

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

FIRAS A. RABI, M.D., RESPONDENT

FILE NO. 02-10-337

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ORDER RE: RESPONDENT'S APPLICATION FOR MODIFICATION OF ORDER  
AND  
TERMINATION OF PROBATION

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Date: April 15, 2016.

**Statement of Charges:** On March 6, 2014, the Iowa Board of Medicine (Board) filed a Statement of Charges against Firas A. Rabi, M.D. (Respondent), alleging that he engaged in sexual harassment, unethical or unprofessional conduct and practice harmful or detrimental to the public. A hearing on the charges was held on January 8 and 9, 2015.

**Findings of Fact, Conclusions of Law, Decision and Order:** On February 19, 2015, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent engaged in sexual harassment in violation of Iowa Code section 148.6(2)(i) and 653 IAC 13.7(6) and 23.1(10) and unprofessional conduct in violation of Iowa Code sections 147.55(3), 272C.10(3), and 653 IAC 23.1(4). The Board concluded that the preponderance of evidence did not support a finding that Respondent violated its rules prohibiting practice harmful or detrimental to the public. The Board issued Respondent a Citation and Warning and ordered him to pay a \$10,000 civil penalty. The Board also suspended Respondent's Iowa medical license and indicated that it would consider reinstatement after he fully complied with the recommendations of BMI set forth in its November 25, 2014, *Summary of Evaluation*, including successful completion of a Board-approved professional boundaries treatment program and recommended psychotherapy and upon a showing by Respondent that the basis for suspension no longer exists, and that it is in the public interest for the license to be reinstated. The Order also indicated that should the Board reinstate Respondent's Iowa medical license, he would be placed on indefinite probation subject to the terms and conditions established by the Board.

**Reinstatement Order:** Respondent subsequently submitted a request to lift the suspension. The Board concluded that Respondent demonstrated that he successfully completed the Board-approved professional boundaries program and that he participated in Board-approved psychotherapy. The Board also concluded Respondent demonstrated that the basis for the suspension no longer exists and it is in the public interest to reinstate his license. On December 11, 2015, the Board issued a Reinstatement Order reinstating Respondent's license and placing him on indefinite probation subject to the terms and conditions established by the Board.

**Amended Reinstatement Order:** On March 3, 2016, the Board approved an Amended Reinstatement Order which replaced and voided the December 11, 2015, Reinstatement Order. The Amended Reinstatement Order requires that Respondent comply with the probationary terms only if he reactivates his inactive Iowa medical license at some date in the future if and when he returns to practice in Iowa or under the authority of his Iowa medical license. The Board again noted that Respondent promptly and fully complied with the terms of the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order including successful completion of the Board-approved professional boundaries program and participation in Board-approved psychotherapy and that the basis for the suspension of his Iowa medical license no longer exists and it is in the public interest to reinstate his license. The Board also noted that the conduct in question occurred more than seven years prior.

**Application for Modification of Order and Termination of Probation:** On March 31, 2016, Respondent submitted an Application for Modification of Order and Termination of Probation. Respondent requested that the Board modify the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order to remove reference to an "indefinite suspension" and an "indefinite probation". Respondent also requested that the Board issue a supplemental finding that acknowledges that the sexual relationships in question were consensual. Finally, Respondent requested that the Board terminate the terms of his probation.

**Background:** In his Application for Modification of Order and Termination of Probation, Respondent indicates that he currently resides in Dubai, a part of the United Arab Emirates (UAE). He indicates that he heads the pediatric intensive care unit at a new government-operated children's hospital. He indicates that this hospital is the first dedicated children's hospital in the region and aspires to become one of the leading children's hospitals in the world. He indicates that by mandate from the UAE government, staff members have been selected from around the world to establish procedures, protocols and clinical guidelines before the hospital begins accepting patients this summer. He indicates that he has a unique opportunity to help shape pediatric intensive care in the region. According to Respondent, pediatric intensive care is a relatively new field in the UAE and the entire Middle East.

Respondent indicates that despite presently being in full compliance with this Board's orders, and in good standing in the State of Iowa, he was recently notified that his license to practice medicine in the UAE is being revoked. Respondent indicates that there was no explanation for the revocation beyond reference to the Iowa disciplinary proceedings. Respondent believes that, in the very conservative culture of the UAE, this Board's disciplinary order may be given rather extreme and unanticipated weight. Respondent argues that as he attempts to appeal the UAE license revocation, any assurance that he has rehabilitated his status with the Iowa Board of Medicine will be helpful.

Respondent indicates that it is impossible at this distance to anticipate what licensing authorities in the UAE will find to be persuasive evidence of good standing in Iowa; hence, the following requests are broad in nature. He requests that the Board fashion a modified order in the hope that UAE authorities will allow him to continue his practice.

#### **I. Removal of "Indefinite Suspension" and "Indefinite Probation"**

Respondent requests that the Board modify the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order to remove reference to an "indefinite suspension" and an "indefinite probation".

**Respondent's Argument:** Respondent notes that his Iowa medical license had been inactive for several years prior to the commencement of these disciplinary proceedings. Thus, he argues, no "indefinite suspension" or "indefinite probation" of his license was necessary at the time of the Board's February 19, 2015 Findings of Fact, Conclusions of Law, Decision and Order. He argues that a de facto suspension had already occurred.

Respondent further argues that he believes that the "indefinite suspension" language in the Board's order may have been seized upon by UAE authorities as cause for alarm regarding his qualification to practice medicine. For that reason, he requests that the Decision and Order be modified to remove reference to an "indefinite suspension" and an "indefinite probation".

**State's Argument:** The State argues that the Board does not have jurisdiction or authority to consider modification of the factual findings or sanctions contained in the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order. The State notes that the Board issued the final ruling in this case on February 19, 2015, and Respondent filed an application for rehearing, but it was denied. The State argues that at that time, the contested case was over. See 653 IAC 25.26(7) (stating, "[a]pplication for rehearing is the only procedure by which a party may request that the board reconsider a final board decision"); 653 IAC 25.26(3) (requiring applications for rehearing to be filed within 20 days of the date a final ruling is issued). Therefore, the State argues, it is too late for the Board to now go back, some fourteen months later, and reconsider the factual findings made or sanctions imposed in the Board's final order.

Further, the State notes that Respondent filed a judicial review of the Board's final decision and the judicial review is still pending in Polk County District court and no remand has been issued. *Christiansen v. Iowa Bd. of Ed. Exam'rs*, 831 N.W.2d 190 (finding "the filing of a proper petition for judicial review divests the agency of jurisdiction unless and until the district court remands the case"). Therefore, the State argues the Board no longer has jurisdiction or authority to modify the factual findings or sanctions contained in the final contested case decision.

The State argues that the laws and rules regarding finality of an agency decision are well settled and for good reason. The State asks the Board to consider the reverse situation where the State comes back to the Board 14 months after the Board's contested case decision is final and asks the Board to make a new factual finding regarding the licensee's behavior. The State argues that such a request is fundamentally unfair and granting such a request would effectively make no board contested case decision ever final. It could be opened up at any time in the future. The State argues that this concept flies directly in the face of the Board's rules, Iowa code chapter 17A, clear case law, and a common sense understanding of the meaning of the word "final". Therefore, the State argues, the Board does not have jurisdiction or authority to consider modification of the original contested case decision.

### **Board Ruling:**

The Board concludes that it does not have jurisdiction or authority to modify the factual findings or sanctions contained in the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order. The Board issued the final contested case decision on February 19, 2015, and Respondent filed an application for rehearing and it was denied. Further, the Board notes that Respondent filed a judicial review of the Board's decision and the judicial review is still pending in Polk County District court. Therefore, the Board concludes that it does not have jurisdiction or authority to remove reference to an "indefinite suspension" and an "indefinite probation" in the final contested case decision.

## **II. Acknowledge that the Sexual Relationships were Consensual:**

Respondent requests that the Board issue a supplemental finding that acknowledges that the sexual relationships were consensual.

### **Respondent's Argument:**

Respondent argues that the Board's February 19, 2015, Findings of Fact. Conclusions of Law, Decision and Order include detailed reference to his sexual relationships with University of Iowa employees. Respondent noted that he freely admitted - as recited in the Board's findings - that these relationships and other conduct on his part were unprofessional. Respondent further noted that the Board's findings failed to reference the

abundant evidence that the sexual relationships, though unprofessional, were consensual. Respondent requests a supplemental finding that acknowledges the evidence that the sexual relationships were consensual. Respondent argues that such a supplemental finding would address any fear by UAE authorities that he would be a threat to other hospital employees.

**State's Argument:**

Again, the State argues that the Board does not have jurisdiction or authority to modify the factual findings or sanctions contained in the final contested case decision. The State argues that the laws and rules regarding finality of an agency decision are well settled and it is too late for the Board to go back and modify the factual findings or sanctions imposed in the Board's final decision.

**Board Ruling:**

As noted above, the Board concludes that it does not have jurisdiction or authority to modify the factual findings or sanctions contained in the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order. Therefore, the Board does not have authority or jurisdiction to issue a supplemental finding that acknowledges that the sexual relationships in question were consensual.

**III. Termination of Probation:**

Respondent requests that the Board terminate the terms and conditions of probation placed on his Iowa medical license.

**Respondent's Argument:**

Respondent argues that he promptly and fully complied with every provision of the Board's February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order. He notes that compliance with the Board's order required completion of comprehensive treatment at the Acumen Institute in Lawrence, Kansas. Respondent notes that he successfully completed treatment, after which the Institute stated, "We note that Dr. Rabi has not engaged in misconduct since 2008, the year his son was born, and he stopped having all social contact with coworkers in 2009. We also note that his shift in moral attitude has finally caught up with this prior cessation of his more problematic behavior". (Longitudinal Treatment Follow-up Report dated August 7, 2015).

Respondent further notes that his Iowa medical license is inactive. Respondent argues if he seeks reinstatement of his inactive license in the future, the Board has authority to impose any terms, conditions or restrictions it chooses on his license. Respondent argues that because his license is inactive and because the Board may impose terms and

conditions at the time of reinstatement, the ongoing probationary requirements contained in the Board's order of February 19, 2015, are an unnecessary exercise of the Board's authority, and duplicative.

**State's Argument:**

The State acknowledges that Board has authority to determine whether Respondent has satisfied the terms of his Order and to modify or terminate the terms of probation. The State notes that the final order dated February 19, 2015, imposed an indefinite suspension until Respondent complied with all BMI recommendations and recommended psychotherapy. However, the State also notes that the final order also imposed an indefinite period of probation to start after Respondent's license was reinstated. The State notes that the Board reinstated Respondent's license on December 11, 2015, and at that time probationary requirements were put in place, including a board monitoring program, compliance with BMI recommendations and professional boundaries treatment recommendations, staff surveillance and patient satisfaction surveys, polygraph examinations, board-approved psychotherapy, worksite monitoring, quarterly reports, board appearances, and monitoring fees. The State also notes that on March 3, 2016, the Board approved an Amended Reinstatement Order that only requires Respondent to comply with the probationary terms if he reactivates his inactive license at some date in the future if and when Dr. Rabi returns to practice in Iowa or under the authority of his Iowa license.

The State notes that now, Respondent seeks termination of all probationary requirements. The State argues that this would require a termination order from the Board stating Respondent has satisfied all requirements contained within the Board's contested case decision or stating the Board decided he did not have to satisfy the requirements for some specific reason. The State notes that in support of his request, Respondent informed the Board they have authority to impose certain terms or conditions on his reinstated license at some point in the future under 653 IAC 9.8(8)"e". The State argues that if the Board determines it is appropriate to grant Respondent's termination request, it should make clear whether it intends to impose the same probationary requirements or other terms and conditions upon reinstatement of his inactive license. The State argues that otherwise, Respondent could later argue the Board lacks authority to impose the same probationary requirements "again" for the same conduct which the Board has previously disciplined him, imposed sanctions, and terminated his compliance with those sanctions.

**Board Ruling:**

The Board concludes that it has authority to modify or terminate the terms and conditions established by the Board in this matter. The Board further acknowledges that Respondent has promptly and fully complied with the requirements for reinstatement of his Iowa medical license, including successful completion of the Board-approved professional

boundaries program, participation in Board-approved psychotherapy and a showing that the basis for the suspension of his license no longer exists and it is in the public interest to reinstate his license. However, the Board notes that the February 19, 2015, Findings of Fact, Conclusions of Law, Decision and Order also imposed a period of probation to start after Respondent's license was reinstated. Those provisions include a board monitoring program, compliance with BMI recommendations and professional boundaries treatment recommendations, staff surveillance forms and patient satisfaction surveys, polygraph examinations, board-approved psychotherapy, worksite monitoring, quarterly reports, board appearances, and monitoring fees. The Board notes that the terms of probation were imposed by the Board to establish a remediation program for Respondent and to monitor him for period of time in order to protect the public. The Board also notes that it would be highly unusual to terminate such probationary terms after such a short period of remediation and monitoring. The Board believes that further remediation and monitoring is necessary to protect the public. Therefore, the Board denies Respondent's request to terminate the terms of his probation at this time.

**THEREFORE IT IS HEREBY ORDERED:** that Respondent's Application for Modification of Order and Termination of Probation is **DENIED**.

This order is effective on April 15, 2016.



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Hamed H. Tewfik, M.D., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

\*\*\*\*\*

IN THE MATTER OF A STATEMENT OF CHARGES AGAINST

FIRAS A. RABI, M.D., RESPONDENT

FILE No. 02-2010-337

\*\*\*\*\*

AMENDED REINSTATEMENT ORDER

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COMES NOW the Iowa Board of Medicine (Board) and Firas A. Rabi, M.D., (Respondent), on March 3, 2016, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) (2005), enter into this Reinstatement Order in the above matter.

1. Respondent was issued Iowa medical license no. 36338 on September 12, 2005.
2. Respondent's Iowa medical license went inactive due to nonrenewal on July 1, 2012.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.
4. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced pediatric medicine in Iowa City, Iowa, and Indianapolis, Indiana.

5. **Statement of Charges:** On March 6, 2014, the Board filed a Statement of Charges against Respondent alleging that he engaged in sexual harassment, unethical or unprofessional conduct and/or practice harmful or detrimental to the public in violation of the laws and rules governing the practice of medicine in Iowa.

6. **Findings of Fact, Conclusions of Law, Decision and Order:** A hearing was held before the Board on January 8-9, 2015, and the Board issued a Findings of Fact, Conclusions of Law, Decision and Order on February 19, 2015. The Board concluded that Respondent engaged in sexual misconduct and unethical or unprofessional conduct in violation of the laws and rules governing the practice of medicine in Iowa. The Board concluded that the preponderance of evidence did not support a finding that he violated its rule prohibiting practice harmful or detrimental to the public. The Board issued Respondent a Citation and Warning and ordered him to pay a \$10,000 civil penalty. The Board suspended Respondent's Iowa medical license until he successfully completes a Board-approved professional boundaries program and psychotherapy and demonstrates that the basis for the suspension no longer exists and it is in the public interest to reinstate his license.

7. **Reinstatement:** Respondent submitted a Request to Lift Suspension and demonstrated that he has successfully completed Phase I and IIA of a Board-approved professional boundaries program and that he has participated in Board-approved psychotherapy. Respondent submits that the basis for the suspension no longer exists and it is in the public interest to reinstate his license. The Board voted to reinstate Respondent's

license subject to the terms of this Order.

8. **December 11, 2015, Reinstatement Order:** This Amended Reinstatement Order replaces and voids the Reinstatement Order dated December 11, 2015.

9. **PROBATION:** Respondent's Iowa medical license has been inactive due to nonrenewal on July 1, 2012, and he no longer practices medicine in Iowa. Respondent shall provide the Board written notice at least thirty (30) days prior to practicing medicine under his Iowa medical license or being employed under the authority of his Iowa medical license. Respondent shall send the required written notice to the Director of Legal Affairs, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. Should Respondent practice medicine under his Iowa medical license in the future, he shall fully comply with the following terms and conditions:

- A. **Board Monitoring Program:** Respondent shall establish a Board monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the Board monitoring program.
- B. **BMI Recommendations:** Respondent shall fully comply with all recommendations made by BMI.

C. **Treatment Program Recommendations:** Respondent shall fully comply with all recommendations made by the Board-approved professional boundaries treatment program.

D. **Principles of Medical Ethics, Staff Surveillance Forms and Patient Satisfaction Surveys:**

1) Respondent shall post the Principles of Medical Ethics in his medical practice as directed by the Board.

2) Respondent shall utilize Staff Surveillance Forms in his medical practice as directed by the Board.

3) Respondent shall utilize Patient Satisfaction Surveys in his medical practice as directed by the Board.

E. **Polygraph Examinations:** Respondent shall submit to Board-approved polygraph examinations every six months.

F. **Board-Approved Psychotherapy:** Respondent shall participate in Board-approved psychotherapy for appropriate professional boundaries under the following terms and conditions:

1) Respondent shall submit for Board approval the name and CV of a psychotherapist with experience in professional boundaries.

2) Respondent shall meet with the psychotherapist as frequently as recommended by the psychotherapist and approved by the Board.

- 3) Respondent shall continue with psychotherapy until discharged by the psychotherapist and approved by the Board.
- 4) Respondent shall ensure that the psychotherapist submits written quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
- 5) Respondent is responsible for all costs associated with the therapy.

**G. Worksite Monitoring Program:** Respondent shall establish a worksite monitoring program with the Board subject to the following conditions:

- 1) Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine.
- 2) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
- 3) The worksite monitor shall provide a written statement indicating that they have read and understand this Order and agree to serve under the terms of this Order.
- 4) The worksite monitor shall agree to inform the Board immediately if there is evidence of sexual harassment, unprofessional conduct or a violation of the terms of this Order.

- 5) The worksite monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
- 6) Respondent shall ensure that the worksite monitor submits quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

H. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with all the terms and conditions of this Order not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.

I. **Board Appearances:** Respondent shall make an appearance before the Board annually or upon request. Respondent shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

K. **Monitoring Fee:** Respondent shall make a payment of \$200 to the Board each quarter for the duration of probation to cover the Board's monitoring expenses. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.

- L. **Obey All Laws:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.
- M. **Failure To Comply:** In the event Respondent violates or fails to comply with any of the terms or conditions of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272C and 653 IAC 25.

10. Respondent shall submit a written statement to the Board which demonstrates that he has shared a copy of this order with all medical licensing boards where Respondent holds a license, whether active or not, within thirty (30) days of the date of this order.

11. Respondent shall submit a written statement to the Board which demonstrates that Respondent has shared a copy of this order with all hospitals and clinics where Respondent practices medicine within thirty (30) days of the date of this order.

12. Respondent voluntarily submits this Order to the Board for consideration.

13. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

14. By entering into this Order, Respondent understands that he may be represented by legal counsel in this matter, voluntarily waives any rights to a contested case hearing on the reinstatement of his Iowa medical license, and waives any objections to the terms of this Order.

15. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank.

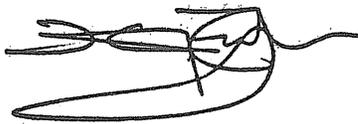
16. Respondent understands that this Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

17. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

18. The Board's approval of this Order shall constitute a **Final Order** of the Board.

  
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Firas A. Rabi, M.D., Respondent

This Order is approved by the Board on March 3, 2016.

  
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Hamed H. Tewfik, M.D., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

\*\*\*\*\*

IN THE MATTER OF A STATEMENT OF CHARGES AGAINST

FIRAS A. RABI, M.D., RESPONDENT

FILE Nos. 02-10-337

\*\*\*\*\*

REINSTATEMENT ORDER

\*\*\*\*\*

COMES NOW the Iowa Board of Medicine (Board) and Firas A. Rabi, M.D., (Respondent), on December 11, 2015, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) (2005), enter into this Reinstatement Order in the above matter.

1. Respondent was issued Iowa medical license no. 36338 on September 12, 2005.
2. Respondent's Iowa medical license went inactive due to nonrenewal on July 1, 2012.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.
4. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced pediatric medicine in Iowa City, Iowa, and Indianapolis, Indiana.

5. **Statement of Charges:** On March 6, 2014, the Board filed a Statement of Charges against Respondent alleging that he engaged in sexual harassment, unethical or unprofessional conduct and/or practice harmful or detrimental to the public in violation of the laws and rules governing the practice of medicine in Iowa.

6. **Findings of Fact, Conclusions of Law, Decision and Order:** A hearing was held before the Board on January 8-9, 2015, and the Board issued a Findings of Fact, Conclusions of Law, Decision and Order on February 19, 2015. The Board concluded that Respondent engaged in sexual misconduct and unethical or unprofessional conduct in violation of the laws and rules governing the practice of medicine in Iowa. The Board concluded that the preponderance of evidence did not support a finding that he violated its rule prohibiting practice harmful or detrimental to the public. The Board issued Respondent a Citation and Warning and ordered him to pay a \$10,000 civil penalty. The Board suspended Respondent's Iowa medical license until he successfully completes a Board-approved professional boundaries program and psychotherapy and demonstrates that the basis for the suspension no longer exists and it is in the public interest to reinstate his license.

7. **Reinstatement:** Recently, Respondent submitted a Request to Lift Suspension and demonstrated that he has successfully completed Phase I and IIA of a Board-approved professional boundaries program and that he has participated in Board-approved psychotherapy. Respondent submits that the basis for the suspension no longer exists and it is in the public interest to reinstate his license. The Board voted to reinstate Respondent's

license subject to the terms of this Order.

8. **INDEFINITE PROBATION:** Respondent is placed on **indefinite probation** subject to the following terms and conditions:

- A. **Written Notice:** Respondent shall provide the Board written notice at least thirty (30) days prior to practicing medicine under his Iowa medical license or being employed under the authority of his Iowa medical license. Respondent shall send the required written notice to the Director of Legal Affairs, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686.
- B. **Board Monitoring Program:** Respondent shall establish a Board monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the Board monitoring program.
- C. **BMI Recommendations:** Respondent shall fully comply with all recommendations made by BMI.
- D. **Treatment Program Recommendations:** Respondent shall fully comply with all recommendations made by the Board-approved professional boundaries treatment program.

**E. Principles of Medical Ethics, Staff Surveillance Forms and Patient Satisfaction Surveys:**

- 1) Respondent shall post the Principles of Medical Ethics in his medical practice as directed by the Board.
- 2) Respondent shall utilize Staff Surveillance Forms in his medical practice as directed by the Board.
- 3) Respondent shall utilize Patient Satisfaction Surveys in his medical practice as directed by the Board.

**F. Polygraph Examinations:** Respondent shall submit to Board-approved polygraph examinations every six months.

**G. Board-Approved Psychotherapy:** Respondent shall participate in Board-approved psychotherapy for appropriate professional boundaries under the following terms and conditions:

- 1) Respondent shall submit for Board approval the name and CV of a psychotherapist with experience in professional boundaries.
- 2) Respondent shall meet with the psychotherapist as frequently as recommended by the psychotherapist and approved by the Board.
- 3) Respondent shall continue with psychotherapy until discharged by the psychotherapist and approved by the Board.

- 4) Respondent shall ensure that the psychotherapist submits written quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
- 5) Respondent is responsible for all costs associated with the therapy.

H. **Worksite Monitoring Program:** Respondent shall establish a worksite monitoring program with the Board subject to the following conditions:

- 1) Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine.
- 2) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
- 3) The worksite monitor shall provide a written statement indicating that they have read and understand this Order and agree to serve under the terms of this Order.
- 4) The worksite monitor shall agree to inform the Board immediately if there is evidence of sexual harassment, unprofessional conduct or a violation of the terms of this Order.

- 5) The worksite monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
  - 6) Respondent shall ensure that the worksite monitor submits quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- I. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with all the terms and conditions of this Order not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
  - J. **Board Appearances:** Respondent shall make an appearance before the Board annually or upon request. Respondent shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
  - K. **Monitoring Fee:** Respondent shall make a payment of \$200 to the Board each quarter for the duration of probation to cover the Board's monitoring expenses. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.

L. **Obey All Laws:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.

M. **Failure To Comply:** In the event Respondent violates or fails to comply with any of the terms or conditions of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272C and 653 IAC 25.

9. Respondent shall submit a written statement to the Board which demonstrates that he has shared a copy of this order with all medical licensing boards where Respondent holds a license, whether active or not, within thirty (30) days of the date of this order.

10. Respondent shall submit a written statement to the Board which demonstrates that Respondent has shared a copy of this order with all hospitals and clinics where Respondent practices medicine within thirty (30) days of the date of this order.

11. Respondent voluntarily submits this Order to the Board for consideration.

12. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

13. By entering into this Order, Respondent understands that he may be represented by legal counsel in this matter, voluntarily waives any rights to a contested case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Order.

14. This Order constitutes the resolution of a contested case proceeding.

15. Periods of practice outside the state of Iowa and periods in which Respondent does not practice medicine or fails to comply with the terms of this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.

16. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank.

17. Respondent understands that this Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

18. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

19. The Board's approval of this Order shall constitute a **Final Order** of the Board.



\_\_\_\_\_  
Firas A. Rabi, M.D., Respondent

Subscribed and sworn to before me on September 24<sup>th</sup>, 2015.

Notary Public, State of OHIO



This Order is approved by the Board on December 11, 2015.

A handwritten signature in black ink, appearing to read 'Hamed H. Tewfik', written over a horizontal line.

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Hamed H. Tewfik, M.D., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

FIRAS A. RABI, M.D., RESPONDENT

FILE NO. 02-10-337

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER

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Date: February 19, 2015.

On March 6, 2014, the Iowa Board of Medicine (Board) issued a Statement of Charges against Firas A. Rabi, M.D. (Respondent), alleging three counts as follows:

- **Sexual Harassment:** Respondent is charged pursuant to Iowa Code section 148.6(2)(i) and 653 IAC 13.7(6) and 23.1(10) with engaging in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.
- **Unethical or Unprofessional Conduct:** Respondent is charged pursuant to Iowa Code section 147.55(3) and 272C.10(3) and 653 IAC 23.1(4) with engaging in unethical or unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics.
- **Practice Harmful or Detrimental to the Public:** Respondent is charged pursuant to Iowa code sections 147.55(3) and 272C.10(3) and 653 IAC 23.1(3) with engaging in practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess or exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances.

A hearing on the charges was held on January 8 and 9, 2015, before the following Board members: Michael Thompson, D.O.; Analisa Haberman, D.O.; Julie Carmody, M.D.; Allison Schoenfelder, M.D.; Allen Zagoren, D.O.; and Paul Thurlow, public member. Respondent was represented by attorneys Michael Sellers and John O. Haraldson. Assistant Attorney General Julie Bussanmas represented the state. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(l) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Kerry Anderson assisted the Board in conducting the hearing and was instructed to prepare a written decision for Board review, in accordance with their deliberations.

### **THE RECORD**

The record includes the Statement of Charges and Hearing Order; prehearing orders both procedural and substantive, State's Exhibits 1-3, 4A-4P, and 5-10, Respondent's Exhibits 1-4, and the testimony of the following witnesses:

- Co-worker #1
- Co-worker #2
- Co-worker #3
- Co-worker #4
- Dr. Gabrielle Hobday
- Co-worker #5
- Co-worker #6
- Co-worker #7 (by deposition)
- Les Gloege
- Dr. Kelly Smith
- Carissa Kelly
- Dr. Rolla Abu-Arja
- Brian Konvalinka
- Dr. Firas Rabi
- Diane Pollard

### **FINDINGS OF FACT**

#### **Background**

Respondent holds Iowa Medical License Number 36338, issued September 12, 2005, which is currently inactive. (State's Exh. 4A; Respondent's Exh. 4). He formerly practiced pediatric medicine in Iowa City, Iowa, and, as of the date of hearing, was practicing in Dublin, Ohio. (Respondent's Exh. 4; Rabi testimony)

Respondent participated in a three-year fellowship at the University of Iowa Hospitals and Clinics (UIHC) in pediatric critical care unit (PICU) beginning July 1, 2006. On July 1, 2009,

Respondent began an associate faculty physician position in pediatrics at UIHC. On March 26, 2010, the University's Office of Equal Opportunity and Diversity (EOD) received a formal complaint alleging that Respondent had engaged in inappropriate relationships with nursing staff. An investigation ensued and, on June 18, 2010, the EOD issued a memorandum finding that the evidence produced during the investigation provided a reasonable basis to believe that Respondent had violated the University's policy on sexual harassment. Thereafter, on June 21, 2010, the Carver College of Medicine notified Respondent that based on the EOD's report he was being placed on administrative leave with pay and that his appointment would not be renewed. Carver College also notified Respondent of his obligation to report the matter to the Iowa Board of Medicine (Board). (State's Exhs. 2, 4A)

On July 13, 2010, the Board received a letter from Respondent reporting the results of the University's investigation but maintaining that the allegations were the result of his termination of a lengthy intimate relationship with a nurse in the PICU, that the relationship was consensual and that it did not create a hostile work environment. Based on Respondent's self-report, the Board initiated an investigation. That investigation resulted in the Statement of Charges which the Board issued against Respondent on March 6, 2014. (State's Exh. 4A).

#### **Evidence from PICU Nurses and Dr. Rabi's Responses**

##### **Co-worker #7:**

Co-worker #7 provided an interview during the investigation in this matter and her hearing testimony was presented by video deposition. (State's Exhs. 4H and 9) Co-worker #7 testified that she was a nurse in the PICU at UIHC and began her orientation in September 2006 when she was 22-years-old. She stated that her first shift on her own in the unit was on Christmas Eve 2006. She testified that on that night she had an infected finger and Respondent lanced it for her and wrote her a prescription for an antibiotic. Co-worker #7 noted that Respondent had begun work on the PICU as a fellow a few months before, in July 2006. (State's Exh. 9)

Co-worker #7 stated that Respondent spent a great deal of time with her during her shifts, teaching her various medical procedures. Respondent also assisted Co-worker #7 in setting up her retirement account and advised her about investments. Co-worker #7 noted that Respondent also began to send her messages on MySpace that were of a personal nature; i.e., advising her what type of jeans she should wear to enhance her figure. Co-worker #7 stated that Respondent did not tell her he was married or that he had children. She stated that some of the notes Respondent sent her felt sexual in nature. Co-worker #7 noted that none of the other medical staff on the PICU gave her such individualized attention or sent her personal messages outside of work. (State's Exhs. 4H, Exh. 9).

Co-worker #7 explained that the PICU's 2006 Christmas party was actually held in February 2007 at a bar in Iowa City. Co-worker #7 was hesitant to attend because she was still new on the unit and did not know many people. She eventually decided to attend with a friend who also worked in the PICU. Co-worker #7 and her friend lived in Cedar Rapids and Co-worker #7

was dependent on her friend to get to and from the party. (State's Exhs. 4H, 9)

Co-worker #7 testified that Respondent was at the party, along with other PICU staff. Everyone was drinking and Respondent was buying drinks and shots for her and for others. Co-worker #7 became intoxicated. The friend Co-worker #7 had come to the party with decided to leave and Respondent convinced Co-worker #7 to stay by telling her he would drive her back to Cedar Rapids later. Co-worker #7 remained at the party after her friend left. She testified that Respondent became "flirty" with her and tried to hold her hand. She stated that she did not allow him to do so. Eventually, Co-worker #7 and Respondent left the bar and walked to a parking garage to get Respondent's car. In the parking garage, Co-worker #7 and Respondent had sex and Respondent then drove her home. (State's Exhs.4H, 9)

Co-worker #7 testified that she takes responsibility for her actions with regard to the Christmas party incident. However, she states that she believes Respondent planned the events at the Christmas party and planned to have sex with her. Co-worker #7 stated that had she been sober or had she known Respondent was married and had children she would not have had sex with him. (State's Exhs. 4H, 9).

Co-worker #7 stated that after the Christmas party she discovered Respondent was married with two children. She noted there were rumors in the PICU and she felt everyone knew what had happened at the Christmas party. Co-worker #7 stated that after the party she felt used by Respondent and attempted to avoid him as much as she could and limited her conversations with him to professional matters only. She testified that Respondent continued to send her messages on MySpace for months afterward but she quit responding and eventually her boyfriend, to whom she is now married, sent Respondent a note asking him to leave her alone and Respondent then quit messaging her. She stated that she subsequently began to notice that Respondent was acting the same way with other newer nurses on the unit as he had previously acted with her. (State's Exhs. 4H, 9)

Co-worker #7 also noted that a few weeks after the Christmas party incident, on March 9, 2007, while she was at work, she mentioned conversationally that she had been experiencing nausea. Respondent heard her comment and wrote her a prescription for Phenergan. She testified she did not fill the prescription. (State's Exhs. 4H, 9)

Dr. Rabi's response:

At hearing, Respondent did not contest Co-worker #7's testimony regarding the Christmas party. Respondent admitted that Co-worker #7 asked him to look at her finger when it was infected and he drained it, put Neosporin on it and wrote her a prescription for an antibiotic. He testified he did not think he needed to establish a formal doctor-patient relationship with Co-worker #7 because he was not prescribing a controlled substance for her. He further testified that he did not recall prescribing Phenergan for her in March 2007. (Rabi testimony)

Respondent reported during the Board's investigation that Co-worker #7's former boyfriend

attended the Christmas party in February 2007 and she was uncomfortable going home by herself. He offered her a ride. He admitted having intercourse with Co-worker #7 in the car but he denied that Co-worker #7 was intoxicated at the time. Respondent stated he and Co-worker #7 mutually agreed not to discuss the Christmas party incident and he honored their agreement. (State's Exh. 4L)

Co-worker #3:

Co-worker #3 testified at hearing and gave statements both during the EOD investigation and the Board's investigation. (State's Exhs. 4C, 4E). Co-worker #3 is currently a nurse on the UIHCs PICU. She stated that she began working there as a nursing student and nursing assistant in 2008 when she was 23-years-old. Co-worker #3 described her relationship with Respondent as "just coworkers" when she first started on the unit. She noted that occasionally Respondent would make comments to her about her appearance such as that she looked good in a certain shirt or that she had "nice lips". Co-worker #3 stated that he once offered to give her a "full body exam". (Co-worker #3 testimony; State's Exhs. 4C, 4E)

Co-worker #3 explained during the EOD investigation that Respondent began to invite her to go out in downtown Iowa City with him. In July 2008, he invited her to his home. She did not accept. But later in the summer she and another nurse did go to Respondent's home where he took them to a downstairs bedroom. The three sat on a bed and drank wine while they talked. Nothing of a sexual nature took place at that time. (State's Exh. 4C)

Co-worker #3 explained that on one occasion Respondent removed a headband she was wearing and refused to return it. He told her she would have to come to the call room to get the headband back. The call rooms are rooms in the hospital with a bed and other personal conveniences for physicians to rest when they are on-call. Co-worker #3 did eventually go to the call room to retrieve her headband. While she was there, Respondent kissed her, removed her shirt and touched her breasts. She noted that she felt uncomfortable and trapped in the room and just "gave up". She stated that Respondent told her that he and his wife had an open relationship and that he was a "swinger". (Co-worker #3 testimony; State's Exhs. 4C, 4E)

Co-worker #3 further testified that in the winter of 2009 she and some friends were at a bar in downtown Iowa City. Respondent was there and was buying drinks and began to flirt with her. Respondent told Co-worker #3 he wished he had met her ten years earlier because he would have married her instead of his wife. Co-worker #3 became inebriated and Respondent offered to drive her and her friends home. Eventually, Respondent and Co-worker #3 arrived at her home. One of her friends was staying with her and was also there. She testified that she recalled Respondent coming into her apartment and that the two kissed. She stated she did not recall anything further of the night but woke the next morning fully clothed except for her underwear. Co-worker #3 testified that it would be highly unusual that she would remove her underwear and she was concerned that something sexual might have occurred with Respondent. She shared her concerns with another nurse who advised her to obtain the Plan B pill. (Co-worker #3; State's Exh. 4C, 4E)

Co-worker #3 noted that Respondent told her he did not come in to her apartment and nothing happened between the two of them. She told the Board's investigator that Respondent was not as nice to her after the event and did not give her compliments any longer. She said she was angry and upset at both herself and Respondent. She stated she felt immense guilt for allowing herself to be in the situation. (Co-worker #3 testimony)

Dr. Rabi's response:

When he spoke with the EOD investigator, Respondent noted that he and Co-worker #3 socialized on several occasions in groups at bars. He stated that it was clear Co-worker #3 was attracted to him but that he did not want to act on it. He noted that in December 2008 he drove Co-worker #3 home along with three other nurses, all of whom were intoxicated. He dropped each nurse off at her home. He stated that he may have kissed Co-worker #3 when they were in his car but stated he could not remember. Respondent denied that Co-worker #3 ever sent him a message asking what happened that night. (State's Exh. 4C) When interviewed by the Board's investigator he reiterated that he took Co-worker #3 and her friends home and they were all intoxicated. He stated all of the women were vomiting. He stated he had no sexual contact with Co-worker #3. He pointed out that he was the only sober person involved in the incident. (State's Exh. 4H).

Respondent also told the EOD investigator that Co-worker #3 and another nurse were at his home on one occasion drinking wine and the three of them were in bed together. Respondent stated that Co-worker #3 and the other nurse were kissing him and each other and Co-worker #3 became angry that the other nurse was there and wanted her to leave. He stated that the physical contact among all three parties was consensual. (State's Exh. 4C)

Respondent also told the Board's investigator that, on one occasion, Co-worker #3 came to the call room when he was there and he took her shirt off and there was some kissing. He stated the incident was brief and there was no intercourse. He emphasized that Co-worker #3 was attracted to him. (State's Exh. 4H)

Respondent emphasized that Co-worker #3 sought him out and continued to do so as late as May 2009 when she posted a message to him on Facebook. (Respondent testimony; State's Exh. 4K)

At hearing, Respondent testified that he did not have sexual intercourse with Co-worker #3. (Rabi testimony)

Co-worker #2:

Co-worker #2 testified that she was employed as a staff nurse on the PICU and a transport nurse for neonatal and pediatric transport at UIHC from 2005 through 2014. She explained that, when Respondent began as a fellow on the unit, PICU staff would go out together socially

after work. She described Respondent as friendly and social. Co-worker #2 testified that she and Respondent were friends early on. (Co-worker #2 testimony)

Co-worker #2 shared that she and Respondent began texting outside of work. On occasion his texts would become too flirtatious, i.e., Respondent once referenced the way her "butt" looked in her flight suit. Then he would "back off" for a while making her think he had only been kidding. She stated she ignored the behavior at the time. (Co-worker #2 testimony; State's Exh. E)

According to Co-worker #2, in April or May 2008, she was working a 24-hour shift as a transport nurse when she bent down and ripped the crotch of her flight suit. She testified that she taped the suit together with duct tape and went to the nurse's area in the PICU to get suture material to sew the rip. Respondent was in the area and offered to mend the suit for her. She agreed. (Co-worker #2 testimony; State's Exhs. 4C, 4E)

Co-worker #2 testified that she was wearing a tee shirt and underwear under the flight suit. She went into the locker room to get a pair of scrubs to change into. She testified that Respondent told her they should take care of the matter in the call room. Both Co-worker #2 and Respondent then went into the call room and Co-worker #2 used the bathroom to change into scrub pants. She gave Respondent her flight suit to mend. Respondent was sitting on the bed and Co-worker #2 was standing in the middle of the room while he worked on the suit. She stated that Respondent told her he had been trying to get her into the call room for some time because he was hoping to have sex with her there. She testified that Respondent told her he had an open marriage and that he and his wife thought it was acceptable to "taste" others. She stated she told Respondent she would never cheat on her boyfriend. He replied that if her boyfriend gave his permission she would not be cheating. Co-worker #2 testified that, while Respondent returned her flight suit to her, she felt he was trying to keep her in the room and she was uncomfortable. She explained that Respondent was between her and the door to the call room and she was concerned enough that she began to grip a pair of scissors that was in the pocket of her flight suit. She stated that eventually Respondent bent over to log into a computer and she was able to get by him and out of the door at that time. (Co-worker #2 testimony; State's Exhs. 4C, 4E)

Co-worker #2 testified that a couple of hours later Respondent paged her and offered her the opportunity to perform an intubation on a 4-year-old child. She accepted the offer and performed the procedure. She testified that she felt Respondent's actions in giving her the opportunity to perform the intubation was a sort of "gift" to her. She stated she had never been given the chance to perform such a procedure before and never got the chance again while employed at UIHC. She believed it was an attempt on Respondent's part to keep her from talking about the incident in the call room. (Co-worker #2 testimony; State's Exh. 4E)

Co-worker #2 testified that she talked to the senior flight nurse about the incident with Respondent in the call room. The two reviewed the university's sexual harassment policy and Co-worker #2 was advised to speak with Respondent and explain to him that she was offended

by the incident and nothing like it should happen again. She stated that she did not want to do that so she opted to send Respondent an email instead. On May 2, 2008, she sent the email. Respondent replied that same day stating he was sorry to have made her uncomfortable and promising it would not happen again. (Co-worker #2 testimony; State's Exhs. 4E, 4F)

Co-worker #2 stated that after Respondent replied to her email they were no longer friends. She said she could tell he was irritated by her presence afterwards. She stated the two no longer spoke and Respondent became rude to her. Co-worker #2 explained that she tried to avoid him as much as possible. She described one occasion in which a teenager was admitted to the PICU and was not "with it". Respondent told the patient not to worry because even though Co-worker #2 was his nurse, the rest of the staff was there to watch out for him. On another occasion, a group of people in the PICU were discussing underwear and Respondent told them that someone should tell Co-worker #2 to wear thong underwear so her panty line would not show. She considered these actions to be offensive. (Co-worker #2 testimony)

Dr. Rabi's response:

Respondent's version of the flight suit incident is much different than Co-worker #2's. He asserts that Co-worker #2 knocked on the door of the call room he was in and asked him to repair her flight suit. He stated she asked that he mend the suit while she was still wearing it but he refused. He stated that while he was sewing the seam, Co-worker #2 began leaning over him and he told her "this looks bad." Once he finished repairing the flight suit, Respondent stated that he told Co-worker #2 that they should not leave together and he left the room first then called her and told her the "coast was clear." He denied ever telling her he was in an open marriage or that he and his wife agreed that it was acceptable to "taste" others. Respondent reported that Co-worker #2 flirted with him on a regular basis and made comments about his appearance. He stated that he paged her to intubate a patient a few hours after she left the call room because he had previously received a memorandum instructing the fellows to allow nurses the opportunity to perform such procedures. He provided a copy of a page from his Facebook account dated January 12, 2009, where Co-worker #2 responded to a post of his about a training session asking why he was not in her class. Respondent stated Co-worker #2 was clearly not afraid of him. (Respondent's testimony; State's Exhs. 4C; 4K)

Co-worker #6:

Co-worker #6 testified at hearing that she is a house operations manager and staff nurse in the PICU at UIHC. She was previously a charge nurse on the unit. She described an incident when she was sitting in an open bay with Respondent. Respondent told her he was going to the call room and asked if she would like to join him there. Co-worker #6 testified that she was shocked and offended by Respondent's remarks. (Co-worker #6 testimony)

Dr. Rabi's response:

Respondent did not offer a response to Co-worker #6's testimony.

Co-worker #1:

Co-worker #1 testified at hearing that she was 22-years-old in 2008 when she began work as a staff nurse on the PICU at UIHC. She stated that her relationship with Respondent was fairly professional when she first met him. As time went on however, she noted that Respondent became more and more familiar in the way he related with her. She stated that he began to make remarks to her that she considered inappropriate such as that he wished he had met her ten years earlier before he was married. She related an incident that she considered the "tipping point" when she and Respondent were in a patient's room and Respondent told her: "You look really hot today in your pony tail." Co-worker #1 stated that she was embarrassed by Respondent's remark and had to step out of the patient's room. She stated that she was unable to go on rounds that day because of the incident. (Co-worker #1 testimony).

Co-worker #1 stated that she questioned in her mind whether the incident in the patient's room constituted sexual harassment. She and her husband discussed the incident and she decided to send Respondent an email stating her concerns. On February 20, 2009, Co-worker #1 emailed Respondent informing him that his earlier comments made her uncomfortable and asking that their relationship remain professional. Respondent replied the same day apologizing and promising her he would be careful of his remarks to her in the future. (Co-worker #1 testimony; State's Exh. 4F).

Dr. Rabi's response:

Respondent admitted making the comment to Co-worker #1 about her ponytail; however, he stated that the incident took place in the nurses' lounge rather than a patient's room. He acknowledged receiving an email from her and apologizing for making her feel uncomfortable. He stated that he had no further contact with Co-worker #1 until September 2009 when he asked her to photograph his family and she agreed but they were never able to arrange a time for the session. (Respondent testimony; State's Exhs. 4C, 4K, 4L)

Co-worker #5:

Co-worker #5 testified at hearing that she is a nurse practitioner on the PICU at UIHC. She has worked in and out of the PICU since 1991. She described an incident in which Respondent approached her in the hall and asked to use her ID to open a door to a locker room. She protested saying that she did not believe her ID would work, but Respondent pulled her to the door. At that point someone inside the locker room opened the door to come out and Respondent pulled Co-worker #5 into the locker room with him. Co-worker #5 testified that she was of the opinion Respondent's actions were flirtatious in nature. (Co-worker #5 testimony)

Co-worker #5 testified that a few nurses came to her and reported behavior they considered to be inappropriate on Respondent's part. She stated that she instructed them to report the

incidents to their nurse supervisor and to Fred Lamb, the director the unit. She explained that after she had received complaints from the nurses, she began to recognize a pattern of behavior involving Respondent. According to Co-worker #5 she noticed that as young nurses and nursing assistants came on the PICU, they were quite friendly with Respondent. However, as time went on something changed in the relationship, the nurses seemed no longer to be friends with Respondent and they appeared sad and their mood at work changed. (Co-worker #5 testimony)

Dr. Rabi's response:

Respondent stated that Co-worker #5 and Co-worker #4 were friends and he believes that Co-worker #5 assisted Co-worker #4 in soliciting complaints against him because Co-worker #4 was angry with him after he ended their affair. (Rabi testimony; State's Exhs. 4C, 4L).

Co-worker #4:

Co-worker #4 testified at hearing that she was employed as a nurse in the PICU at UIHC from July 2007 through May 2008 and, again, from January 2009 through August 2010. She stated she was 23-years-old when she began in the PICU in 2007. Co-worker #4 characterized herself as socially naïve and stated she was overwhelmed by the PICU. She noted that she was a very conservative Christian at the time. She testified that she met Respondent during her orientation and that she felt he took her "under his wing". She noted that Respondent would stay up all night and teach her during her shifts in the PICU. She explained that she and Respondent began texting each other outside of work and, at times, the texts became sexually suggestive. (Co-worker #4 testimony; State's Exhs. 4C, 4E)

Co-worker #4 stated that she was unaware Respondent was married until January 2008 when she was informed by another nurse of the fact. She testified that subsequently, she offered to babysit for Respondent's children so he and his wife could go out for Valentine's Day. Respondent then arranged for Co-worker #4 to come to his house a few days prior to Valentine's Day to meet his wife, Dr. Rolla Abu-Arja, and their children. When she arrived, Dr. Abu-Arja was not at home and the children were in bed. Respondent asked her to come in and watch television with him. He then offered her "mint hot chocolate". Co-worker #4 stated that she later determined there was Schnapps in the hot chocolate but, as she was not a drinker, she did not recognize the presence of alcohol in the drink at the time. She stated that she and Respondent then smoked hookah together and eventually went to Respondent's bedroom where they engaged in sexual activity but did not have intercourse. She testified that Respondent explained to her that he and his wife had an open relationship but that Co-worker #4 should keep their activity a secret so he could tell Dr. Abu-Arja about it first. (Co-worker #4 testimony; State's Exhs. 4C, 4E)

Co-worker #4 stated that, after that night, Respondent would invite her to a call room at the hospital to engage in sexual activity with him. She stated the two used call rooms for sexual activity six to ten times after their first encounter at Respondent's home. She maintained that

the two did not have intercourse on those occasions as it was her goal to save intercourse for marriage. She stated that Respondent was well aware that she did not want to have intercourse. (Co-worker #4 testimony; Exhs. 4C, 4E)

According to Co-worker #4's testimony, sometime during mid-March 2008, she and Respondent had sexual intercourse in a call room at UIHC while he was on call. She stated that the intercourse was not consensual on her part and that she was very upset afterwards. She explained that she then decided to move to Colorado. She accepted a position there effective June 1, 2008. She testified; however, that she decided to continue having sexual intercourse with Respondent in an effort to "control" the situation. She stated the two continued in a mutually consensual sexual relationship thereafter. (Co-worker #4 testimony; State's Exhs. 4C, 4E)

Co-worker #4 testified that after she moved to Colorado, she and Respondent continued their relationship including sexual encounters when they were able to arrange to be together. She stated that she returned to Iowa for Thanksgiving in 2008 only to find Respondent in a call room at the hospital with someone else. Co-worker #4 stated that Respondent told her it was his wife but that she was not certain that was true. (Co-worker #4 testimony; State's Exhs. 4C, 4E)

In January 2009 Co-worker #4 returned to Iowa City and the PICU at UIHC. She and Respondent continued their sexual encounters but she described their relationship as more of a friendship than a romantic bond. In September 2009 Co-worker #4 went on a mission trip to Jamaica and Respondent and his wife were also on the trip. According to Co-worker #4, Respondent sought her out during the trip and accused her of being sexually assertive with the resort staff. She stated that she finally ended the relationship with Respondent on October 13, 2009, after they had intercourse at her home. She recalled the date because it was Respondent's tenth wedding anniversary. According to Co-worker #4, she and Respondent remained friendly after their relationship ended until the end of October, 2009. (Co-worker #4 testimony; State's Exhs. 4C, 4E)

On November 5, 2009, Respondent wrote Co-worker #4 a prescription for an antibiotic. Near that time, Co-worker #4 arranged to meet with Respondent's wife, Dr. Abu-Arja. She testified she wanted to tell Dr. Abu-Arja all of the lies Respondent had been telling. She stated that thereafter, she and Respondent had little or no contact. (Co-worker #4 testimony; State's Exhs. 4C, 4E)

Dr. Rabi's response:

Respondent testified at length with regard to his relationship with Co-worker #4. He noted that she scheduled herself to work when he was on call. She then offered to babysit for his children on Valentine's Day. Respondent stated that his wife was supposed to be home when Co-worker #4 came over before Valentine's Day to meet her and the children but she was delayed getting home. He noted that he had wanted to try hot chocolate with Schnapps and decided to

make it while Co-worker #4 was at his home. He denied that she was not aware there was alcohol in the drinks. He noted that neither of them liked the drinks and they did not finish them. Respondent stated that they smoked hookah and eventually kissed and engaged in sexual touching but did not have intercourse. He testified that Co-worker #4 returned to the house a couple of days later, on Valentine's Day, to babysit and acted as though she had never been to their home. (Respondent testimony; State's Exhs. 4C, 4L)

Respondent explained that over the next several weeks he and Co-worker #4 began to have trysts in the call rooms at the hospital. He stated that he fell in love with Co-worker #4. On March 15, 2008, they expressed their love for each other and then had sexual intercourse. He stated that she never expressed displeasure or asked him to stop. He testified he even asked Co-worker #4 if the intercourse had hurt since she was a virgin and she stated that she enjoyed it. (Respondent testimony; State's Exhs. 4C, 4L)

Respondent stated that when he was in Italy in April 2008 his wife discovered him chatting with Co-worker #4 online, and he realized that he was going to lose his children and his whole life if he continued the relationship with Co-worker #4. He told his wife that the relationship with Co-worker #4 was over but, in reality, he just got better at hiding it. He remained in touch with Co-worker #4 while she was in Colorado and the affair continued. (Respondent testimony; State's Exhs. 4C, 4L)

According to Respondent, he and Co-worker #4 continued their affair after she returned to Iowa City in January 2009. However, he explained that prior to the mission trip to Jamaica he decided to commit to his marriage so he went to the person in charge of applications for the mission and tried to ensure that Co-worker #4 would not be going. A couple of weeks later he received the list of persons going and found her name on it. He discovered that the husband of another participant in the mission had backed out and Co-worker #4 had been invited to attend in his place. Respondent testified that on the trip Co-worker #4 kept asking others about him and searching him out continuously. She then began hanging around with resort staff and acting out sexually. He stated that he explained to Co-worker #4 that her behavior was unacceptable and that he wanted to make his marriage work. According to Respondent, Co-worker #4 was unhappy with his decision. He noted that after the trip, the foundation banned friends from participating and limited participants to spouses although he stated he did not know if the change was due to Co-worker #4's behavior. (Respondent testimony; State's Exhs. 4C, 4L)

Respondent testified that on October 13, 2009, he went to Co-worker #4's home to tell her goodbye because she had met someone else she was romantically interested in. He noted that the two ended up having intercourse on that date but that they parted on friendly terms. (Respondent's testimony; State's Exhs. 4C, 4L)

Respondent maintains that the complaints against him have been engineered by Co-worker #4 and her friends as a part of Co-worker #4's desire to obtain revenge against him for ending their relationship. (Respondent's testimony)

### **Other Evidence Presented by the State**

#### **Diane Pollard:**

Ms. Pollard testified at hearing that she is the President and CEO of the Issa Trust Foundation. She stated that she never received any complaints regarding Co-worker #4's behavior on the mission trip to Jamaica in September 2009. (Pollard testimony)

#### **Dr. Gabrielle Hobday:**

Dr. Hobday testified that she is psychiatrist in private practice at The Gabbard Center in Bellaire, Texas, and a Clinical Assistant Professor in the Psychiatry Department at Baylor College of Medicine. Dr. Hobday specializes in boundaries, ethics and professionalism. At the request of the Board, she conducted a peer review of specific documents regarding Respondent's conduct during his time at UIHC. Those documents included, among others: Respondent's self-report to the Board; all investigative materials from the U of I's DOE investigation and the Board's investigation. (Hobday testimony; State's Exhs. 5, 6)

As a result of her review, Dr. Hobday concluded:

- Respondent demonstrated poor judgment with prescribing privileges by prescribing to individuals with whom he did not have an doctor/patient relationship;
- Respondent lacked professionalism and evidenced a pattern of behavior which was predatory in nature with younger, female nursing staff who were, in essence, in an inferior position to him;
- The evidence provided her did not show Respondent's actions negatively impacted patient care;
- The evidence provided her was sufficient to show Respondent engaged in unethical and unprofessional conduct;
- The evidence provided her demonstrated Respondent violated the Board's rules prohibiting sexual harassment;
- The evidence provided her did not support of a finding Respondent's behavior rose to the level of sexual misconduct.

(Hobday testimony; State's Exh. 5)

#### **BMI Report:**

Respondent voluntarily submitted to a professional boundaries and/or sexual misconduct evaluation at the Behavioral Medicine Institute of Atlanta (BMI) in November 2014. At that time he underwent seven hours of clinical interviews and psychological testing. As a result of the evaluation, BMI made the following findings and recommendations:

1. [Respondent] has been involved in sexual harassment.
2. [Respondent] has been involved in professional sexual misconduct.
3. [Respondent] has not conducted himself in a professional manner.
4. [Respondent has] written prescriptions without charts, indicating history, physical, diagnosis and reason for prescribing.

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... We do not believe [Respondent] can be treated by a three-day boundary course, because his behavior has been involved in too many inappropriate behaviors, having affairs, sexual harassment, treating patients without appropriate history and physical and charts and lacking awareness of the power differential between he and staff that he worked with. For this reason we believe he needs more extensive treatment than can be provided at a three day boundary course. It is possible that he could be treated in "packages" of therapy interspersed with his returning to practice because his behavior has had a tremendous impact on his marriage, family, occupation and practice.

Upon our education and training and with reasonable medical and psychiatric certainty, we believe he can continue to practice (sic) once he has successfully completed professional boundaries treatment with one of the following organizations:

1. Acumen Assessments, LLC ...
2. Professional Enhancement Program @ Pine Grove Recovery Center ...
3. Professional Renewal Center ...
4. Behavioral Medicine Institute of Atlanta ...

(State's Exh. 7)

The BMI report also states that permission was sought to speak with Respondent's wife, Dr. Abu-Arja; however, but they never received permission. (State's Exh. 7)

### **Testimony of Respondent's Witnesses**

Les Gloege:

Mr. Gloege is a professional polygraph examiner. He administered three polygraph tests to Respondent on August 9, 2014. He asked Respondent the following questions and received the following answers:

- Did you give Co-worker #4 alcoholic beverages or drugs so you could have sexual intercourse with her against her will? "No"
- Did you ever have sexual intercourse with Co-worker #4 against her conscious will? "No"

- Did Co-worker #4 give you implied consent to insert your penis into her vagina the first time you had sexual intercourse? “Yes”
- Have you ever inserted your penis into Co-worker #3? “No”
- Did Co-worker #3 give her conscious consent to all sexual activity between you and her? “Yes”
- Did you intentionally give Co-worker #3 alcoholic beverages or drugs with the intention of having sexual intercourse with her? “No”
- Has any woman consumed a narcotic or alcoholic substance without their knowledge due to your providing the substance to them? “No”
- Have you ever intentionally caused a woman to blackout from a narcotic or alcoholic substance? “No”
- Did (sic) you ever taken into your possession any medication, in solid or liquid form, that belonged to a patient or employer, without a proper medical basis to do so? “No”

Mr. Gloege opined that there was no deception indicated in any of Respondent’s answers. He acknowledged that it was not the best practice to ask questions during a polygraph examination that included the concepts of intent and conscious will, but stated that on some occasions such questions cannot be avoided. He stated that the questions posed to Respondent were developed by Respondent’s legal counsel. Mr. Gloege also admitted that in many states the results of polygraph tests are not admissible because they are not considered to be scientifically reliable although he maintained they are admissible in his home state, Ohio.<sup>1</sup> (Gloege testimony; Respondent’s Exh. 2)

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<sup>1</sup> Mr. Gloege’s testimony as to the admissibility of polygraph results is incomplete. As noted by the Ohio Court of Appeals in *State v. Dutiel*, 2012 WL 5845355:

The Ohio Supreme Court has “not adopted the unrestrained use of polygraph results at trial, and polygraphs themselves remain controversial.” *In re D.S.*, 111 Ohio St.3d 361, 856 N.E.2d 921, 2006–Ohio–5851, ¶13. Moreover, as stated in *State v. Barton*, 12th Dist. No. CA2005–03–036, 2007–Ohio–1099, the results of a polygraph examination are generally “inadmissible since such tests have not attained scientific or judicial acceptance as an accurate and reliable means of ascertaining truth or deception .” *Id.* at ¶ 98.

A trial court cannot admit the results of a polygraph test into evidence simply at an accused’s request. *State v. Jamison*, 49 Ohio St.3d 182, 190, 552 N.E.2d 180 (1990). Instead, polygraph test results are only admissible if both the prosecution and defense jointly stipulate that the accused will take a polygraph test and that the results will be admissible. *Id.*; *State v. Souel*, 53 Ohio St.2d 123, 372 N.E.2d 1318 at syllabus; *In re D.S.* at ¶ 13. However, even when there is a stipulation between the parties to that effect, the polygraph test results are still only admissible if the trial court, in its sound discretion, decides to accept such evidence, and then for corroboration or impeachment purposes only. *Souel* at syllabus; *In re D.S.* at ¶ 13.; but, see, *State v. Sharma*, 143 Ohio Misc.2d 27, 875 N.E.2d 1002, 2007–Ohio–5404(C.P.) (polygraph test results sufficiently reliable to permit their admission at trial).

Dr. Kelly Smith:

Dr. Kelly Smith, Psy.D., L.P., testified that Respondent was referred to her “for an evaluation of his risk to offend against children following sexual harassment of adult women.” She met with Respondent on October 6, 2014, at which time he completed a battery of psychological tests and a clinical interview. In addition, Dr. Smith reviewed information provided her by Respondent which included the Board’s investigative materials. Dr. Smith issued her report on November 11, 2014. (Kelly testimony; Respondent’s Exh. 1).

Dr. Smith testified that it was her conclusion after scoring and interpreting Respondent’s responses on psychological testing, interviewing Respondent and reviewing the documents provided to her that:

... it is possible, to a reasonable degree of professional certainty, to state that [Respondent’s] likelihood of engaging in inappropriate sexual contact with a minor child is low.

(Smith testimony; Respondent’s Exh. 1)

Dr. Smith admitted, however, that the validity of her conclusions depends on Respondent’s truthfulness in his discussions with her. She noted that during her interview with Respondent, he told her he had never been fired from a job although she was aware he had been placed on administrative leave at UIHC and informed his position would be terminated. Additionally, Respondent told Dr. Smith he left employment in Indiana when the allegations against him at UIHC became public and did not tell her he had been under investigation for other conduct in Indiana. Respondent also told Dr. Smith that he had engaged in one extra marital affair with Co-worker #4 but did not mention he had engaged in sexual intercourse with Co-worker #7 and another nurse at UIHC. (Smith testimony)

Carissa Kelly:

Carissa Kelly testified that she was involved in the administration of Propofol to a pediatric patient on the general pediatric floor in 2009. She stated that the drug was brought to the floor by the pharmacy, was administered to the patient and was properly wasted. (Kelly testimony)

Dr. Rolla Abu-Arja:

Dr. Abu-Arja testified that she is married to Respondent. They met during their rotations in Jordan and were married in October 1999. They moved to the United States in early 2000. She explained that her marriage to Respondent began to fall apart in his first year and her second year of fellowship. She stated that she took their children back to Jordan and stayed for the entire summer of 2007. (Abu-Arja testimony)

Dr. Abu-Arja noted that in January of 2008, she began looking at Respondent’s Facebook

account and noticed that more and more nurses from the PICU at UIHC were being added as his friends. She testified that Respondent told her about Co-worker #4 and her offer to babysit for them on Valentine's Day 2008. Dr. Abu-Arja stated that she asked Respondent to bring Co-worker #4 to their home to meet her and the children. Dr. Abu-Arja explained that she had a job interview on the day Co-worker #4 was supposed to be coming but thought she would be home in time to meet her. She was delayed in returning and was not there when Co-worker #4 came to the house.<sup>2</sup> Dr. Abu-Arja testified that she did not meet Co-worker #4 until Valentine's Day and did not like her when they met. However, she tried to become friends with Co-worker #4. (Abu-Arja testimony)

Dr. Abu-Arja explained that at the end of February 2008, she was in the lab and attempted to open her email account but Respondent's came up instead and there were messages to him from Co-worker #4 in which Co-worker #4 stated her desire to accompany Respondent on a trip he was taking to Italy. Dr. Abu-Arja stated that she confronted Respondent with the messages and he admitted he was having an affair with Co-worker #4 but stated he did not want a divorce. (Abu-Arja testimony)

Dr. Abu-Arja testified at hearing that subsequently, in April 2008, Respondent went on the trip to Italy. While he was there, she logged into his Gmail account and discovered he was chatting with Co-worker #4. Dr. Abu-Arja explained that she began chatting as though she were Respondent. When Respondent returned from the trip, Dr. Abu-Arja stated that she made him telephone Co-worker #4 and break off their relationship over the speaker phone. (Abu-Arja testimony; State's Exh. 4G)

Dr. Abu-Arja stated that subsequently Co-worker #4 came to their home and stated she was moving to Colorado on May 30, 2008. That same day Dr. Abu-Arja saw Respondent and Co-worker #4 at a coffee shop together. (Abu-Arja testimony)

According to Dr. Abu-Arja, she was rounding in January 2009 when she saw Co-worker #4 who had recently returned from Colorado. Dr. Abu-Arja confronted Respondent and he told her not to worry. Subsequently, Co-worker #4 came to their home and told Dr. Abu-Arja that the relationship between Co-worker #4 and Respondent was over and that they just wanted to be friends. (Abu-Arja testimony)

Dr. Abu-Arja testified at hearing that after Co-worker #4's visit to the house, Respondent started going out after work with staff from the PICU. She noted that the culture in the PICU involved a lot of cursing and sexual innuendo. She stated she did not feel comfortable in that environment and did not fit in with the PICU staff. She did not go out with her husband and the rest of the PICU employees. (Abu-Arja testimony)

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<sup>2</sup> This testimony is belied by the transcript of a Gmail chat between the Respondent and Dr. Abu-Arja in April 2008, which clearly shows Abu-Arja did not know Co-worker #4 was at their home in February and only discovered she was there when Respondent admitted the same to her during the chat. (State's Exh. 4G)

In September 2009 Respondent was scheduled to go on a mission trip to Jamaica sponsored by the Issa Trust Foundation. Dr. Abu-Arja agreed to go on the trip with Respondent and told him that this trip was “do or die” for their marriage. She testified that during the Jamaica trip she and Respondent sat down and talked at length and Respondent admitted everything to her and stated he would end things with Co-worker #4 if she would stay in their marriage. Dr. Abu-Arja told Respondent that she would consider their conversations and decide what she was going to do and tell him on their tenth wedding anniversary in October. She testified that Co-worker #4 was also on the Jamaica trip and was “acting out”. She stated that the Issa Trust Foundation banned Co-worker #4 from attending future trips because of her behavior. (Abu-Arja testimony)

Dr. Abu-Arja testified that she told Respondent on their tenth wedding anniversary, October 13, 2009, she was willing to try to make their marriage work. Subsequently, Co-worker #4 made an appointment to meet with Dr. Abu-Arja to confess everything.<sup>3</sup> According to Dr. Abu-Arja, during their conversation, Co-worker #4 stated that she was going to make Respondent “pay one way or another”. (Abu-Arja testimony)

Dr. Abu-Arja stated that Respondent had previously been offered a position in Indiana and she had looked for a position there as well, but they did not have anything that she was interested in. She stated that Respondent passed his boards in December 2009 and reapplied to Indiana. He was subsequently offered a job there in April 2010. She noted that the formal complaint against him was filed with the EOD in March 2010. Dr. Abu-Arja explained that she remained in Iowa when Respondent took the job in Indianapolis. She subsequently obtained a position in Ohio and Respondent joined her there. (Abu-Arja testimony; Respondent’s Exh. 5)

Brian Konvalinka:

Mr. Konvalinka testified that he has been employed as a nurse on the PICU at UIHC for eleven years. He stated that he is a friend of Respondent. Mr. Konvalinka testified he never heard anyone complain about Respondent’s conduct prior to the initiation of the university’s investigation. He testified that nothing Respondent ever did negatively impacted patient care. He noted that Respondent never discussed sexual matters with him and that he was not aware Respondent was having an affair with Co-worker #4.<sup>4</sup> Mr. Konvalinka stated that he believed Co-worker #4 was pursuing Respondent and that he had actually told her to “back off” Respondent at a tailgating party because Respondent was married. He also testified that he was unaware anyone was having sex in the call rooms at the hospital. He admitted that Respondent was once discovered in bed with another nurse, A.B., at a party at his home. (Konvalinka testimony)

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<sup>3</sup> Even though Dr. Abu-Arja stated that her husband told her everything on the Jamaica trip, she admitted that she only found out that her husband had been telling women they had an open marriage during the investigation and that he never told her he had engaged in sexual intercourse with Co-worker #7 and another nurse on the PICU.

<sup>4</sup> This testimony conflicts with emails from Respondent to Co-worker #4 in August 2008 wherein Respondent informs Co-worker #7 that he told Konvalinka he was having sexual intercourse with her. (State’s Exh. 4G)

### **Additional Testimony of Respondent**

Respondent testified at hearing that he was overwhelmed when he began his fellowship at UIHC and he experienced a steep learning curve. He stated that he was advised to spend more time on the unit when he was on call. Respondent stated that he began to stay up all night on the unit when he was on call. Because the work load was lighter on the PICU at night, he had more time to talk with the nurses. He noted that he began to establish friendships with PICU staff. He also noted that his marriage was in trouble at the time. (Rabi testimony)

Respondent stated that he practiced medicine in Indiana for 3 ½ years after he left UIHC. He stated that he did not lie to officials there about having difficulties while practicing in Iowa because the results of the EOD's investigation had not been issued when he accepted the position there.<sup>5</sup> Respondent testified he encountered no problems while in Indiana until December 2013 when a complaint was filed against him for improper use of social media. According to Respondent, he was in the midst of grievance proceedings when the Board's charges against him were issued. Indiana officials found out about the Board's charges and he was advised by counsel to resign. From Indiana, he went on to Ohio. (Rabi testimony)

Respondent admitted that he had sex with Co-worker #7, Co-worker #4, and another nurse on the PICU. He admitted telling staff he had an open marriage and that he was a swinger. He admitted making inappropriate statements to nurses about their appearances. Respondent testified he is very ashamed of his conduct while on the PICU. However, he maintained that his problems were in his personal life and that they did not affect his professional life at all. He stated that he was "absolutely professional" at work. (Rabi testimony)

Respondent also testified that during credentialing in May 2010 he chose not to report the EOD investigation. He also admitted that when he applied for a medical license in Ohio he failed to report the U of I's investigation and findings, that he was placed on administrative leave as a result of those findings or the Board's investigation of the complaints against him. (Rabi testimony)

Respondent also admitted that he failed to inform Dr. Kelly and BMI that when he left Indiana there was a pending investigation against him there. He further explained that, although BMI had requested permission to speak with Dr. Abu-Arja during his evaluation, he did not have time to provide her telephone number to BMI staff. Finally, Respondent admitted that he was inaccurate when he told Dr. Kelly and BMI that he had only had four sexual partners. (Rabi testimony)

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<sup>5</sup> The evidence shows that the formal complaint against Dr. Rabi was filed with OED on March 26, 2010. Indiana University offered Respondent a position by letter dated April 6, 2010. Respondent signed the appointment letter on April 8, 2010. Thus, while the OED's report had not been issued, Respondent was clearly aware there was an investigation into his conduct when he accepted the position in Indiana. (State's Exh. 4C; Respondent's Exh. 5; ).

**Credibility of the Witnesses:**

Although many of the salient facts in this case are not in dispute, Respondent has contested some of the testimony offered against him. The Board has therefore determined it is necessary to evaluate the credibility of some of the witnesses at hearing, including Respondent.

There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witnesses' interest in the trial, their motive, candor, bias and prejudice.<sup>6</sup>

In light of these standards, the Board makes the following observations regarding the credibility of some of the witnesses in this case.

The testimony offered by Co-worker #7, Co-worker #3, Co-worker #6, Co-worker #1, Co-worker #2 and Co-worker #5 appeared credible to the Board. These witnesses gave testimony that was consistent on all relevant matters with multiple previous statements provided to investigators. They shared incidents of a highly personal nature which genuinely appeared to be embarrassing to them. Further, there is no obvious motive for any of the women to have come forward with their stories other than that they testified to; to ensure that other women were not exposed to Respondent's behaviors in the future.

While Respondent suggested the complaining nurses were all friends of Co-worker #4 and had been solicited by her to come forward with their complaints long after the events in question occurred, the evidence did not support a strong connection between Co-worker #4 and the rest of the nurses. While it is true that each of the complainants testified she would not have come forward had the others not, the witness clearly stated that, until the nurses began talking amongst themselves, they were unaware that others had experienced similar interactions with Respondent. Once it became clear that there was a pattern of behavior on Respondent's part, each of the witnesses testified she felt obliged to come forward.

The Board does have some concern with the nature of some of the communications between Co-worker #2 and Respondent prior to the flight suit repair incident. The record contains at least one sexually-suggestive Facebook post from Co-worker #2 on Respondent's account.

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<sup>6</sup> *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996) (citing Uniform Jury Instructions).

Additionally, Respondent provided evidence that Co-worker #2 and Co-worker #3 posted on his Facebook page after the incidents they testified to. (State's Exh. 4) However, these facts go more toward whether Respondent's conduct was unwanted by the women than to the issue of whether the conduct occurred. Additionally, the women's continued communication with Respondent may be attributable to a desire to maintain a good relationship with Respondent, who they viewed as being in a position superior to them professionally.

The Board is less convinced of the credibility of Co-worker #4. Co-worker #4's testimony that she did not know there was Schnapps in her hot chocolate when she first visited Respondent's home and that her first instance of sexual intercourse with Respondent was not consensual on her part was not entirely believable. The evidence suggested that Co-worker #4 pursued a relationship with Respondent just as aggressively as he pursued one with her. Co-worker #4 has a motive in painting portions of her relationship with Respondent in a light more favorable to her.

The testimony provided by Respondent was also found to be unreliable. His lack of candor with hiring, credentialing, and licensing officials after the UIHC complaint was filed against him troubled the Board. Respondent displayed the same lack of honesty during his interviews with Dr. Kelly Smith and BMI. In fact, when faced at hearing with evidence that during both evaluations he provided incorrect information as to the number of sexual partners he has been with, Respondent testified that he had simply "miscounted". Additionally, Respondent's testimony that Co-worker #4's first visit to his home in February 2008 was scheduled with his wife beforehand was clearly proven incorrect by the contents of his Gmail chat with his wife in April of that year when he first admitted that Co-worker #4 had been in their home before Valentine's Day. The pattern of deception evidenced by Respondent in his relationships with his wife and with Co-worker #4 is also of concern. Finally, it goes without saying that Respondent has a clear personal interest in the outcome of this proceeding and its effect on his ability to practice medicine.

The Board also has concerns about the credibility of Dr. Abu-Arja's testimony. First, it is clear that Dr. Abu-Arja has little personal knowledge of her husband's actions. She is aware of only that information which Respondent chose to share with her. The record is clear that much of the information Respondent provided his wife is untrue and he failed to tell her about any of his interactions with nurses other than Co-worker #4. Additionally, Dr. Abu-Arja's testimony that it was she who asked to have Co-worker #4 come to their home before Valentine's Day 2008 and that Co-worker #4 was banned from the Issa Foundation Trust's mission trips due to her behavior on the September 2009 mission trip was obviously incorrect. The Gmail chat between Dr. Abu-Arja and Respondent in April 2008 clearly demonstrated that Dr. Abu-Arja had not been aware that Co-worker #4 was in her home before Valentine's Day and the President and CEO of the Issa Foundation Trust testified she had never received a complaint about Co-worker #4's behavior. Finally, Dr. Abu-Arja has an obvious personal interest in the outcome of this proceeding.

## CONCLUSIONS OF LAW

### Sexual Harassment:

The Board is authorized to discipline a licensee for willfully or repeatedly violating the laws or rules governing the practice of medicine in Iowa.<sup>7</sup> At all times relevant to this case, Board rule 653 IAC 13.7(6) prohibited physicians from engaging in sexual harassment:

**13.7(6) *Sexual harassment.*** A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.

The Board finds that Respondent willfully and repeatedly violated the rule prohibiting sexual harassment while a fellow on the PICU at UIHC. The evidence is undisputed that Respondent generally engaged in inappropriate verbal conduct of a sexual nature with the nurses on the PICU and that he made sexual advances towards several of them. The evidence demonstrates that Respondent engaged a pattern of sexual harassment including:

- Co-worker #7: Respondent told Co-worker #7 what type of jeans would flatter her figure and engaged in sexual relations with her when she was intoxicated after the PICU Christmas party. Co-worker #7 testified that her professional relationship with Respondent changed after the incident at the Christmas party;
- Co-worker #3: Respondent told Co-worker #3 she had nice lips, he could give her a "full body exam" and that he wished he had met her before he met his wife. Respondent took Co-worker #3's headband and when she attempted to retrieve it in a call room at UIHC he kissed her, removed her shirt and touched her breasts. Co-worker #3 testified that her professional relationship with Respondent changed after the incident in the call room;
- Co-worker #2: While attempting to mend a tear in Co-worker #2's flight suit in a call room at UIHC, Respondent told her he had been trying to get her into the call room for some time because he was hoping to have sex with her there. Respondent told her he had an open marriage and that he and his wife thought it was acceptable to "taste" others. Co-worker #2 testified that her professional relationship with Respondent changed after the incident in the call room;
- Co-worker #6: Respondent told Co-worker #6 he was going to the call room and asked her whether she would like to join him;
- Co-worker #1: When Co-worker #1 and Respondent were in a patient's room, Respondent told her, "You look really hot today in your pony tail." Co-worker #1 testified that she was embarrassed by Respondent's remark and had to step out of the room. She testified she was unable to go on rounds that day because of the incident;

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<sup>7</sup> Iowa Code sections 147.55(8), 272C.10(8).

- Co-worker #5: Respondent attempted to pull Co-worker #5 into a locker room with him at UIHC. Co-worker #5 testified that she was of the opinion that Respondent's actions were flirtatious in nature; and
- Co-worker #4: Respondent engaged in a long-term sexual relationship with Co-worker #4 while they both worked on the PICU at UIHC. Respondent engaged in sexual relations with Co-worker #4 in call rooms at UIHC on multiple occasions while he was on call.

Respondent also admits telling nurses that he and his wife had an open marriage and that he was a swinger. Respondent further admitted to having sex with another nurse who did not come forward in the investigation.

Respondent argues that, even though he engaged in the behavior set forth above, the conduct was not unwanted by the recipients, did not interfere with any of the nurses' performance and did not create an intimidating, hostile or offensive work environment. He points to evidence of a pervasive culture of rough language and sexual innuendo on the PICU. Respondent contends he was merely trying to make friends of the nurses on the unit. Respondent argues that on the two occasions when he received specific complaints from nurses about his behavior, he apologized and did not interact with them in a less than professional manner again.

Respondent's contentions do not take into consideration the disparity in power between the nursing staff and the physicians on the PICU. The evidence shows that Respondent engaged in a practice of ingratiating himself with younger or newer nurses on the unit and then making sexual advances towards them. What Respondent characterized as willing participation in unharmed ribald behavior appears to be more attributable to a desire by the nurses on the PICU to "get along" with a superior. While Respondent was not a supervisor of any of the nurses and had no authority to hire or fire them, as pointed out by Dr. Hobday, Respondent served as the leader of a team. He wrote orders which were to be carried out by the nurses on the floor. They perceived him to be in a position superior to theirs. This point is emphasized in the testimony of some of the nurses that they did not complain about Respondent's behavior earlier because they did not want to be in the position of having their word judged against that of a doctor.

It is clear that Respondent's actions toward the nurses who testified created an offensive work environment and interfered with their work performance. Many of the nurses testified that they went out of their way to avoid Respondent after offensive contact with him and that they would only seek Respondent out as a last resort.

The Board finds that the preponderance of evidence in this matter supports a finding that Respondent willfully and repeatedly violated its rule prohibiting sexual harassment.

**Unethical or Unprofessional Conduct:**

Iowa Code sections 147.55(3) and 272C.10(3) authorize the Board to discipline licensees for

engaging in unethical conduct. Iowa Code section 148.6(2)(g) authorizes the Board to discipline licensees for committing an act contrary to honesty, justice or good morals, whether the same is committed in the course of the physician's practice or otherwise.

653 IAC 23.1(4) also authorizes the Board to discipline a licensee for unprofessional conduct. The rule provides that engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by the licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the principles of medical ethics or 653 IAC 13.7 or 653 IAC 13.20, as interpreted by the Board.

At hearing, Respondent testified that while he was ashamed of the manner in which he conducted his personal affairs, he was never less than professional in his practice of medicine. This testimony is simply incorrect and reflects the depth of Respondent's lack of insight regarding the line between personal and professional conduct. The evidence in this case clearly demonstrated that Respondent's objectionable behavior occurred both on and off the PICU and involved the women he worked with on a regular basis.

The record supports a finding that Respondent engaged in a pattern of unprofessional conduct in violation of Iowa Code sections 147.55(3), 272C.10(3), and 653 IAC 23.1(4), including:

- Co-worker #7: Respondent told Co-worker #7 what type of jeans would flatter her figure and engaged in sexual relations with her when she was intoxicated after a Christmas party;
- Co-worker #3: Respondent told Co-worker #3 she had nice lips, he could give her a "full body exam" and that he wished he had met her before he met his wife. While in a call room at UIHC, Respondent kissed her, removed her shirt and touched her breasts;
- Co-worker #2: Respondent told Co-worker #2 he had been trying to get her into the call room for some time because he was hoping to have sex with her there.
- Co-worker #6: Respondent told Co-worker #6 he was going to the call room and asked her whether she would like to join him;
- Co-worker #1: When Co-worker #1 and Respondent were in a patient's room, Respondent told her, "You look really hot today in your pony tail."
- Co-worker #5: Respondent attempted to pull Co-worker #5 into a locker room with him at UIHC.
- Co-worker #4: Respondent engaged in sexual relations with Co-worker #4 in call rooms at UIHC on multiple occasions while he was on call.

The Board finds that the preponderance of evidence in this matter supports a finding that Respondent willfully and repeatedly violated its rule prohibiting unprofessional conduct.

**Practice Harmful or Detrimental to the Public:**

Iowa law authorizes the Board to discipline a physician who engages in practice harmful or detrimental to the public. Iowa Code sections 147.55(3), 272C.10(3). The Board's rules define the violation as follows:

Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

The Board has serious concerns that Respondent prescribed medications to Co-worker #4 and Co-worker #7 without establishing a valid physician-patient relationship, including a history and physical examination, diagnosis, treatment plan and a medical record. However, the Board concluded that Respondent's actions do not rise to the level necessary for a finding that he engaged in practice harmful or detrimental to the public.

Additionally, although the evidence of Respondent's conduct with nurses on the PICU was sufficient to establish violations of the Board's rules prohibiting sexual harassment and unprofessional conduct, the Board does not find it constitutes sufficient evidence to support a finding of a violation of this rule.

The Board finds that the preponderance of evidence in this matter did not support a finding that Respondent violated its rule prohibiting practice harmful or detrimental to the public.

**DECISION AND ORDER**

- 1. CITATION AND WARNING:** Respondent is hereby **CITED** for engaging in sexual harassment and unprofessional conduct in violation of the laws and rules governing the practice of medicine in Iowa. Respondent is hereby **WARNED** that engaging in such conduct in the future may result in further disciplinary action, including revocation of his Iowa medical license.
- 2. CIVIL PENALTY:** Respondent shall pay a **\$10,000 civil penalty** within twenty (20) days of the date of this Order. The civil penalty shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited in the State General Fund.
- 3. INDEFINITE SUSPENSION:** Respondent's Iowa medical license (No. 36338) is **indefinitely suspended**. Respondent shall not engage in any aspect of the practice of medicine under his Iowa medical license during the period of suspension. Respondent may not apply for reinstatement of his Iowa medical license until he fully complies with the

recommendations of BMI set forth in its November 25, 2014, *Summary of Evaluation*, including successful completion of a Board-approved professional boundaries treatment program and recommended psychotherapy.

4. **REINSTATEMENT:** The Board shall only consider reinstatement of Respondent's Iowa medical license upon a motion for reinstatement pursuant to Iowa Code chapters 17A, 147, 148 and 272C and 653 IAC 26. Respondent's license shall not be reinstated except upon a showing by Respondent that the basis for suspension no longer exists, and that it is in the public interest for the license to be reinstated.
5. **INDEFINITE PROBATION:** Should the Board choose to reinstate Respondent's Iowa medical license, he shall be placed on indefinite probation subject to terms and conditions established by the Board, including, but not be limited to, the following:
  - A. **Written Notice:** Respondent shall provide the Board written notice at least thirty (30) days prior to practicing medicine under his Iowa medical license or being employed under the authority of his Iowa medical license. Respondent shall send the required written notice to the Director of Legal Affairs, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686.
  - B. **Board Monitoring Program:** Respondent shall establish a Board monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the Board monitoring program.
  - C. **BMI Recommendations:** Respondent shall fully comply with all recommendations made by BMI.
  - D. **Treatment Program Recommendations:** Respondent shall fully comply with all recommendations made by the Board-approved professional boundaries treatment program.
  - E. **Principles of Medical Ethics, Staff Surveillance Forms and Patient Satisfaction Surveys:**
    - 1) Respondent shall post the Principles of Medical Ethics in his medical practice as directed by the Board.
    - 2) Respondent shall utilize Staff Surveillance Forms in his medical practice as directed by the Board.
    - 3) Respondent shall utilize Patient Satisfaction Surveys in his medical practice as directed by the Board.

- F. Polygraph Examinations:** Respondent shall submit to Board-approved polygraph examinations every six months.
- G. Board-Approved Psychotherapy:** Respondent shall participate in Board-approved psychotherapy for appropriate professional boundaries under the following terms and conditions:
- 1) Respondent shall submit for Board approval the name and CV of an Iowa-licensed psychotherapist with experience in professional boundaries.
  - 2) Respondent shall meet with the psychotherapist as frequently as recommended by the psychotherapist and approved by the Board.
  - 3) Respondent shall continue with psychotherapy until discharged by the psychotherapist and approved by the Board.
  - 4) Respondent shall ensure that the psychotherapist submits written quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
  - 5) Respondent is responsible for all costs associated with the therapy.
- H. Worksite Monitoring Program:** Respondent shall establish a worksite monitoring program with the Board subject to the following conditions:
- 1) Respondent shall submit for Board approval the name of an Iowa-licensed physician who regularly observes and/or supervises Respondent in the practice of medicine.
  - 2) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
  - 3) The worksite monitor shall provide a written statement indicating that they have read and understand this Order and agree to serve under the terms of this Order.
  - 4) The worksite monitor shall agree to inform the Board immediately if there is evidence of sexual harassment, unprofessional conduct or a violation of the terms of this Order.

- 5) The worksite monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
  - 6) Respondent shall ensure that the worksite monitor submits quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- I. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with all the terms and conditions of this Order not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
  - J. **Board Appearances:** Respondent shall make an appearance before the Board annually or upon request. Respondent shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
  - K. **Monitoring Fee:** Respondent shall make a payment of \$200 to the Board each quarter for the duration of probation to cover the Board's monitoring expenses. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.
  - L. **Obey All Laws:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.
  - M. **Failure To Comply:** In the event Respondent violates or fails to comply with any of the terms or conditions of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272C and 653 IAC 25.

**IT IS FURTHER ORDERED**, in accordance with 653 IAC 12.43, that the Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, the Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 12.43(3). All fees and costs shall be paid in the form of a check or money order payable to the State of Iowa and delivered to the Iowa Board of Medicine within thirty (30) days of the date of this Order.

Dated this 19<sup>th</sup> day of February, 2015.

A handwritten signature in black ink, appearing to read 'MT', with a long horizontal flourish extending to the right.

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Michael Thompson, D.O.  
Vice-Chairperson  
Iowa Board of Medicine

cc: Michael Sellers and John O. Haraldson, Respondent's Attorneys  
Julie Bussanmas, Assistant Attorney General

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure act.

**BEFORE THE IOWA BOARD OF MEDICINE**

\*\*\*\*\*

**IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST**

**FIRAS A. RABI, M.D., RESPONDENT**

**FILE Nos. 02-10-337**

\*\*\*\*\*

**STATEMENT OF CHARGES**

\*\*\*\*\*

COMES NOW the Iowa Board of Medicine (Board) on March 6, 2014, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 36338 on September 12, 2005. Respondent's Iowa medical license went inactive due to nonrenewal on July 1, 2012.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing. A disciplinary contested case hearing shall be held on May 15, 2014, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 IAC 25.10 to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on March 28, 2014, at 8:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 IAC 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 IAC 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 IAC 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Julie Bussanmas at 515-281-5637.

## **B. LEGAL AUTHORITY AND JURISDICTION**

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C.

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 IAC 25.25.

10. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 IAC 25.20.

## C. SECTIONS OF STATUTES AND RULES INVOLVED

### COUNT I

11. **Sexual Harassment:** Respondent is charged pursuant to Iowa Code section 148.6(2)(i) and 653 IAC 13.7(6) and 23.1(10) with engaging in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.

### COUNT II

12. **Unethical or Unprofessional Conduct:** Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(3) and 653 IAC 23.1(4) with engaging in unethical or unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics.

### COUNT III

13. **Practice Harmful or Detrimental to the Public:** Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(3) and 653 IAC 23.1(3) with engaging in practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess or exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the

same or similar circumstances.

#### STATEMENT OF THE MATTERS ASSERTED

14. Respondent is an Iowa-licensed physician who formerly practiced pediatric medicine in Iowa City, Iowa, and currently practices in Indianapolis, Indiana.

15. **Sexual Harassment, Unethical or Unprofessional Conduct and/or Practice Harmful or Detrimental to the Public:** The Board alleges that Respondent engaged in sexual harassment, unethical or unprofessional conduct and/or practice harmful or detrimental to the public in violation of the laws and rules governing the practice of medicine in Iowa including, but not limited to, the following:

- A. Respondent made improper complimentary remarks about the personal appearance of multiple female co-workers in the workplace in an effort to solicit sexual relations with female co-workers.
- B. Respondent made improper sexual comments to multiple female co-workers, both in-person and electronically, in an effort to solicit sexual relations with female co-workers.
- C. Respondent made improper and unwanted sexual advances toward multiple female co-workers in the workplace.
- D. Respondent attempted to isolate female co-workers in secluded locations in the workplace in an effort to engage in sexual relations with female co-workers.
- E. Respondent placed alcohol and/or another substance in a female co-worker's non-alcoholic drink without her knowledge or consent.

- F. Respondent engaged in sexual relations with female co-workers after the female co-workers had consumed alcohol to intoxication.
- G. Respondent engaged in unwanted and/or nonconsensual sexual relations with a female co-worker.
- H. Respondent engaged in sexual relations with two female co-workers during the same period of time that he provided medical care, including prescribing medications, to the female co-workers.
- I. Respondent took advantage of the female co-worker's subordinate position and vulnerability in an effort to engage in inappropriate sexual relations with female co-workers.
- J. Respondent's improper sexual conduct with multiple female co-workers interfered with their ability to perform their duties in the workplace and/or created an intimidating, hostile or offensive work environment.
- K. On June 21, 2010, Respondent was placed on administrative leave and his appointment was not renewed by his employer on October 1, 2010, terminating his employment, due to concerns that he engaged in a pattern of sexual harassment in the workplace.
- L. Respondent wrote prescriptions for a female co-worker on two occasions (December 2006 and March 2007) without establishing an appropriate physician-patient relationship and without maintaining appropriate medical records.

- M. Respondent wrote prescriptions for a female co-worker on one occasion (2009) without establishing an appropriate physician-patient relationship and without maintaining appropriate medical records.
- N. Respondent wrote multiple prescriptions for himself and members of his immediate family between 2006 and 2009 without establishing an appropriate physician-patient relationship and without maintaining appropriate medical records.

#### **E. SETTLEMENT**

16. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 IAC 25.17. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

#### **F. PROBABLE CAUSE FINDING**

17. On March 6, 2014, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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Gregory B. Hoversten, D.O., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686