor Muse waived the confidentiality offered to him as a patient, and agreed that his name could be used.

81. Several of Dr. Hostettler's patients wrote letters attesting to his medical expertise and his caring nature. One patient wrote that after Dr. Hostettler diagnosed a critical heart problem in October 2014, he then made sure the patient had the best available physicians for his heart catheterization and subsequent open-heart surgery. Dr. Hostettler remained in constant contact with the patient and his family, and after the patient was released, Dr. Hostettler came to the family's home and stayed after midnight going over discharge instructions with the patient's wife and making sure she had all of the medical supplies and equipment to carry out those instructions. (Resp. Ex. B at 1)
82. Another patient wrote about Dr. Hostettler's compassion and dedication to his patients, making time to see them immediately for urgent concerns. That patient also wrote about Dr. Hostettler's and Michael's commitment to their community. The patient related that they have generously supported the Alliance City Schools, and that they equipped a medical office for the A-FIRST project, a permanent supportive housing residence for homeless families. Dr. Hostettler then worked with the University of Mount Union to have Physician Assistant student volunteers at the shelter. The patient added that Dr. Hostettler never refuses a request to speak at medical demonstrations for science teachers, and he often mentors high school students interested in health careers. (Resp. Ex. B at 5)
83. Dr. Hostettler's dentist, who also sees him as a patient, wrote that Dr. Hostettler displayed the utmost professionalism, and had, in fact, served as an example to him, inspiring him to treat his own patients with the same compassion and professionalism. (Resp. Ex. B at 6)
84. A fellow physician who has worked with Dr. Hostettler at Alliance Community Hospital wrote a letter characterizing Dr. Hostettler as "an outstanding clinician in the field of internal medicine," respected by his colleagues for his medical knowledge as well as his compassion. (Resp. Ex. B at 8) A nurse who had worked with Dr. Hostettler for over 27 years wrote a letter emphasizing Dr. Hostettler's respect for each patient, regardless of that person's station in life. (Resp. Ex. B at 7)
85. A newspaper article was also offered into evidence, describing Dr. Hostettler's service to the community through his participation in the Wellness Health Awareness Team [WHAT], which educates the community on preventive health, wellness and nutrition. (Resp. Ex. D; Tr. at 188-189)

#### **Testimony of Stephen Levine, M.D.**

86. Stephen Levine, M.D., is a physician who is board-certified in psychiatry and neurology, and has practiced for approximately 45 years, primarily in the field of human sexuality. He commented that, although that is not a formal sub-specialty of psychiatry, he has always practiced in an area concerning sexual life and its problems. Dr. Levine is the author of *The Handbook of Clinical Sexuality for Mental Health Professionals*, which is in the process of being published, and he has worked with physicians and other professionals for many years, often in a capacity as an evaluator for State licensing boards. (Tr. at 345-349)

87. Dr. Levine testified that he performed an evaluation of Dr. Hostettler consisting of a three-hour interview on July 10, 2015, followed by psychological testing. Dr. Hostettler then met with a secondary evaluator, with whom Dr. Levine conferred before formulating a report. Dr. Levine stated that he had also reviewed Dr. Hostettler's answers to interrogatories from the Board, and the letter from Patient 1. At the end of that process, Dr. Levine and his associate, Candace Risen, L.I.S.W., met with Dr. Hostettler to review their findings. (Tr. at 349-350; St. Exs. 2, 3)
88. Dr. Levine characterized Dr. Hostettler as a "fine man" and a "fine physician." He offered that the psychological testing showed that Dr. Hostettler was a rule-follower and a "good boy." Dr. Levine testified that Dr. Hostettler is intelligent and responsible, and that he was "pretty psychologically healthy," except for this single "island of a problem" with Patient 1. Dr. Levine stated that Dr. Hostettler had lived a conservative life up until the time when he put away his critical sensibilities and crossed the boundary with Patient 1. (Tr. at 353-358) He added that Dr. Hostettler tends to project his own goodness onto other people, adding, "And as a result of his projecting the goodness of himself onto others, he ends up being easy to fool." (Tr. at 356)
89. Dr. Levine testified that he worked with Dr. Hostettler over the course of 13 days. He explained that at the beginning of that treatment, Dr. Hostettler believed he had been victimized by Patient 1, but by the end of the time, he took responsibility for his poor judgment in getting sexually involved with his patient. (Tr. at 353-355) Dr. Levine described the change that he saw in Dr. Hostettler over that period of time:

[H]e seemed to understand the difference between lying to another person and lying to one's self. And I think we opened his eyes that he is lying to himself about Patient 1 and his motives are -- for participating in this process. \* \* \* [T]he changeability of this man in the 13 days of these interactions that we had with him indicates that he's fundamentally capable of knowing the truth and of growing and using the truth. As a part -- as opposed to people who maintain their lie during the course of the evaluation or who cannot stand their confrontation and quit the evaluation.

(Tr. at 392-393)

90. Dr. Levine offered his insight into why a "rule-follower" like Dr. Hostettler overstepped boundaries with Patient 1 at this time in his life, when he had never done so previously. The first aspect he identified was the curiosity Dr. Hostettler had about what he was missing in life, because his experiences as a gay man had been limited to his relationship with Michael. (Tr. at 363-364). He offered the following explanation:

[L]ike all human beings who follow the rules of monogamy and fidelity, there is a residual curiosity about what I am missing. And I think, as he was listening to what his Patient No. 1 said about his life in the context of doing his medical work, it stimulated an awareness of what he was missing.

(Tr. at 363)

91. Dr. Levine testified that also during this time, Dr. Hostettler's partner, Michael, was recovering from a major surgery. He believes the loss of his sexual relationship with Michael during that time, as well anxiety about Michael's mortality, led Dr. Hostettler to do things he would not ordinarily be inclined to do. (Tr. at 363-367) He summarized:

So I'd say the combination of his deterioration of sexual life with his lifelong partner, plus the awareness that there was more to life – and maybe some questioning about, you know, is he foolish to follow these rules to – you know, the conservative, monogamous rules. What am I missing in life?

And then I think underneath all this was the anxiety that Michael was going to die. Michael's father died when he was about Michael's age at his first – at his heart attack. And what would happen to Dr. Hostettler's life if the one love of his life would – would die?

And I think these are the things that were swirling around in the back of Dr. Hostettler's mind that he couldn't exactly face. And it was – it was just sort of behaving and dealing with this stuff.

(Tr. at 365-366)

92. Dr. Levine specifically testified about his finding that Dr. Hostettler was not a sexual predator, and that he did not deliberately use his influence over Patient 1 to initiate or maintain the relationship with Patient 1. (Tr. at 368-369) He explained:

When I say that Dr. Hostettler is naïve, psychologically naïve, I really am saying that this is the opposite of predatory. He – He is not a predatory guy. And he's a very civilized guy. And it is breathtaking that this happened to such an intelligent, rule-following guy. But, you know, I have been in practice long enough to know that sexual life has a power over us at times of our vulnerability that does take our breath away where people do things that – that they generally haven't done and won't do because they're in a particular set of circumstances.

And so I – I really want to reassure the Board that it's my professional opinion that Dr. Hostettler is not a predatory physician.

(Tr. at 368-369)

93. Dr. Levine has recommended that Dr. Hostettler have additional treatment, in the form of five to ten hours of "brief, focused, intense psychotherapy" to increase his own awareness of the mental processes that caused him to cross these boundaries with his patient. He recommends that the therapy take the form of an "emotional confrontation" from a medical

ethics point of view about why doctors must never have sex with their patients. Dr. Levine stated that he believes this therapy, combined with Dr. Hostettler's upcoming course about physicians' boundary issues, will sufficiently address the issues in this case. (Tr. at 359-360)

94. Dr. Levine testified that he believes Dr. Hostettler now understands and appreciates the significance of his conduct with respect to Patient 1, and that he does not believe Dr. Hostettler will ever have another boundary issue with a patient again. He cautioned that boundary issues tend to be more complicated for physicians who practice in small towns, where "patients become your friends and friends become your patients." Dr. Levine observed that in Dr. Hostettler's small community, he takes care of his neighbors and his pastor, as many rural physicians do. He pointed that in the case of Patient 1, Dr. Hostettler began by crossing social boundaries; then the relationship became erotic with the sexually-charged text messages; and finally, there was behavioral boundary crossing. (Tr. at 371-375)
95. Dr. Levine concluded that he believes that Dr. Hostettler is an asset to his community, and that he has been embarrassed and punished by his experience with Patient 1. He stated that he shares the Board's responsibility to protect the public, but he stated that he believes Dr. Hostettler is fit and competent to practice medicine and that he poses no danger to the public. (Tr. at 368, 373-375) He added, "And I think of all the people I've seen who are worthy of a second chance, he's high on that list." (Tr. at 379)

### **FINDING OF FACT**

In the routine course of his practice, Mark E. Hostettler, M.D., undertook the medical care of Patient 1. Despite his concurrent physician-patient relationship, on or about 2011 to July 2013, Dr. Hostettler engaged in sexual misconduct with Patient 1 on multiple occasions.

### **CONCLUSION OF LAW**

Dr. Hostettler's acts, conduct, and/or omissions as alleged in the Finding of Fact, 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 Chapter 4731 or any rule promulgated by the board," as that clause is used in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02. Further, pursuant to Rule 4731-26-03(A), a violation of Rule 4731-26-02 also violates R.C. 4731.22(B)(6), which is "[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."

### **DISCUSSION OF PROPOSED ORDER**

The essential facts of this case are not in dispute. Dr. Hostettler had a sexual relationship with Patient 1 during a time when he was serving as the patient's physician, and he continued that personal relationship without ending his concurrent physician-patient relationship. Dr. Hostettler fully conceded that there can be no justification for becoming sexually involved with a patient, and that he had a duty to refrain from such conduct, regardless of who initiated it.

While Dr. Hostettler indisputably violated the Medical Practice Act by his involvement with Patient 1, the hearing produced persuasive evidence that Dr. Hostettler is not a sexual predator, and that he did not coerce or intimidate Patient 1. Although Dr. Hostettler testified that he viewed the relationship as consensual, a sexual relationship between a physician and a patient can never truly be consensual because of the inherent imbalance of power between the two parties. Nonetheless, the hearing examiner was persuaded that this incident was not representative of Dr. Hostettler's course of practice, and that nothing similar had ever before occurred in his career as a physician. Although Patient 1 gave different accounts of various events than Dr. Hostettler, the Hearing Examiner found Patient 1's testimony suspect at several points in the hearing, and as a result, found Dr. Hostettler to be a somewhat more credible witness.

One reason that Patient 1 was found to be less credible is that his letter sent to the Board appeared to list each occurrence of sexual activity and the location of the incident; however, the letter did not include the incidents that Patient 1 claimed occurred during his appointments in Dr. Hostettler's medical office. Since this letter was being sent to the Board, Patient 1 presumably would have included those incidents if they occurred, as they would be some of the most abhorrent to the practice of medicine. It was also suspect that Patient 1 claimed Dr. Hostettler told him when he returned to his medical care in 2010 that he had always found him attractive, but he could not recall whether that conversation took place in person or on the telephone. Because it would be such an unusual event for a physician to tell a patient that he had long found him attractive, it seems likely that he would be able to recall such a conversation very clearly if it occurred. Patient 1 also testified that his appointments were scheduled to be the last of the day, so that Dr. Hostettler could engage in sexual activity with him, but the medical records of his last two appointments where he claimed this activity took place show that they were scheduled for 3:00 p.m. Dr. Hostettler gave credible testimony that those were not his last appointments of the day, and that his office staff or cleaning staff would be present even when his appointments for the day ended.

In addition, the Hearing Examiner believes that Patient 1 may have exaggerated or overstated some details of the events of his relationship with Dr. Hostettler. It is difficult to believe that a busy physician would have time for "hundreds of hours" of texting, particularly when he was living with a partner and also helping care for that partner after a surgery. And, Patient 1 was inclined to view himself as a victim in his prior relationships as well as this one, when those relationships ended. Even when Dr. Hostettler responded apologetically to Patient 1's telling him that he felt taken advantage of, the patient interpreted his response as one designed solely to keep him "trapped in his web."

### PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark E. Hostettler, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 120 days.
- B. **INTERIM MONITORING:** During the period that Dr. Hostettler's certificate to practice medicine and surgery is suspended, Dr. Hostettler shall comply with the following terms, conditions, and limitations:
  1. **Obey the Law:** Dr. Hostettler shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Declarations of Compliance:** Dr. Hostettler shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Personal Appearances:** Dr. Hostettler shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  4. **Required Reporting of Change of Address:** Dr. Hostettler shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Hostettler's certificate to practice medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Hostettler shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Personal/Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Hostettler shall submit acceptable

documentation of successful completion of a course or course dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

The Board may consider the course "Medical Ethics, Boundaries and Professionalism," presented by Case Western Reserve University School of Medicine and University Hospitals Case Medical Center, on September 10 and 11, 2015, that Dr. Hostettler registered to take as evidence of compliance with this reinstatement condition.

3. **Course(s) Concerning Physician/Patient Boundaries:** At the time he submits his application for reinstatement or restoration, Dr. Hostettler shall submit acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Hostettler submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he learned to his practice of medicine in the future.

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

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

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Hostettler shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
  2. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Hostettler is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Hostettler's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Hostettler violates the terms of this Order in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Hostettler shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Hostettler shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Hostettler receives from the Board written notification of the successful completion of his probation.  
  
In the event that Dr. Hostettler provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.  
  
This requirement shall continue until Dr. Hostettler receives from the Board written notification of the successful completion of his probation.
  2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Hostettler shall provide a copy of this Order to

the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Hostettler shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

This requirement shall continue until Dr. Hostettler receives from the Board written notification of the successful completion of his probation.

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

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

  
Ronda Shamansky, Esq.  
Hearing Examiner

# State Medical Board of Ohio

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

(614) 466-3934

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## EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 14, 2015

### REPORTS AND RECOMMENDATIONS

Mr. Kenney announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Mr. Kenney 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: Brian J. Altman, D.P.M.; Clinton James Cornell, P.A.; Anthony Vernon Dallas, Jr., M.D.; Mark E. Hostettler, M.D.; Hassan Imanpoor Tahsildar, M.D.; and Nathan Buchanan Frantz, D.O. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schottenstein	- aye
	Dr. Schachat	- aye
	Dr. Edgin	- aye

Mr. Kenney 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. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schottenstein	- aye
	Dr. Schachat	- aye
	Dr. Edgin	- aye

Mr. Kenney 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 any disciplinary matters. In the matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

Mr. Kenney 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.

.....  
MARK E. HOSTETTLER, M.D.  
.....

**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Mark E. Hostettler, M.D. Dr. Soin seconded the motion.**

Mr. Kenney stated that he will now entertain discussion in the above matter.

Dr. Soin stated that the matter of Dr. Hostettler is based on the allegation that from approximately 2011 until July 2013 Dr. Hostettler engaged in sexual misconduct with Patient 1 on multiple occasions despite an ongoing physician/patient relationship. Dr. Soin noted that many facts are in dispute in this matter. For instance, Dr. Hostettler testified that Patient 1 had told him that he had found Dr. Hostettler after networking in the gay community to find a gay medical provider, while Patient 1 testified that he had selected Dr. Hostettler as a medical provider solely for geographic reasons. Dr. Soin stated that while details are disputed, the salient fact remains that a sexual relationship developed between Dr. Hostettler and Patient 1. In 2013 Patient 1 ended the physician/patient relationship with Dr. Hostettler. Patient 1 had provided a letter he had written to Dr. Hostettler delineating some of their encounters.

Dr. Soin noted that in 31 years of practice Dr. Hostettler has never been the subject of disciplinary action. Dr. Soin further noted that Dr. Hostettler has proactively taken courses in medical ethics and physician/patient boundaries. Dr. Hostettler has also been in therapy with Stephen Levine, M.D., a psychiatrist who works with professionals concerning sexual issues. Dr. Soin stated that Dr. Hostettler conceded in his testimony, and again today before the Board, that there can be no justification for becoming sexually involved with a patient and that he should refrain from such conduct regardless of who initiates it.

Dr. Soin stated that Dr. Hostettler violated the Medical Practices Act by becoming sexually involved with a patient. Dr. Soin opined that Dr. Hostettler is remorseful and that he will not appear before the Board again for a similar situation. Dr. Soin agreed with the Proposed Order, which will suspend Dr. Hostettler's Ohio medical license for a minimum of 120 days with conditions for reinstatement, followed by probationary terms and conditions for a minimum of 2 years. Dr. Soin also agreed with Dr. Hostettler's

attorney that a 30-day wind-down period prior to Dr. Hostettler's suspension would be appropriate. Dr. Steinbergh agreed.

**Dr. Steinbergh moved to amend the Proposed Order so that the suspension of Dr. Hostettler's medical license will commence on the 31<sup>st</sup> day following the effective date of the Order. Dr. Steinbergh further moved that Dr. Hostettler will not accept any new patients in the 30 days prior to the suspension. Dr. Soin seconded the motion.**

Dr. Steinbergh stated that she finds cases involving sexual boundaries to be very egregious. Dr. Steinbergh was offended by the concept that a physician would take advantage of a patient and of the power that he or she holds in that relationship. Dr. Steinbergh was pleased that Dr. Hostettler recognizes these issues and she opined that Dr. Hostettler will not repeat these mistakes. Dr. Steinbergh agreed with the suspension of Dr. Hostettler's medical license for a minimum of 120 days because a physician should be out of practice for a significant time in order to properly give thought to what has occurred, as well as to pay a penalty for such actions.

Mr. Gonidakis agreed that a 30-day wind-down period is appropriate. Mr. Gonidakis stated that in his years on the Medical Board, the typical suspension time for sexual boundary issues has been a minimum of 180 days. Mr. Gonidakis opined that the Board should remain consistent and predictable in its Orders, and that the facts of Dr. Hostettler's case do not warrant an exception. Dr. Steinbergh, Dr. Sethi, and Dr. Soin agreed.

**Dr. Steinbergh wished to change her motion to amend to add the stipulation that on the 31<sup>st</sup> day following the effective date of the Order, Dr. Hostettler's medical license will be suspended for a minimum of 180 days. No Board member objected to the change in the motion to amend. The change in the motion to amend was accepted.**

Dr. Schottenstein stated that often in these situations the physician does not conceptualize himself for herself as taking advantage of a patient and they see the relationship as consensual. However, Dr. Schottenstein stated that such physicians are indeed taking advantage of the patient. Dr. Schottenstein stated that whenever a physician responds approvingly to a patient's flirting it is deeply wounding to the patient; while the physician may think they are gratifying the patient, the patient often feels very diminished and at some point starts to feel like an object. Dr. Schottenstein noted that Patient 1 in the matter of Dr. Hostettler reacted with aggravation and frustration.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Mr. Gonidakis	- aye

Mr. Kenney	- aye
Dr. Sethi	- aye
Dr. Soin	- aye
Dr. Schachat	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye

The motion to amend carried.

**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Mark E. Hostettler, M.D. Dr. Soin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- abstain
	Dr. Steinbergh	- nay
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Sethi	- aye
	Dr. Soin	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye

The motion to approve carried.

# State Medical Board of Ohio

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

(614) 466-3934

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January 14, 2015

Case number: 15-CRF- *011*

Mark E. Hostettler, M.D.  
1401 South Arch Ave  
Alliance, OH 44601-4202

Dear Doctor Hostettler:

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

- (1) In the routine course of your practice, you undertook the medical care of Patient 1, as identified on the attached patient Key. (The Patient Key is confidential and shall be withheld from public disclosure.) Despite your concurrent physician-patient relationship, on or about 2011 to July 2013, you engaged in sexual misconduct with Patient 1 on multiple occasions.

Your acts, conduct, and/or omissions as alleged in paragraph (1) 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, Ohio Administrative Code. Further, pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is “[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.”

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

*Mailed 1-15-15*

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,



Kim G. Rothermel, M.D.  
Secretary

KGR/JBR/pev  
Enclosures

CERTIFIED MAIL #91 7199 9991 7034 8392 3728  
RETURN RECEIPT REQUESTED

cc: J. Ryan Williams  
Brouse McDowell  
600 E. Superior Avenue  
Suite 1600  
Cleveland, OH 44114-2603

CERTIFIED MAIL #91 7199 9991 7034 8383 9074  
RETURN RECEIPT REQUESTED

**IN THE MATTER OF  
MARK E. HOSTETTLER, M.D.**

**15-CRF-011**

**JANUARY 14, 2015, NOTICE OF  
OPPORTUNITY FOR HEARING -  
PATIENT KEY**

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