

: No. 131 WAL 2022

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: Petition for Allowance of Appeal
: from the Order of the
: Commonwealth Court

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IN THE COMMONWEALTH COURT OF
PENNSYLVANIA

Zafar Iqbal,

V.

Petitioner

Bureau of Professional and

Occupational Affairs,

State Board of Medicine,

Respondent no 1190CD2020

ORDER

AND NOW, this 18th day of April, 2022, the
November 2, 2020, order

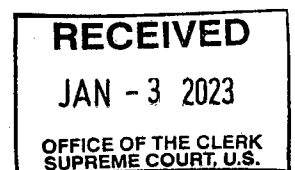
of the State Board of Medicine revoking Dr. Zafar
Iqbal's license to practice medicine in Pennsylvania,
is AFFIRMED.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Order Exit 04/18/2022

Appendix A



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Zafar Iqbal,

V.

Petitioner

Bureau of Professional and

Occupational Affairs,

State Board of Medicine,

Respondent

4:

No. 1190 C.D. 2020 Submitted: February 4, 2022

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge

HONORABLE CHRISTINE FIZZANO CANNON, Judge HONORABLE LORI A.
DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION

BY JUDGE FIZZANO CANNON

FILED: April 18, 2022

Zafar Iqbal (Dr. Iqbal) petitions for review of the November 2, 2020, order of the State Board of Medicine (Board) revoking his license to practice medicine in Pennsylvania on the basis of multiple incidents of unwanted sexual advances toward nurses and medical support staff. The Board concluded that revocation is warranted because Dr. Iqbal's conduct violated the prohibition on immoral and unprofessional conduct set forth in the Medical Practice Act of 1985¹ (MPA) and its associated regulations. Upon review, we affirm.

¹ Act of December 20, 1985, P.L. 457, as amended, 63 P.S. §§ 422.1-422.53.

I. Background and Procedural Posture

Dr. Iqbal has been a licensed medical doctor in Pennsylvania since 1990 and specializes as a nephrologist. Hearing Officer's Op., 7/17/20, at 5; Certified Record (C.R.) #23. In 2003, Dr. Iqbal lost his practice privileges at the Fresenius Dialysis Center after allegations of sexual harassment by several nurses. Id. at 9 & n.9. In 2012, after an incident involving unwanted sexual contact with a nurse when he was practicing at UPMC Passavant (UPMC), Dr. Iqbal received a warning but no formal discipline. Id. at 9 & n.10.

On August 1, 2015, while still at UPMC, Dr. Iqbal made unwanted physical advances toward a nurse, M.S.,² in an elevator, by kissing her and putting his tongue in her mouth; she reported it to her superiors the same day. Hearing Officer's Op. at 5-7. After an investigation and internal proceedings, UPMC's board of trustees revoked Dr. Iqbal's hospital privileges as of March 17, 2016. Id. at 7-10.

Then, on November 7, 2017, while working for Curahealth in Oakdale, Dr. Iqbal sexually assaulted a medical records clerk, K.F., who reported it to the police on November 9, 2017. Id. at 10-12. Dr. Iqbal was suspended from Curahealth and after a bench trial on November 20, 2018, he was convicted of one count of simple assault (a second-degree misdemeanor) and three counts of harassment (a third-degree misdemeanor);³ he was sentenced to five years of probation. Id. at 12-13.

In November 2019, the Bureau of Professional and Occupational Affairs (Bureau) filed an Order to Show Cause (OTSC) against Dr. Iqbal, alleging that in association with the M.S. and K.F. incidents, he was being charged with seven counts of unprofessional and/or immoral conduct in violation of the MPA and its

² For confidentiality purposes, the victims' names are limited to their initials.

³ See 18 Pa.C.S. §§ 2701(a), 2709.

regulations. OTSC, 11/8/19, at 2-11; C.R. #1. The OTSC advised Dr. Iqbal that his state medical license could be revoked and he could be assessed civil fines of up to \$10,000 per violation. Id. at 11-12.

At hearings on February 26-27, 2020, two UPMC doctors testified about the 2012 incident. M.S. testified about the 2015 incident, as did two of her superiors, as well as two doctors involved in UPMC's investigation, two police officers, and the professional conduct investigator who worked on M.S.'s report. K.F. testified as to the 2017 incident, as did the police officer and the professional conduct investigator who investigated it. The Bureau also presented an expert on medical ethics and conduct.

Dr. Iqbal testified that the M.S. incident was not an unwanted advance. He had suggested to her that they speak privately about her personal "problems" after he finished with his patients. Notes of Testimony (N.T.), 2/27/20, at 433. They first went to a seating area on the fifth floor away from the nurses' station, then to the elevator for more privacy. Id. at 436. She was upset and tearful and since they knew each other, he gave her a hug and a peck on the cheek. Id. at 437-39. In the elevator, they went up and down to various floors because they were confused, then when they returned to the fifth floor and were exiting the elevator, he gave her a hug, his lips accidentally brushed against hers, then they went in different directions. Id. at 441-42. He denied putting his tongue in her mouth or throat. Id. at 444 & 487.

Dr. Iqbal acknowledged that when UPMC leadership asked if he kissed M.S., he said he had, even though it was accidental, because he wanted to be truthful, but he had not known the nature of the allegations against him when he admitted to kissing her. N.T., 2/27/20, at 443, 486 & 495. He acknowledged telling them that his actions towards M.S. were inappropriate. Id. at 485-86. Nevertheless, he

believes M.S. has lied about it being non-consensual. Id. at 561. He confirmed that he had been warned after the 2012 incident. Id. at 488-93. He also believed that better video of the incident existed and would have cleared him, but it was "obstructed" and never shown to the UPMC investigative panel. Id. at 558 & 564.

With regard to K.F., Dr. Iqbal admitted that he kissed her and touched her breasts but stated that she consented and put his hand on her breasts. N.T., 2/27/20, at 445. He believed they were going to have an extramarital affair and that she wanted to go out and have a good time with him; he maintains that she is lying about the encounter being non-consensual. Id. at 446, 461 & 560. He acknowledges that he was convicted of charges arising from the incident, but criticized Detective Cokus, the investigating police officer, for having misled him about there being video of the K.F. incident and for tearing up his first written statement suggesting that the incident had been consensual. Id. at 453, 464, 483, & 558.

Dr. Iqbal acknowledged that his practice privileges at Fresenius were revoked in 2003 after several allegations of sexual harassment by nurses. N.T., 2/27/20, at 468-69. He stated that he has had about 15 extramarital affairs, about half with women from his medical workplaces who were nurses or support staff. Id. at 471-76. He maintained that in the past, allegations of sexual harassment have been lodged against him after an affair soured. Id. at 552-53.

Dr. Iqbal agreed that if he had acted in the way M.S. and K.F. alleged and the incidents had been non-consensual, it would have been improper in the hospital workplace setting. N.T., 2/27/20, at 500-01. He acknowledged that he had an opportunity for a further hearing before the UPMC Medical Committee, but refused to attend because he was not given video that he believes would have cleared him. Id. at 569-71.

The hearing officer credited M.S. and K.F. and described their testimony as consistent, credible, and corroborated: "More specifically, their body language, tears, as well as the tone and tenor of [their] voice[s] lent credibility to the veracity of their testimony." Hearing Officer's Op. at 17. The hearing officer also credited the Bureau's additional witnesses and discredited Dr. Iqbal. Id. The hearing officer therefore concluded that Dr. Iqbal had violated the MPA's prohibition on unprofessional and immoral conduct as to the M.S. and K.F. incidents. Id. at 18-28. Weighing the seriousness of Dr. Iqbal's offenses with the lack of any "meaningful" mitigation evidence, the hearing officer concluded that Dr. Iqbal's medical license should be revoked.⁴ Id. at 28-30 & Order. The Board adopted the hearing officer's opinion in full. Board's Op., 11/2/20; C.R. #30. Dr. Iqbal then petitioned this Court pro se for review.⁵

II. Parties' Arguments

Dr. Iqbal argues that the Board's revocation of his medical license was arbitrary and capricious. Dr. Iqbal's Br. at 3. He claims that M.S. should not have been found credible because she stated in her testimony that she reported the August 1, 2015, incident to the police several days after it occurred, but the police report taken by Sergeant Itri was taken several weeks later on August 29, 2015. Id. at 3-4.

⁴ The hearing officer also imposed a civil penalty of \$1,000 against Dr. Iqbal. Hearing Officer's Order. The Board reversed the penalty sua sponte, explaining that revocation of Dr. Iqbal's medical license was sufficient to ensure public health and safety, and it is not at issue here. Board's Op., 11/2/20, at 6.

⁵ Dr. Iqbal's petition for review was filed on November 23, 2020. He then filed amended petitions for review on January 19, 2021, and February 3, 2021. This Court struck those filings as they sought to add new claims not contained in the original petition and the appeal period from the Board's determination had lapsed. Order, 2/3/21, & Order, 2/4/21 (citing Pa.R.A.P. 1513(d)(5)). We therefore consider only the merits of Dr. Iqbal's original petition.

He claims that the settlement funds M.S. received from her lawsuit against him and UPMC arising from the incident were fraudulently acquired. Id. at 9.

Similarly, Dr. Iqbal claims that K.F. should not have been found credible, because she stated that Dr. Iqbal had blood on his shirt that stained her shirt during the November 7, 2017, incident and that she gave her shirt to the police, but Detective Cokus testified that she did not give him the shirt; Dr. Iqbal asserts that K.F. lied about the shirt and therefore falsified evidence against him. Id. at 4-5 & 9.

Dr. Iqbal claims that Detective Cokus likewise should not have been found credible, because he admitted misleading Dr. Iqbal during their interview by stating he would be reviewing video of the K.F. incident that ultimately did not exist and also acknowledged disposing of Dr. Iqbal's initial written statement that asserted the K.F. incident had been consensual. Id. at 6-7. Dr. Iqbal asserts that his subsequent admission to Detective Cokus that the incident was not consensual was therefore a product of duress and obstruction of justice, such that his criminal convictions arising from the K.F. incident were invalid. Id. at 7-8. He adds that the hearing officer deliberately excluded an allegedly exculpatory report by Dr. Wettstein, a forensic psychologist who examined Dr. Iqbal in June 2017 as part of the Bureau's investigation of the M.S. matter. Id. at 9. He asks this Court to reinstate his medical license, overturn his criminal convictions, and institute criminal proceedings against M.S., K.F., and Detective Cokus. Id. at 9.

The Bureau responds that the Board's decision to revoke Dr. Iqbal's medical license was supported by substantial evidence of record and that Dr. Iqbal

has not established that the revocation was either arbitrary or capricious. Bureau's Br. at 12. The Bureau notes that the hearing officer applied the appropriate preponderance of the evidence standard rather than the criminal standard of proof

beyond a reasonable doubt, and that any discrepancies in M.S. and K.F.'s testimony were ancillary to the main issue of whether the assaults occurred. *Id.* at 15. The Bureau avers that Dr. Iqbal's attempt to discredit Detective Cokus is likewise immaterial in light of the extensive evidence that Dr. Iqbal committed the actions that led to his criminal conviction arising from the K.F. incident. *Id.* at 20-21.

III. Discussion

Physician disciplinary sanctions are within the Board's discretion and must be upheld unless the Board acted in bad faith or fraudulently or the sanction constitutes capricious action or a flagrant abuse of discretion. *Slawek v. State Bd. of Med. Educ. & Licensure*, 586 A.2d 362, 364-66 (Pa. 1991); *Tandon v. State Bd. of Med.*, 705 A.2d 1338, 1346 (Pa. Cmwlth. 1997). Generally, a reviewing court may not substitute its judgment for that of the agency whose decision is being reviewed. *Slawek*, 586 A.2d at 365-66. This Court's review is therefore limited to determining whether constitutional rights have been violated, whether the findings of fact are supported by substantial record evidence, and whether errors of law have been committed. *Gleeson v. State Bd. of Med.*, 900 A.2d 430, 435 (Pa. Cmwlth. 2006). The Board is the ultimate fact finder and may accept or reject the testimony of any witness in whole or in part, and this Court is bound by those determinations. *Id.* Thus, when reviewing a decision by the Board, this Court may not re-weigh the evidence which was presented or judge the credibility of witnesses. *Id.*

The Board is charged with the responsibility and authority to oversee the medical profession and to determine the competency and fitness of an applicant

6 "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support [a] conclusion." *Taterka v. Bureau of Pro. & Occupational Affs., State Bd. of Med.*, 882 A.2d 1040, 1044 n.4 (Pa. Cmwlth. 2005).

to practice medicine within the Commonwealth. *Barran v. State Bd. of Med.*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996). Section 41 of the MPA, titled "Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder," states that the Board "shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons":

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. In proceedings based on this paragraph, actual injury to a patient need not be established.

63 P.S. § 422.41(6), (8). The Board's regulations further provide that "A Board-regulated practitioner who engages in unprofessional or immoral conduct is subject to disciplinary action under section 41 of the [MPA] (63 P.S. § 422.41)." 49 Pa.

Code § 16.61(a). This subsection lists actions related to patient care that would warrant discipline, but the list is not limited to patient care. *Id.* Immoral conduct also includes "[t]he commission of an act involving moral turpitude, dishonesty or corruption when the act directly or indirectly affects the health, welfare or safety of citizens of this Commonwealth." 49 Pa. Code § 16.61(b).

Although Section 16.61 also states that a criminal conviction is not required for disciplinary action, a conviction or guilty plea involving conduct pertaining to medical practice is admissible and relevant to disciplinary proceedings

for the same actions at issue in the criminal matter. *Herberg v. State Bd. of Med.*

Educ. & Licensure, 442 A.2d 411, 413 (Pa. Cmwlth. 1982) (guilty plea to felony drug charges admissible in revocation proceedings). Disciplinary proceedings, however, are conducted on the basis of a preponderance of the evidence standard rather than the criminal standard of beyond a reasonable doubt. *Lyness v. State Bd. of Med.*, 561 A.2d 362, 369 (Pa. Cmwlth. 1998). Deference is accorded to the Board's determination of what constitutes unprofessional and immoral conduct. *Starr v. State Bd. of Med.*, 720 A.2d 183, 190 (Pa. Cmwlth. 1998).

In *Tandon*, a doctor's medical license in Tennessee had been suspended for unwanted sexual advances toward his receptionist and a female insurance agent. 705 A.2d at 1341. He relocated to Pennsylvania, reactivated his prior Pennsylvania license, and began practicing as the only oncologist at his new hospital, with a case load of 170 cancer patients per month. *Id.* The Bureau, citing Section 41 of the MPA, began reciprocal disciplinary action based on his Tennessee record. *Id.* at 1342. A hearing officer imposed a three-year suspension (mostly stayed), which was upheld by the Board. *Id.* This Court affirmed, noting that but for the doctor's patient case load and the lack of other oncologists at the facility, the discipline for his misconduct would likely have been more severe. *Id.* at 1346.

In *Flickinger v. Department of State*, 461 A.2d 336 (Pa. Cmwlth. 1983), multiple sexual harassment and assault complaints had been filed against the doctor, a chiropractor, by both patients and staff where he practiced. *Id.* at 337. Under provisions of the chiropractor conduct law analogous to Section 41 of the MPA, his license was revoked. *Id.* The doctor argued that misconduct involving staff should not be subject to professional discipline because it did not impact patient care and well-being, but this Court disagreed and upheld the revocation, finding extensive

support in the record of multiple incidents of sexual misconduct and no mitigating evidence. Id. at 337-38.⁷

Tandon and Flickinger establish that doctors found to have sexually assaulted nurses and medical support staff are subject to discipline, up to and including license revocation. Apart from the mitigating evidence of an extensive patient case load in Tandon, the primary reason for lenience in cases involving sexual misconduct has been when too much time has elapsed and the principle of laches applied because memories had faded and witnesses were not available. See *Shah v. State Bd. of Med.*, 589 A.2d 783 (Pa. Cmwlth. 1991) (over four years between alleged incident and report by patient to Board); Lyness (victims did not report incidents for several years). Dr. Iqbal has not argued laches in this matter and, in any event, M.S. and K.F. promptly reported their incidents with Dr. Iqbal. Here, the Bureau presented evidence of Dr. Iqbal's unwanted sexual contacts dating back to 2003, when he lost his practice privileges at Fresenius after multiple staff reports. Hearing Officer's Op. at 9 & n.9, Findings of Fact (F.F.) 41. The record also includes the testimony of Dr. Robert Volosky, who observed the 2012 incident at UPMC in which Dr. Iqbal verbally propositioned a nurse, and Dr. Rupa Mokkapatti, who stated that the incident led to an informal (but documented) inquiry after which Dr. Iqbal admitted wrongdoing, accepted a warning, and promised not to do it again. N.T., 2/26/20, at 24-41 & 237-39. Despite that assurance, in 2015, Dr. Iqbal assaulted M.S. in an elevator, which she recalled included him "shov[ing] his tongue down [her] throat." Hearing

⁷ Our courts have also consistently upheld revocation of doctors' medical licenses for improper sexual harassment or conduct regarding patients. *Telang v. Bureau of Pro. & Occupational Affs.*, 751 A.2d 1147 (Pa. 2000); *Yousufzai v. Bureau of Pro. & Occupational Affs., State Bd. of Med.*, 793 A.2d 1008 (Pa. Cmwlth. 2002); *Starr v. State Bd. of Med.*, 720 A.2d 183 (Pa. Cmwlth. 1998).

Officer's Op. at 5-7 & 20. M.S. reported it immediately to three superiors, two of whom testified consistently concerning her account of the incident. N.T., 2/26/20, at 89-97 & 105-17. Several weeks later, M.S. also reported the incident consistently to the police. Id. at 119-27. M.S. subsequently told the UPMC investigating panel, which found her credible, and the professional conduct investigator gathering evidence for these disciplinary proceedings, who found her "sincere." Id. at 301-03 & 249-57. Ultimately, the hearing officer also credited M.S.'s account, to which she testified in person. Hearing Officer's Op. at 17.

Dr. Iqbal maintains that the incident with M.S. was not an unwanted advance in light of their prior friendly relations, but proffered no evidence or witnesses to support his assertion. The UPMC investigative panel did not find his version of the incident as consensual to be credible, and neither did the hearing officer. N.T., 2/26, 20, at 303-08 & 314; Hearing Officer's Op. at 17. Moreover, Dr. Steven Jones of UPMC, whom the hearing officer found credible, testified that shortly after the incident, when he and the Leadership Council conducted an initial inquiry, Dr. Iqbal admitted he had "crossed a line" with M.S. and that he regretted the incident. Id. at 154-61. Dr. Iqbal's attempts to discredit M.S. were rejected by the hearing officer, who found the passage of several weeks before M.S. reported the matter to the police irrelevant in light of the fact that she immediately reported it at UPMC and did ultimately report it to the police. Hearing Officer's Op. at 20 & 23. After UPMC revoked Dr. Iqbal's hospital privileges in March 2016, he began practicing at Curahealth, but his episodes of misconduct did not cease and, in fact, escalated to the 2017 physical assault on K.F., who stated she had no prior relationship with him at all when he came into her office to sign medical records,

then violently attacked her, "stuck his tongue down [her] throat," ground his body against hers in a bear hug, and grabbed at her breasts, bruising them. N.T., 2/27/20, at 373-76. Two days later, she reported the incident to Curahealth and the police.

Id. at 337-38.

Detective Cokus, who investigated the K.F. incident, stated he was suspicious of Dr. Iqbal's verbal and written assertions that the incident had been consensual, so he used an accepted technique of misleading Dr. Iqbal by mentioning there was video of the incident that would clear up any questions, at which point Dr. Iqbal admitted the incident had not been consensual. N.T., 2/27/20, at 346-49 & 355-58. Dr. Iqbal's criminal conviction on misdemeanor charges of simple assault and harassment arising from the K.F. incident after a counseled bench trial (with stipulated evidence) in Allegheny County was admitted at the hearing and acknowledged by Dr. Iqbal in his testimony. Hearing Officer's Op. at 4 & n.4.

The hearing officer credited K.F. and Detective Cokus and found Dr.

Iqbal's account of the incident as consensual to be not credible. Hearing Officer's Op. at 17 & 24. The hearing officer also described this incident as an escalation in the severity of Dr. Iqbal's conduct, particularly after he received a warning following

the 2012 incident at UPMC and ultimately lost his UPMC hospital privileges after the M.S. incident in 2015. Hearing Officer's Op. at 23. The hearing officer dismissed Dr. Iqbal's attempt to discredit K.F. by arguing about whether blood on his shirt stained her shirt during the incident as immaterial to whether the incident was nonconsensual and amounted to immoral and unprofessional conduct. Id. at 24.

8 Dr. Iqbal now contends that his conviction was unjust, but the record contains no indication that he appealed it within the appropriate timeframe.

The hearing officer concluded that the Bureau proved all of the charges against Dr. Iqbal, whose actions amounted to immoral and unprofessional conduct as set forth in Section 41 of the MPA and Section 16.61 of the associated regulations. *Id.* at 19 & 25. Given the preponderance standard, the breadth and consistency of the Bureau's evidence, and Dr. Iqbal's lack of rebuttal or mitigating evidence, the hearing officer's conclusions were supported by substantial evidence of record and were not legally erroneous, arbitrary, or capricious.

As to sanctions, the hearing officer considered the numerous and escalating instances of Dr. Iqbal's misconduct, the revocation of his UPMC hospital practice privileges after the M.S. incident, his criminal conviction arising from the K.F. incident, and his lack of any mitigating evidence. Hearing Officer's Op. at 30. The hearing officer concluded that "despite numerous warnings, including collegial interventions and revocation of privileges at various medical facilities, [Dr. Iqbal] [cannot], or will not, act in a professional, ethical or moral manner. Thus, a severe sanction is warranted." Hearing Officer's Op. at 30. The hearing officer therefore ordered Dr. Iqbal's medical license revoked. *Id.* The Board adopted the hearing officer's findings and conclusions in full, dismissed Dr. Iqbal's exceptions attacking the credibility and conduct of the witnesses who testified for the Bureau, and upheld the revocation of his medical license. Board's Op. at 2-6.

We agree with the Board that the extensive evidence presented by the Bureau and summarized above fully supports the sanction of revocation. That determination was amply supported by substantial evidence of record and was not legally erroneous, arbitrary, or capricious. This result is also consistent with the holdings of *Tandon* and *Flickinger*, where this Court has upheld severe sanctions for

doctors found to have violated the MPA and its regulations against unwanted sexual advances and attacks on nurses and support medical staff.

In his brief, Dr. Iqbal again argues that M.S., K.F., and Detective Cokus should not have been found credible. Dr. Iqbal's Br. at 3-5. However, credibility determinations are firmly reserved to the fact finder (the Board) and this Court has no basis or authority to overturn such determinations. Gleeson, 900 A.2d at 435.

Moreover, as the hearing officer pointed out, Dr. Iqbal's assertions of inconsistencies in the testimony of both M.S. and K.F. pertain to minor or ancillary matters rather than these victims' accounts of the incidents themselves, which were the basis of the Board's revocation decision and which were unequivocally found credible, consistent, and corroborated by other evidence of record. Hearing Officer's Op. at 17, 19 & 23-24. Likewise, Detective Cokus was found credible by the hearing officer, and as explained above, this Court may not disturb that determination. See Gleeson, 900 A.2d at 435. Moreover, the hearing officer's opinion does not indicate that Detective Cokus's testimony was relied on for any specific finding or served as anything other than a supplemental or corroborative source to that of M.S., K.F., and the hospital personnel who corroborated their accounts. See Hearing Officer's Op. at 17 & 23-25.

IV. Conclusion

As the Board's determination was supported by substantial evidence of record and Dr. Iqbal has not shown that the Board acted arbitrarily, capriciously, or

in a legally erroneous manner, we affirm the Board's order revoking Dr. Iqbal's license to practice medicine in Pennsylvania.⁹

S/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Dr. Iqbal's assertions in his brief that M.S. fraudulently received settlement funds from her civil suit against him, that his criminal conviction should be overturned, and that criminal proceedings should be instituted against K.F. and Detective Cokus for alleged fabrication of evidence and obstruction of justice, are waived because they were not brought before the administrative tribunals. See *K.J. v. Pa. Dep't of Pub. Welfare*, 767 A.2d 609, 612 (Pa. Cmwlth. 2001) (explaining that "when a party fails to raise an issue... in an agency proceeding, the issue is waived and cannot be considered for the first time in a judicial appeal"). Moreover, Dr. Iqbal has not asserted any legal basis on which this Court could exercise appellate jurisdiction over these criminal or private civil matters. See 42 Pa.C.S. §§ 761-763.

As for Dr. Iqbal's additional assertion that the hearing officer deliberately excluded an allegedly exculpatory report by Dr. Wettstein, our review of the record reveals no indication that Dr. Iqbal presented such a report for admission during the hearing or that he raised it to the Board. Moreover, Dr. Iqbal fails to develop this argument in his brief with citations to either the record or relevant authority, as required by Pennsylvania's Rules of Appellate Procedure. Pa.R.A.P. 2119(a); *Skytop Meadow Cmty. Ass'n, Inc. v. Paige*, 177 A.3d 377, 384 (Pa. Cmwlth. 2017) (stating that "[w]hen parties fail to satisfy this requirement, the Court is neither obliged, nor even particularly equipped, to develop an argument for [them]"); see also *K.J.*, 767 A.2d at 612.

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No. 1190 C.D. 2020

ORDER

AND NOW, this 18th day of April, 2022, the November 2, 2020, order of the State Board of Medicine revoking Dr. Zafar Iqbal's license to practice medicine in Pennsylvania, is AFFIRMED.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

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Submitted: February 4, 2022

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HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: April 18, 2022

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¹ Act of December 20, 1985, P.L. 457, *as amended*, 63 P.S. §§ 422.1-422.53.

I. Background and Procedural Posture

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regulations. OTSC, 11/8/19, at 2-11; C.R. #1. The OTSC advised Dr. Iqbal that his state medical license could be revoked and he could be assessed civil fines of up to \$10,000 per violation. *Id.* at 11-12.

At hearings on February 26-27, 2020, two UPMC doctors testified about the 2012 incident. M.S. testified about the 2015 incident, as did two of her superiors, as well as two doctors involved in UPMC's investigation, two police officers, and the professional conduct investigator who worked on M.S.'s report. K.F. testified as to the 2017 incident, as did the police officer and the professional conduct investigator who investigated it. The Bureau also presented an expert on medical ethics and conduct.

Dr. Iqbal testified that the M.S. incident was not an unwanted advance. He had suggested to her that they speak privately about her personal "problems" after he finished with his patients. Notes of Testimony (N.T.), 2/27/20, at 433. They first went to a seating area on the fifth floor away from the nurses' station, then to the elevator for more privacy. *Id.* at 436. She was upset and tearful and since they knew each other, he gave her a hug and a peck on the cheek. *Id.* at 437-39. In the elevator, they went up and down to various floors because they were confused, then when they returned to the fifth floor and were exiting the elevator, he gave her a hug, his lips accidentally brushed against hers, then they went in different directions. *Id.* at 441-42. He denied putting his tongue in her mouth or throat. *Id.* at 444 & 487.

Dr. Iqbal acknowledged that when UPMC leadership asked if he kissed M.S., he said he had, even though it was accidental, because he wanted to be truthful, but he had not known the nature of the allegations against him when he admitted to kissing her. N.T., 2/27/20, at 443, 486 & 495. He acknowledged telling them that his actions towards M.S. were inappropriate. *Id.* at 485-86. Nevertheless, he

believes M.S. has lied about it being non-consensual. *Id.* at 561. He confirmed that he had been warned after the 2012 incident. *Id.* at 488-93. He also believed that better video of the incident existed and would have cleared him, but it was “obstructed” and never shown to the UPMC investigative panel. *Id.* at 558 & 564.

With regard to K.F., Dr. Iqbal admitted that he kissed her and touched her breasts but stated that she consented and put his hand on her breasts. N.T., 2/27/20, at 445. He believed they were going to have an extramarital affair and that she wanted to go out and have a good time with him; he maintains that she is lying about the encounter being non-consensual. *Id.* at 446, 461 & 560. He acknowledges that he was convicted of charges arising from the incident, but criticized Detective Cokus, the investigating police officer, for having misled him about there being video of the K.F. incident and for tearing up his first written statement suggesting that the incident had been consensual. *Id.* at 453, 464, 483, & 558.

Dr. Iqbal acknowledged that his practice privileges at Fresenius were revoked in 2003 after several allegations of sexual harassment by nurses. N.T., 2/27/20, at 468-69. He stated that he has had about 15 extramarital affairs, about half with women from his medical workplaces who were nurses or support staff. *Id.* at 471-76. He maintained that in the past, allegations of sexual harassment have been lodged against him after an affair soured. *Id.* at 552-53.

Dr. Iqbal agreed that if he had acted in the way M.S. and K.F. alleged and the incidents had been non-consensual, it would have been improper in the hospital workplace setting. N.T., 2/27/20, at 500-01. He acknowledged that he had an opportunity for a further hearing before the UPMC Medical Committee, but refused to attend because he was not given video that he believes would have cleared him. *Id.* at 569-71.

The hearing officer credited M.S. and K.F. and described their testimony as consistent, credible, and corroborated: "More specifically, their body language, tears, as well as the tone and tenor of [their] voice[s] lent credibility to the veracity of their testimony." Hearing Officer's Op. at 17. The hearing officer also credited the Bureau's additional witnesses and discredited Dr. Iqbal. *Id.* The hearing officer therefore concluded that Dr. Iqbal had violated the MPA's prohibition on unprofessional and immoral conduct as to the M.S. and K.F. incidents. *Id.* at 18-28. Weighing the seriousness of Dr. Iqbal's offenses with the lack of any "meaningful" mitigation evidence, the hearing officer concluded that Dr. Iqbal's medical license should be revoked.⁴ *Id.* at 28-30 & Order. The Board adopted the hearing officer's opinion in full. Board's Op., 11/2/20; C.R. #30. Dr. Iqbal then petitioned this Court *pro se* for review.⁵

II. Parties' Arguments

Dr. Iqbal argues that the Board's revocation of his medical license was arbitrary and capricious. Dr. Iqbal's Br. at 3. He claims that M.S. should not have been found credible because she stated in her testimony that she reported the August 1, 2015, incident to the police several days after it occurred, but the police report taken by Sergeant Itri was taken several weeks later on August 29, 2015. *Id.* at 3-4.

⁴ The hearing officer also imposed a civil penalty of \$1,000 against Dr. Iqbal. Hearing Officer's Order. The Board reversed the penalty *sua sponte*, explaining that revocation of Dr. Iqbal's medical license was sufficient to ensure public health and safety, and it is not at issue here. Board's Op., 11/2/20, at 6.

⁵ Dr. Iqbal's petition for review was filed on November 23, 2020. He then filed amended petitions for review on January 19, 2021, and February 3, 2021. This Court struck those filings as they sought to add new claims not contained in the original petition and the appeal period from the Board's determination had lapsed. Order, 2/3/21, & Order, 2/4/21 (citing Pa.R.A.P. 1513(d)(5)). We therefore consider only the merits of Dr. Iqbal's original petition.

He claims that the settlement funds M.S. received from her lawsuit against him and UPMC arising from the incident were fraudulently acquired. *Id.* at 9.

Similarly, Dr. Iqbal claims that K.F. should not have been found credible, because she stated that Dr. Iqbal had blood on his shirt that stained her shirt during the November 7, 2017, incident and that she gave her shirt to the police, but Detective Cokus testified that she did not give him the shirt; Dr. Iqbal asserts that K.F. lied about the shirt and therefore falsified evidence against him. *Id.* at 4-5 & 9.

Dr. Iqbal claims that Detective Cokus likewise should not have been found credible, because he admitted misleading Dr. Iqbal during their interview by stating he would be reviewing video of the K.F. incident that ultimately did not exist and also acknowledged disposing of Dr. Iqbal's initial written statement that asserted the K.F. incident had been consensual. *Id.* at 6-7. Dr. Iqbal asserts that his subsequent admission to Detective Cokus that the incident was not consensual was therefore a product of duress and obstruction of justice, such that his criminal convictions arising from the K.F. incident were invalid. *Id.* at 7-8. He adds that the hearing officer deliberately excluded an allegedly exculpatory report by Dr. Wettstein, a forensic psychologist who examined Dr. Iqbal in June 2017 as part of the Bureau's investigation of the M.S. matter. *Id.* at 9. He asks this Court to reinstate his medical license, overturn his criminal convictions, and institute criminal proceedings against M.S., K.F., and Detective Cokus. *Id.* at 9.

The Bureau responds that the Board's decision to revoke Dr. Iqbal's medical license was supported by substantial evidence of record and that Dr. Iqbal has not established that the revocation was either arbitrary or capricious. Bureau's Br. at 12. The Bureau notes that the hearing officer applied the appropriate preponderance of the evidence standard rather than the criminal standard of proof

beyond a reasonable doubt, and that any discrepancies in M.S. and K.F.'s testimony were ancillary to the main issue of whether the assaults occurred. *Id.* at 15. The Bureau avers that Dr. Iqbal's attempt to discredit Detective Cokus is likewise immaterial in light of the extensive evidence that Dr. Iqbal committed the actions that led to his criminal conviction arising from the K.F. incident. *Id.* at 20-21.

III. Discussion

Physician disciplinary sanctions are within the Board's discretion and must be upheld unless the Board acted in bad faith or fraudulently or the sanction constitutes capricious action or a flagrant abuse of discretion. *Slawek v. State Bd. of Med. Educ. & Licensure*, 586 A.2d 362, 364-66 (Pa. 1991); *Tandon v. State Bd. of Med.*, 705 A.2d 1338, 1346 (Pa. Cmwlth. 1997). Generally, a reviewing court may not substitute its judgment for that of the agency whose decision is being reviewed. *Slawek*, 586 A.2d at 365-66. This Court's review is therefore limited to determining whether constitutional rights have been violated, whether the findings of fact are supported by substantial record evidence,⁶ and whether errors of law have been committed. *Gleeson v. State Bd. of Med.*, 900 A.2d 430, 435 (Pa. Cmwlth. 2006). The Board is the ultimate fact finder and may accept or reject the testimony of any witness in whole or in part, and this Court is bound by those determinations. *Id.* Thus, when reviewing a decision by the Board, this Court may not re-weigh the evidence which was presented or judge the credibility of witnesses. *Id.*

The Board is charged with the responsibility and authority to oversee the medical profession and to determine the competency and fitness of an applicant

⁶ "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support [a] conclusion." *Taterka v. Bureau of Pro. & Occupational Affs., State Bd. of Med.*, 882 A.2d 1040, 1044 n.4 (Pa. Cmwlth. 2005).

to practice medicine within the Commonwealth. *Barran v. State Bd. of Med.*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996). Section 41 of the MPA, titled "Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder," states that the Board "shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons":

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

....

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. In proceedings based on this paragraph, actual injury to a patient need not be established.

63 P.S. § 422.41(6), (8). The Board's regulations further provide that "A Board-regulated practitioner who engages in unprofessional or immoral conduct is subject to disciplinary action under section 41 of the [MPA] (63 P.S. § 422.41)." 49 Pa. Code § 16.61(a). This subsection lists actions related to patient care that would warrant discipline, but the list is not limited to patient care. *Id.* Immoral conduct also includes "[t]he commission of an act involving moral turpitude, dishonesty or corruption when the act directly or indirectly affects the health, welfare or safety of citizens of this Commonwealth." 49 Pa. Code § 16.61(b).

Although Section 16.61 also states that a criminal conviction is not required for disciplinary action, a conviction or guilty plea involving conduct pertaining to medical practice is admissible and relevant to disciplinary proceedings

for the same actions at issue in the criminal matter. *Herberg v. State Bd. of Med. Educ. & Licensure*, 442 A.2d 411, 413 (Pa. Cmwlth. 1982) (guilty plea to felony drug charges admissible in revocation proceedings). Disciplinary proceedings, however, are conducted on the basis of a preponderance of the evidence standard rather than the criminal standard of beyond a reasonable doubt. *Lyness v. State Bd. of Med.*, 561 A.2d 362, 369 (Pa. Cmwlth. 1998). Deference is accorded to the Board's determination of what constitutes unprofessional and immoral conduct. *Starr v. State Bd. of Med.*, 720 A.2d 183, 190 (Pa. Cmwlth. 1998).

In *Tandon*, a doctor's medical license in Tennessee had been suspended for unwanted sexual advances toward his receptionist and a female insurance agent. 705 A.2d at 1341. He relocated to Pennsylvania, reactivated his prior Pennsylvania license, and began practicing as the only oncologist at his new hospital, with a case load of 170 cancer patients per month. *Id.* The Bureau, citing Section 41 of the MPA, began reciprocal disciplinary action based on his Tennessee record. *Id.* at 1342. A hearing officer imposed a three-year suspension (mostly stayed), which was upheld by the Board. *Id.* This Court affirmed, noting that but for the doctor's patient case load and the lack of other oncologists at the facility, the discipline for his misconduct would likely have been more severe. *Id.* at 1346.

In *Flickinger v. Department of State*, 461 A.2d 336 (Pa. Cmwlth. 1983), multiple sexual harassment and assault complaints had been filed against the doctor, a chiropractor, by both patients and staff where he practiced. *Id.* at 337. Under provisions of the chiropractor conduct law analogous to Section 41 of the MPA, his license was revoked. *Id.* The doctor argued that misconduct involving staff should not be subject to professional discipline because it did not impact patient care and well-being, but this Court disagreed and upheld the revocation, finding extensive

support in the record of multiple incidents of sexual misconduct and no mitigating evidence. *Id.* at 337-38.⁷

Tandon and *Flickinger* establish that doctors found to have sexually assaulted nurses and medical support staff are subject to discipline, up to and including license revocation. Apart from the mitigating evidence of an extensive patient case load in *Tandon*, the primary reason for lenience in cases involving sexual misconduct has been when too much time has elapsed and the principle of laches applied because memories had faded and witnesses were not available. See *Shah v. State Bd. of Med.*, 589 A.2d 783 (Pa. Cmwlth. 1991) (over four years between alleged incident and report by patient to Board); *Lyness* (victims did not report incidents for several years). Dr. Iqbal has not argued laches in this matter and, in any event, M.S. and K.F. promptly reported their incidents with Dr. Iqbal.

Here, the Bureau presented evidence of Dr. Iqbal's unwanted sexual contacts dating back to 2003, when he lost his practice privileges at Fresenius after multiple staff reports. Hearing Officer's Op. at 9 & n.9, Findings of Fact (F.F.) 41. The record also includes the testimony of Dr. Robert Volosky, who observed the 2012 incident at UPMC in which Dr. Iqbal verbally propositioned a nurse, and Dr. Rupa Mokkapatti, who stated that the incident led to an informal (but documented) inquiry after which Dr. Iqbal admitted wrongdoing, accepted a warning, and promised not to do it again. N.T., 2/26/20, at 24-41 & 237-39.

Despite that assurance, in 2015, Dr. Iqbal assaulted M.S. in an elevator, which she recalled included him "shov[ing] his tongue down [her] throat." Hearing

⁷ Our courts have also consistently upheld revocation of doctors' medical licenses for improper sexual harassment or conduct regarding patients. *Telang v. Bureau of Pro. & Occupational Affs.*, 751 A.2d 1147 (Pa. 2000); *Yousufzai v. Bureau of Pro. & Occupational Affs., State Bd. of Med.*, 793 A.2d 1008 (Pa. Cmwlth. 2002); *Starr v. State Bd. of Med.*, 720 A.2d 183 (Pa. Cmwlth. 1998).

Officer's Op. at 5-7 & 20. M.S. reported it immediately to three superiors, two of whom testified consistently concerning her account of the incident. N.T., 2/26/20, at 89-97 & 105-17. Several weeks later, M.S. also reported the incident consistently to the police. *Id.* at 119-27. M.S. subsequently told the UPMC investigating panel, which found her credible, and the professional conduct investigator gathering evidence for these disciplinary proceedings, who found her "sincere." *Id.* at 301-03 & 249-57. Ultimately, the hearing officer also credited M.S.'s account, to which she testified in person. Hearing Officer's Op. at 17.

Dr. Iqbal maintains that the incident with M.S. was not an unwanted advance in light of their prior friendly relations, but proffered no evidence or witnesses to support his assertion. The UPMC investigative panel did not find his version of the incident as consensual to be credible, and neither did the hearing officer. N.T., 2/26, 20, at 303-08 & 314; Hearing Officer's Op. at 17. Moreover, Dr. Steven Jones of UPMC, whom the hearing officer found credible, testified that shortly after the incident, when he and the Leadership Council conducted an initial inquiry, Dr. Iqbal admitted he had "crossed a line" with M.S. and that he regretted the incident. *Id.* at 154-61. Dr. Iqbal's attempts to discredit M.S. were rejected by the hearing officer, who found the passage of several weeks before M.S. reported the matter to the police irrelevant in light of the fact that she immediately reported it at UPMC and did ultimately report it to the police. Hearing Officer's Op. at 20 & 23.

After UPMC revoked Dr. Iqbal's hospital privileges in March 2016, he began practicing at Curahealth, but his episodes of misconduct did not cease and, in fact, escalated to the 2017 physical assault on K.F., who stated she had no prior relationship with him at all when he came into her office to sign medical records,

then violently attacked her, “stuck his tongue down [her] throat,” ground his body against hers in a bear hug, and grabbed at her breasts, bruising them. N.T., 2/27/20, at 373-76. Two days later, she reported the incident to Curahealth and the police. *Id.* at 337-38.

Detective Cokus, who investigated the K.F. incident, stated he was suspicious of Dr. Iqbal’s verbal and written assertions that the incident had been consensual, so he used an accepted technique of misleading Dr. Iqbal by mentioning there was video of the incident that would clear up any questions, at which point Dr. Iqbal admitted the incident had not been consensual. N.T., 2/27/20, at 346-49 & 355-58. Dr. Iqbal’s criminal conviction on misdemeanor charges of simple assault and harassment arising from the K.F. incident after a counseled bench trial (with stipulated evidence) in Allegheny County was admitted at the hearing and acknowledged by Dr. Iqbal in his testimony.⁸ Hearing Officer’s Op. at 4 & n.4.

The hearing officer credited K.F. and Detective Cokus and found Dr. Iqbal’s account of the incident as consensual to be not credible. Hearing Officer’s Op. at 17 & 24. The hearing officer also described this incident as an escalation in the severity of Dr. Iqbal’s conduct, particularly after he received a warning following the 2012 incident at UPMC and ultimately lost his UPMC hospital privileges after the M.S. incident in 2015. Hearing Officer’s Op. at 23. The hearing officer dismissed Dr. Iqbal’s attempt to discredit K.F. by arguing about whether blood on his shirt stained her shirt during the incident as immaterial to whether the incident was nonconsensual and amounted to immoral and unprofessional conduct. *Id.* at 24.

⁸ Dr. Iqbal now contends that his conviction was unjust, but the record contains no indication that he appealed it within the appropriate timeframe.

The hearing officer concluded that the Bureau proved all of the charges against Dr. Iqbal, whose actions amounted to immoral and unprofessional conduct as set forth in Section 41 of the MPA and Section 16.61 of the associated regulations. *Id.* at 19 & 25. Given the preponderance standard, the breadth and consistency of the Bureau's evidence, and Dr. Iqbal's lack of rebuttal or mitigating evidence, the hearing officer's conclusions were supported by substantial evidence of record and were not legally erroneous, arbitrary, or capricious.

As to sanctions, the hearing officer considered the numerous and escalating instances of Dr. Iqbal's misconduct, the revocation of his UPMC hospital practice privileges after the M.S. incident, his criminal conviction arising from the K.F. incident, and his lack of any mitigating evidence. Hearing Officer's Op. at 30. The hearing officer concluded that "despite numerous warnings, including collegial interventions and revocation of privileges at various medical facilities, [Dr. Iqbal] [cannot], or will not, act in a professional, ethical or moral manner. Thus, a severe sanction is warranted." Hearing Officer's Op. at 30. The hearing officer therefore ordered Dr. Iqbal's medical license revoked. *Id.* The Board adopted the hearing officer's findings and conclusions in full, dismissed Dr. Iqbal's exceptions attacking the credibility and conduct of the witnesses who testified for the Bureau, and upheld the revocation of his medical license. Board's Op. at 2-6.

We agree with the Board that the extensive evidence presented by the Bureau and summarized above fully supports the sanction of revocation. That determination was amply supported by substantial evidence of record and was not legally erroneous, arbitrary, or capricious. This result is also consistent with the holdings of *Tandon* and *Flickinger*, where this Court has upheld severe sanctions for

doctors found to have violated the MPA and its regulations against unwanted sexual advances and attacks on nurses and support medical staff.

In his brief, Dr. Iqbal again argues that M.S., K.F., and Detective Cokus should not have been found credible. Dr. Iqbal's Br. at 3-5. However, credibility determinations are firmly reserved to the factfinder (the Board) and this Court has no basis or authority to overturn such determinations. *Gleeson*, 900 A.2d at 435. Moreover, as the hearing officer pointed out, Dr. Iqbal's assertions of inconsistencies in the testimony of both M.S. and K.F. pertain to minor or ancillary matters rather than these victims' accounts of the incidents themselves, which were the basis of the Board's revocation decision and which were unequivocally found credible, consistent, and corroborated by other evidence of record. Hearing Officer's Op. at 17, 19 & 23-24. Likewise, Detective Cokus was found credible by the hearing officer, and as explained above, this Court may not disturb that determination. *See Gleeson*, 900 A.2d at 435. Moreover, the hearing officer's opinion does not indicate that Detective Cokus's testimony was relied on for any specific finding or served as anything other than a supplemental or corroborative source to that of M.S., K.F., and the hospital personnel who corroborated their accounts. *See* Hearing Officer's Op. at 17 & 23-25.

IV. Conclusion

As the Board's determination was supported by substantial evidence of record and Dr. Iqbal has not shown that the Board acted arbitrarily, capriciously, or

in a legally erroneous manner, we affirm the Board's order revoking Dr. Iqbal's license to practice medicine in Pennsylvania.⁹

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

⁹ Dr. Iqbal's assertions in his brief that M.S. fraudulently received settlement funds from her civil suit against him, that his criminal conviction should be overturned, and that criminal proceedings should be instituted against K.F. and Detective Cokus for alleged fabrication of evidence and obstruction of justice, are waived because they were not brought before the administrative tribunals. *See K.J. v. Pa. Dep't of Pub. Welfare*, 767 A.2d 609, 612 (Pa. Cmwlth. 2001) (explaining that "when a party fails to raise an issue . . . in an agency proceeding, the issue is waived and cannot be considered for the first time in a judicial appeal"). Moreover, Dr. Iqbal has not asserted any legal basis on which this Court could exercise appellate jurisdiction over these criminal or private civil matters. *See* 42 Pa.C.S. §§ 761-763.

As for Dr. Iqbal's additional assertion that the hearing officer deliberately excluded an allegedly exculpatory report by Dr. Wettstein, our review of the record reveals no indication that Dr. Iqbal presented such a report for admission during the hearing or that he raised it to the Board. Moreover, Dr. Iqbal fails to develop this argument in his brief with citations to either the record or relevant authority, as required by Pennsylvania's Rules of Appellate Procedure. Pa.R.A.P. 2119(a); *Skytop Meadow Cmty. Ass'n, Inc. v. Paige*, 177 A.3d 377, 384 (Pa. Cmwlth. 2017) (stating that "[w]hen parties fail to satisfy this requirement, the Court is neither obliged, nor even particularly equipped, to develop an argument for [them]"); *see also K.J.*, 767 A.2d at 612.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

Case No.: 17-49-14398

vs.

Zafar Iqbal, M.D.

Respondent

FINAL MEMORANDUM OPINION AND ORDER ADOPTING HEARING
EXAMINER'S PROPOSED ADJUDICATION AND ORDER AND ADDRESSING
EXCEPTIONS

At its September 2, 2020, Board meeting, the State Board of Medicine (Board) considered the entire record established before the hearing examiner in this case, including the proposed history, findings of fact, conclusions of law and discussion in the hearing examiner's Proposed Adjudication and Order issued on July 17, 2020. In addition, the Board considered the Brief on Exceptions to the Hearing Examiner's Proposed Adjudication and Order (Brief on Exceptions) filed by Zafar Iqbal, M.D. (Respondent) on August 3, 2020.

It is consistent with Board's authority under the Medical Practice Act of 1985 and the Administrative Agency Law, 2 Pa. C.S. § 504, for the Board to adopt the hearing examiner's proposed findings of fact, conclusions of law and discussion if the Board determines that they are complete, and the evidence supports them. Having reviewed the entire record, the Board concludes that the evidence and the law support the hearing examiner's proposed findings of fact, conclusions of law and discussion and incorporates them as if set forth fully in this Final Memorandum Opinion.

Prothonotary Filed On: Nov 02, 2020, 12:03 PM

Act of December 20, 1985. P.L. 457, No. 112, as amended, 63 P.S. 422.1 -422.51 a.

and Order. The Board adds the following discussion to address the exceptions raised in Respondent's Brief on Exceptions.

In his Brief on Exceptions, Respondent outlines several exceptions to the hearing examiner's Proposed Adjudication and Order. In his first two exceptions, Respondent takes exception to the hearing examiner's credibility determination as it relates to his two accusers, M.S. and K. In his third exception, Respondent takes exception to the credibility of the testimony of Detective Donald Cokus as it relates to the criminal proceedings in this matter. Finally, in his fourth and fifth exceptions, Respondent provides an explanation of his prior relationship with a 2012 complainant, Ms. S. and provides further information on the "Fresenius Incident in 2002." See Brief on Exceptions at para. 1-5.

The Board begins by noting that "[a]ny participant who wishes to appeal all or part of the Hearing Examiner's proposed report to the Board must file exceptions in the form of a Brief on Exceptions with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative

Practice and Procedure at 1 Pa. Code 35.211-214." *Arowosaye v. Bureau of Professional and Occupational Affairs* 2017 WL 1 152561 (Pa. Cmwlth. 2017) Specifically, the Brief on Exceptions shall contain the following: a short statement of the case, a summary of the basic position of the party filing, the grounds upon which the exceptions rest and the argument in support with appropriate reference to the record and legal authorities. 1 Pa. Code 35.212.

In response to Respondent's first three exceptions, the Board concludes that the Proposed Adjudication and Order correctly states that in an administrative proceeding, the fact finder determines questions of credibility of witnesses and weight of evidence. See e.g. *Neva v. Department of Public Welfare* 551 A.2d 354 (Pa. Cmwlth. 1988) (determination of credibility of witnesses in health care providers' appeal is the province of the fact finder.) Additionally, the fact

finder "need not provide specific reasons for finding one witness credible over the other." *Sunoco*: 864 A.2d 960 (Pa. Cmwlth. 2005) The reviewing courts do not accept invitations to re-evaluate evidence and credibility determinations. *Id.*

In attacking the both the victims' credibility and the detective's credibility in his Brief on Exceptions, Respondent argues that it was "extremely clear" that the three key witnesses "lied under oath making their accusation probative values not beyond a reasonable doubt." See Brief on Exceptions, pg. 1. However, the normal burden of proof for most administrative actions is the preponderance of the evidence standard. *Samuel J. Lansberry In v. Pennsylvania Public Utility Commission* 578 A.2d 600 (Pa. Cmwlth. 1990), petition for allowance of appeal denied, 529 Pa. 654, 602 A.2d 863 (1998); see also *North American Coal Corp. v. Air Pollution Commission* 279 A.2d 356 (Pa. Cmwlth. 1971) citing *In Matter of Leopold*, 366 A.2d 227 (Pa. 1976).

In *Lepold vs the Pennsylvania Supreme Court* was faced with the issue of what standard of proof to apply when conducting a de novo review of the recommended disbarment of an attorney. Rejecting the contention that the "beyond a reasonable doubt" standard should be used, the Pa. Supreme Court stated that "[w]hile we recognize the severe impact that such sanctions may have on an individual's career, we are also mindful of our duty to uphold the integrity of the Bar." *Suber v. Pennsylvania Commission on Crime and Delinquency* 885 A.2d 678 (Pa. Cmwlth. 2005) citing *Leopold* Accordingly, the Court concluded that use of the preponderance of the evidence standard is necessary as it had been consistently utilized in disciplinary cases through the years. *Id.* citing *Ruane v. Shippensburg University*, 871 A.2d 859 (Pa. Cmwlth. 2005) (holding that the proper standard for a student suspended for sexual assault was "preponderance of the evidence" standard), *Boguslawski v. Department of Education*, 837 A.2d 614 (Pa. Cmwlth. 2003) (reaffirming and holding that preponderance of evidence was the correct standard to be applied in teacher discipline cases).

The Board notes that the hearing examiner began the proposed discussion by clearly and accurately outlining that the correct burden of proof to be applied in this administrative proceeding is the preponderance of the evidence standard. Next, the hearing examiner provides a lengthy discussion on the credibility of the witnesses and weight of the evidence and cites to the controlling case law on that issue. The Board concludes that the hearing examiner's proposed discussion on burden of proof and credibility is precise and complete. Accordingly, Respondent's first three exceptions, relating to the credibility of M.S., K.F. and Detective Cokus are without merit.

In his fourth and fifth exceptions, Respondent provides additional explanations regarding a 2002 sexual harassment complaint against him while employed at the Fresenius Dialysis Center and a 2012 complaint against him while employed at UPMC. Specifically, in his fourth exception, Respondent states that, "I had a purely platonic relationship with "Ms. S" with a small altercation in 2012. I was extremely contrite and have not spoken to her since. She did not appear at the hearing." See Brief on Exceptions at para. 4. In his fifth and final exception, Respondent states, "attached are documents which show exoneration initially. The instigating event was my breakup with a group and starting a new dialysis clinic. I was readmitted to the clinic once new administration took over." See Brief on Exceptions at para 5. Respondent attaches exhibit R-15 in support of his fifth exception. This exhibit is the Governing Body Committee Decision Dated April 4, 2003 which found sufficient grounds for revocation of Respondent's staff privileges based on his progress notes, history and physicals, long and short-term care plans and physician orders. The Committee further found that the charges of sexual harassment were not substantiated. See Exhibit R-15.

2 The Board notes that Respondent uses the complainant's full name but for sake of privacy, the Board has used the complainant's initials.

The Board notes that Respondent's statements in his fourth and fifth exceptions do not specifically cite to any proposed finding, conclusion or discussion within the Proposed Adjudication and Order to which he takes exception as required by the General Rules of Administrative Practice and Procedure. However, for the sake of completeness, the Board will treat these general statements as exceptions to the only areas of the proposed report that address these incidents. In the Proposed Adjudication and Order, at findings of fact 41 through 43, the hearing examiner found as fact the following related to the investigation of the MS. complaint:

41. The Investigating Committee considered the incident involving MSS. as well as previous incidents involving Respondent from 2003 (involving multiple complaints at the Fresenius Dialysis Center)⁹, 2012 (involving unwanted physical contact of a co-worker nurse, A.S.)¹⁰ and 2013 (involving a patient complaint). N.T. 2/27/20 at pp. 286-287, 292; Exhibit C-8.

42. "The Investigating Committee conducted a thorough investigation and recommended that Respondent's medical staff and clinical privileges be revoked because he violated UP MC's policies, including the Code of Conduct and Harassment-Free Workplace Policy. N.T. 2/26/20 at pp. 182-183; Exhibit C-9.

43. Based upon the results of that investigation, the unanimous vote of the Medical Executive Committee was to revoke Dr. Iqbal's medical staff and clinical privileges. N.T. 2/26/20 at p. 186.

See Proposed Adjudication and Order at pg 9.

Proposed finding of fact number 41 contains two footnotes (FN 9 and FN 10) which describe the 2003 and the 2012 incidents. Footnote 9 and 10 states as follows:

9"Dr. Iqbal admitted to losing his privileges at the Fresenius Dialysis Center in 2003 as a result of sexual harassment allegations. "The complainants in that case were all nurses. N.T. 2/27/20 at pp. 467-470. Although the Fresenius allegations are not the basis for the present OTSC before the Board, the allegations are material to the extent they were a factor considered by UPMC in its decision to revoke Respondent's medical staff and clinical privileges.

10The 2012 incident involved Respondent's unwanted physical contact with nurse A. S. That unwanted physical contact resulted in a "collegial intervention" by UPN-IC personnel including Dr. Rupa Mokkapatti, the Chair of Medicine at UPMC Passavant (who testified in person at the hearing in this matter. N.T. 2/26/20 at pp. 25-26; 28-31; Exhibit C-1 and C-2). Although the 2012 unwanted contact with nurse A.S. is not the basis for the present OTSC before the Board, it is material to the extent it was a factor considered by UPMC in its decision to revoke Respondent's privileges.

See Proposed Adjudication and Order at pg 9, FN 9. 10.

The hearing examiner made no other reference to the 2003 and the 2012 incidents in the Proposed Adjudication and Order. The Board has reviewed the entire record of this matter, including the transcript of testimony. The Board notes that the hearing examiner properly considered the testimony concerning the 2003 and 2012 incidents as they related to the investigation of M.S.'s complaint against Respondent and not as violations themselves. The hearing examiner's proposed findings of fact 41 through 43 accurately reflect the testimony provided by several of the Commonwealth's witnesses. The Board recognizes Exhibit R-15 contains the conclusion of the Governing Body Committee Decision, on April 4, 2003, that there were insufficient grounds for a finding of sexual harassment based on Respondent never being warned, notified or counseled about the allegations of harassment against him. However, the Board concludes that the 2003 finding is irrelevant to these proceedings as Respondent is not charged with a violation related to that complainant. The sole purpose of the introduction of this evidence was to lay the foundation and provide the full picture of UPMC's investigation in the current M.S. matter. Therefore, Respondent's fourth and fifth exceptions are without merit.

While Respondent does not raise an exception to the hearing examiner's proposed penalty, the Board concludes that the imposition of a civil penalty is not necessary in this matter. The revocation of Respondent's license is enough to further the Board's specific goal of protecting the public health and safety. In conclusion, the Board finds that the evidence and law support the hearing examiner's Proposed Adjudication and Order and that the issues raised in the Commonwealth's Brief on Exceptions are without merit.

Wherefore, the following substitute Final Order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and Occupational Affairs

Case No.: 17-49-14398

vs.

Zafar Iqbal, M.D.

Respondent

FINAL ORDER

AND NOW, this 2nd day of November 2020, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is ORDERED that the license to practice

medicine and surgery issued to Respondent, Zafar Iqbal, M.D., license no. MD044624E is

REVOKED.

This Order is effective immediately. The sanction will become effective thirty (30) days from the mailing date of this order, namely December 2, 2020.

BY ORDER:

BUREAU OF PROFESSIONAL AND STATE BOARD OF MEDICINE
OCCUPATIONAL AFFAIRS

K. KALONJI JOHNSON, MARK B. WOODLAND, M.S., M.D.
COMMISSIONER CHAIR

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

vs.

Case No.: 17-49-14398

Zafar Iqbal, M.D.
Respondent

**FINAL MEMORANDUM OPINION AND ORDER ADOPTING HEARING
EXAMINER'S PROPOSED ADJUDICATION AND ORDER AND ADDRESSING
EXCEPTIONS**

At its September 2, 2020 Board meeting, the State Board of Medicine (Board) considered the entire record established before the hearing examiner in this case, including the proposed history, findings of fact, conclusions of law and discussion in the hearing examiner's *Proposed Adjudication and Order* issued on July 17, 2020. In addition, the Board considered the *Brief on Exceptions to the Hearing Examiner's Proposed Adjudication and Order (Brief on Exceptions)* filed by Zafar Iqbal, M.D. (Respondent) on August 3, 2020.

It is consistent with Board's authority under the Medical Practice Act of 1985 (Act),¹ and the Administrative Agency Law, 2 Pa. C.S. § 504, for the Board to adopt the hearing examiner's proposed findings of fact, conclusions of law and discussion if the Board determines that they are complete, and the evidence supports them. Having reviewed the entire record, the Board concludes that the evidence and the law support the hearing examiner's proposed findings of fact, conclusions of law and discussion and incorporates them as if set forth fully in this *Final Memorandum Opinion*

¹ Act of December 20, 1985, P.L. 457, No. 112, as amended, 63 P.S. §§ 422.1 - 422.51a.

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Department of State

and Order. The Board adds the following discussion to address the exceptions raised in Respondent's *Brief on Exceptions*.

In his *Brief on Exceptions*, Respondent outlines several exceptions to the hearing examiner's *Proposed Adjudication and Order*. In his first two exceptions, Respondent takes exception to the hearing examiner's credibility determination as it relates to his two accusers, M.S. and K.F. In his third exception, Respondent takes exception to the credibility of the testimony of Detective Donald Cokus as it relates to the criminal proceedings in this matter. Finally, in his fourth and fifth exceptions, Respondent provides an explanation of his prior relationship with a 2012 complainant, Ms. S. and provides further information on the "Fresenius Incident in 2002." See *Brief on Exceptions* at para. 1-5.

The Board begins by noting that "[a]ny participant who wishes to appeal all or part of the Hearing Examiner's proposed report to the Board must file exceptions in the form of a *Brief on Exceptions* with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§ 35.211-214." *Arowosaye v. Bureau of Professional and Occupational Affairs* 2017 WL 1152561 (Pa. Cmwlth. 2017) Specifically, the *Brief on Exceptions* shall contain the following: a short statement of the case, a summary of the basic position of the party filing, the grounds upon which the exceptions rest and the argument in support with appropriate reference to the record and legal authorities. 1 Pa. Code § 35.212.

In response to Respondent's first three exceptions, the Board concludes that the *Proposed Adjudication and Order* correctly states that in an administrative proceeding, the fact finder determines questions of credibility of witnesses and weight of evidence. See e.g. *Nepa v. Department of Public Welfare*, 551 A.2d 354 (Pa. Cmwlth. 1988)(determination of credibility of witnesses in health care providers' appeal is the province of the fact finder.) Additionally, the fact

finder "need not provide specific reasons for finding one witness credible over the other." Sunoco, Inc. v. Department of Environmental Protection, 864 A.2d 960 (Pa. Cmwlth. 2005) The reviewing courts do not accept invitations to re-evaluate evidence and credibility determinations. *Id.*

In attacking the both the victims' credibility and the detective's credibility in his *Brief on Exceptions*, Respondent argues that it was "extremely clear" that the three key witnesses "lied under oath making their accusation probative values not beyond a reasonable doubt." *See Brief on Exceptions*, pg. 1. However, the normal burden of proof for most administrative actions is the preponderance of the evidence standard. Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission, 578 A.2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 529 Pa. 654, 602 A.2d 863 (1998); *see also North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971) *citing In Matter of Leopold*, 366 A.2d 227 (Pa. 1976).

In Leopold, the Pennsylvania Supreme Court was faced with the issue of what standard of proof to apply when conducting a *de novo* review of the recommended disbarment of an attorney. Rejecting the contention that the "beyond a reasonable doubt" standard should be used, the Pa. Supreme Court stated that "[w]hile we recognize the severe impact that such sanctions may have on an individual's career, we are also mindful of our duty to uphold the integrity of the Bar." Suber v. Pennsylvania Com'n on Crime and Delinquency, 885 A.2d 678 (Pa. Cmwlth. 2005) *citing Leopold* Accordingly, the Court concluded that use of the preponderance of the evidence standard is necessary as it had been consistently utilized in disciplinary cases through the years. *Id. citing Ruane v. Shippensburg University*, 871 A.2d 859 (Pa. Cmwlth. 2005)(holding that the proper standard for a student suspended for sexual assault was "preponderance of the evidence" standard), Boguslawski v. Department of Education, 837 A.2d 614 (Pa. Cmwlth. 2003)(reaffirming Lansberry and holding that preponderance of evidence was the correct standard to be applied in teacher discipline cases).

The Board notes that the hearing examiner began the proposed discussion by clearly and accurately outlining that the correct burden of proof to be applied in this administrative proceeding is the preponderance of the evidence standard. Next, the hearing examiner provides a lengthy discussion on the credibility of the witnesses and weight of the evidence and cites to the controlling case law on that issue. The Board concludes that the hearing examiner's proposed discussion on burden of proof and credibility is precise and complete. Accordingly, Respondent's first three exceptions, relating to the credibility of M.S., K.F. and Detective Cokus are without merit.

In his fourth and fifth exceptions, Respondent provides additional explanations regarding a 2002 sexual harassment complaint against him while employed at the Fresenius Dialysis Center and a 2012 complaint against him while employed at UPMC. Specifically, in his fourth exception, Respondent states that, "I had a purely platonic relationship with "Ms. S"² with a small altercation in 2012. I was extremely contrite and have not spoken to her since. She did not appear at the hearing." *See Brief on Exceptions at para. 4.* In his fifth and final exception, Respondent states, "attached are documents which show exoneration initially. The instigating event was my breakup with a group and starting a new dialysis clinic. I was readmitted to the clinic once new administration took over." *See Brief on Exceptions at para. 5.* Respondent attaches exhibit R-15 in support of his fifth exception. This exhibit is the Governing Body Committee Decision Dated April 4, 2003 which found sufficient grounds for revocation of Respondent's staff privileges based on his progress notes, history and physicals, long and short-term care plans and physician orders. The Committee further found that the charges of sexual harassment were not substantiated. *See Exhibit R-15.*

² The Board notes that Respondent uses the complainant's full name but for sake of privacy, the Board has used the complainant's initials.

The Board notes that Respondent's statements in his fourth and fifth exceptions do not specifically cite to any proposed finding, conclusion or discussion within the *Proposed Adjudication and Order* to which he takes exception as required by the General Rules of Administrative Practice and Procedure. However, for the sake of completeness, the Board will treat these general statements as exceptions to the only areas of the proposed report that address these incidents. In the *Proposed Adjudication and Order*, at findings of fact 41 through 43, the hearing examiner found as fact the following related to the investigation of the M.S. complaint:

41. The Investigating Committee considered the incident involving M.S. as well as previous incidents involving Respondent from 2003 (involving multiple complaints at the Fresenius Dialysis Center)⁹, 2012 (involving unwanted physical contact of a co-worker nurse, "A.S.")¹⁰ and 2013 (involving a patient complaint). N.T. 2/27/20 at pp. 286-287, 292; Exhibit C-8.

42. The Investigating Committee conducted a thorough investigation and recommended that Respondent's medical staff and clinical privileges be revoked because he violated UPMC's policies, including the Code of Conduct and Harassment-Free Workplace Policy. N.T. 2/26/20 at pp. 182-183; Exhibit C-9.

43. Based upon the results of that investigation, the unanimous vote of the Medical Executive Committee was to revoke Dr. Iqbal's medical staff and clinical privileges. N.T. 2/26/20 at p. 186.

See Proposed Adjudication and Order at pg. 9.

Proposed finding of fact number 41 contains two footnotes (FN 9 and FN 10) which describe the 2003 and the 2012 incidents. Footnote 9 and 10 states as follows:

⁹ Dr. Iqbal admitted to losing his privileges at the Fresenius Dialysis Center in 2003 as a result of sexual harassment allegations. The complainants in that case were all nurses. N.T. 2/27/20 at pp. 467-470. Although the Fresenius allegations are not the basis for the present OTSC before the Board, the allegations are material to the extent they were a factor considered by UPMC in its decision to revoke Respondent's medical staff and clinical privileges.

¹⁰ The 2012 incident involved Respondent's unwanted physical contact with nurse A.S. That unwanted physical contact resulted in a "collegial intervention" by UPMC personnel including Dr. Rupa Mokkapatti, the Chair of Medicine at UPMC Passavant (who testified in person at the hearing in this matter. N.T. 2/26/20 at pp. 25-26; 28-31; Exhibit C-1 and C-2). Although the 2012 unwanted contact with nurse A.S. is not the basis for the present OTSC before the Board, it is material to the extent it was a factor considered by UPMC in its decision to revoke Respondent's privileges.

See Proposed Adjudication and Order at pg. 9, FN 9, 10.

The hearing examiner made no other reference to the 2003 and the 2012 incidents in the *Proposed Adjudication and Order*. The Board has reviewed the entire record of this matter, including the transcript of testimony. The Board notes that the hearing examiner properly considered the testimony concerning the 2003 and 2012 incidents as they related to the investigation of M.S.'s complaint against Respondent and not as violations themselves. The hearing examiner's proposed findings of fact 41 through 43 accurately reflect the testimony provided by several of the Commonwealth's witnesses. The Board recognizes *Exhibit R-15* contains the conclusion of the Governing Body Committee Decision, on April 4, 2003, that there were insufficient grounds for a finding of sexual harassment based on Respondent never being warned, notified or counseled about the allegations of harassment against him. However, the Board concludes that the 2003 finding is irrelevant to these proceedings as Respondent is not charged with a violation related to that complainant. The sole purpose of the introduction of this evidence was to lay the foundation and provide the full picture of UPMC's investigation in the current M.S. matter. Therefore, Respondent's fourth and fifth exceptions are without merit.

While Respondent does not raise an exception to the hearing examiner's proposed penalty, the Board concludes that the imposition of a civil penalty is not necessary in this matter. The revocation of Respondent's license is enough to further the Board's specific goal of protecting the public health and safety. In conclusion, the Board finds that the evidence and law support the hearing examiner's *Proposed Adjudication and Order* and that the issues raised in the Commonwealth's *Brief on Exceptions* are without merit.

Wherefore, the following substitute *Final Order* shall issue:

6.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

vs.

Case No.: 17-49-14398

Zafar Iqbal, M.D.
Respondent

FINAL ORDER

AND NOW, this 2nd day of November 2020, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that the license to practice medicine and surgery issued to Respondent, Zafar Iqbal, M.D., license no. MD044624E is **REVOKED**.

This Order is effective immediately. The sanction will become effective thirty (30) days from the mailing date of this order, namely December 2, 2020.

BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



K. KALONJI JOHNSON
COMMISSIONER

STATE BOARD OF MEDICINE



MARK B. WOODLAND, M.S., M.D.
CHAIR

Case #1 MS Prehearing Statement

Attached are documents which are exhibits labeled 1-20, Exhibits A, B, C and photo evidence 1 and Drawing evidence1.

1. Nothing can describe better my narrative as written by Sergeant Itri (#4) which has expanded my statement to hearing panel (#6,7).

2. The hospital became aware of the complaint same day (#3), though I was informed about the complaint on 8/5/2015. I was asked to go on leave on 8/19/2015 and it was reported to police on 8/29/2015 (#1-4).

3. Exhibits A (a, b, c) suggest a platonic relationship of at least 2 years. It also acknowledges a mutual hug on 8/1/2015.

4. From 8/1-8/5/2015 incidents have been reported to the hospital [Exhibits (r, y, aa, cc) yet she did not report to police 4 weeks later and the hospital took 4 days to warn me on 8/5/2015.

5. On 8/5/2015, MS informed me of the upcoming vacation for 10 days to Florida. In the afternoon the hospital called me about this complaint, and I haven't spoken to her since.

6. During my discussion on the phone, with Sergeant (#3), I raised the discrepancy that 4 weeks

have gone by, between the incident and its reporting to the police.

7. On 9/11/2015, at the interview with the investigating committee. I insisted that MS travelled to several floors including ground floor with me, making her contention implausible (#3, Exhibit B (p)).

8. I insisted on obtaining surveillance video from ground floor camera (photo evidence 1). The testimony of Sergeant Itri is vital to determine if video from camera shown in (photo evidence 1) can still be available or can be obtained from the security company.

APPENDIX C

9. Investigating Committee report (#17-18), #12 states that there was only one video surveillance tape available from PNC ATM machine. This is in stark contrast to admission of Thomas Wolfson on conference call (#5) that a tape from Hospital surveillance camera shown in the photo was given to David Hanlon, chief investigator,

10. Michael Weiss MD, chairman of investigating committee received the above-mentioned tape from hospital surveillance in September 2015, yet it was not included in the final report (#17,18).

11. Michael Weiss MD was removed from the witness list and my statement to the Hearing panel (#6-9) was held by President Thomas Boyle (#11), though a compromise was offered earlier (#10).

12. It is prudent to ask Dr. Pollice, what in my statement (#6-9) was so egregious, and by withholding my statement violated my first amendment rights.

13. I stand by today that I had a platonic relationship with MS, commiserated with her, never prescribed any medications to her and never treated her as my patient.

14. MS sued me and asked for \$70,000.00 (Exhibit C), however I ran out of money, she settled for \$10,000 (#14-16) on 2/22/2018.

15. Mr. Thomas Wolfson was issued federal subpoena (#12,13). No video evidence has been delivered so far.

Conclusion and Remarks:

1. MS testimony is vital; police report indicates complaint reported to Hospital (#3) on 8/1/2015. A question should be asked to MS, why it took a month to report to the police.

2. I spoke to her same day (#3) and introduced her to my daughter (Exhibit B(u)), my mother-in-law was a patient on the same floor. I inquired about her welfare everyday up until 8/5/2015, when she informed me of her vacation for 10 days in Florida.

3. Questions should be asked that why she maintained a cordial relationship and should have told me, not to speak to her anymore (Exhibits A, B).

4. Questions will be asked in relevance to ambiance and the table we sat (Drawing evidence), to people around us, and the distance from the table to the elevators on the 5th floor.

5. Questions regarding other people in the elevator when we boarded, right elevator (Photo and drawing evidence).

6. Getting off at 4th floor and boarding, middle elevator to ground floor.

7. Getting off at ground floor right underneath hospital surveillance camera (Photo evidence 1)

and getting on the left elevator within 15 seconds.

8. On 8/5/2015, she informed me that she is going for a 10-day vacation to Florida. Questions should be asked, why was she comfortable divulging such personal details.

9. Sergeant Itri will be able to contribute immensely by elaborating where in the hospitals video surveillance is available. Why did MS take 4 weeks to report it to the police?

10. Both Sergeants' testimonies are vital for the access to the hospital surveillance particularly, if a crime needs investigated with review of old video surveillance stored off site by security company.

11. Question should be asked to Dr. Pollice, why they relied on an often-obstructed PNC ATM machine video (#17 bullet 15), while they had Hospital surveillance video (#photoevidence1).

12. Authentication of all the pages of investigating report admitted as evidence in this hearing by Dr. Pollice

13. Dr. Pollice should explain why my statement to Hospital hearing panel (#6-9) was withheld (#10,11),

14. Why was Michael Weiss removed from the witness list?

15. Request to get the telephone testimony of Dr. Michael Weiss.

Zafar Iqbal MD

Feb 21,2020

TRANSCRIPT FROM M.S. TESTIFYING

2/26 Page 50 lines:

21 Q. And did you report this to the police?

22. A. Yes. I believe a couple of days later we had reported to the McCandless Police...

Page 79 lines

19. Q. Mrs. Smith, you said you went to the police the next day?

21. A. I believe it was a couple of days later.

This is entirely false as depicted in the police report (Exhibit-III, R-3), which suggests that Mr. and Mrs. Smith presented themselves on 08/29/2015 @15:49 (Incident #20150831M8358) to the police station. The report was written by Lawrence J. Itri Sergeant. This was followed up by his interview with me on September 1, 2015 (Exhibit III, R-3).

TRANSCRIPT OF SERGEANT LAWRENCE ITRI TESTIMONY.

02/26-page 122 lines:

17. I'm handing Sergeant what's been marked as Exhibit R-3

23. Q. Is that she said- the time reported is 8/29/2015, at 15:49?

25. A. Yes. That's the time I took the report.

02/26 -Page 123 lines:

2. A. That's the date that Mrs. Smith and her husband came to the station. Yes, it is.

4. Q. Did they come before this date? Is this the first time ever you saw them?6.

A. Yes. That was the first time I've seen them

ALLEN FLEMM, PCI testified 2/26 page 253 lines

15. Q. But she told you that she went to the police a month later?

17. A. She didn't give an exact date, but she said she went after her vacation. She said took a vacation and went after the vacation.

(THE ABOVE TESTIMONIES STAND IN DIRECT CONTRAVENTION TO THE TESTIMONY OF M.S)

2/26 Page 50

1.Q. You indicated that Eddie told you to tell

2 a supervisor or did he call a supervisor?

3 A. I can't remember if I called or if he

4 called. I can't remember.

5 Q Okay.

6. Did you end up reporting this to that

7. supervisor

8.Yes.

9 Q. And who was that?

10 A. Kris.

11 Q. Mankey?

12 A. Mankey

13 Q. Okay

14. And did you end up then reporting this to

15 anyone else in the UPMC chain of command?

16 A. On my way home, I believe I called my

17 manager, Denise.

18 Q Sponker ?

19 Yes.

20 Q Okay

21 And did you report this to the police?

22 A. Yes. I believe a couple of days later we

23 had reported it to the McCandless Police. They're

24. the-

25. DR. IQBAL: Objection, Your Honor.

2/26 page 79

1 HEARING EXAMINER: That's hearsay is

2. the basis of your objection then. I sustain that 3. objection.

4 DR. IQBAL: Your Honor, this is Police

5 Report and the police officer is scheduled to appear

6 before here.

7 HEARING EXAMINER: Then you are able

8 to ask the police officer about the contents of his

9 report. This witness did not prepare the report.

10 DR. IQBAL: So I would like to

11 preserve my right to question the witness again,

12 once the police officer identifies the document

13 written by them and

14 HEARING EXAMINER: Okay.

15 That's fine. You

16 can preserve that right, assuming that the officer

17 is going to testify.

18 BY DR. IQBAL:

19 Q Mrs. Smith, you said you went

to the

20 police the next day?

21 A. I believe it was a couple of days later.

22 I don't believe it was the next day.

23 DR. IQBAL: Your Honor,

24 I have a document which suggests that she went to the police

25 after a month

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2/26 page 122

1 BY DR. IQBAL:

2 Q. Sir, did you file a report?

3 A. Yes, I did.

4 Q. Is that report somewhere there?

5 HEARING EXAMINER:

6 And are you referring to what's been marked -?

7 DR. IQBAL: Yes, it's on the report

8 bottom, yes. It's the report 1, 2, 3.

9 ATTORNEY DELAURENTIS: I don't know if

10 I left that up there.

11 THE WITNESS: I don't see it up here.

12 Is it in the file?

13 ATTORNEY DELAURENTIS: No.

14 HEARING EXAMINER: Okay.

15 Here, I'll give you my copy. There

16 you go.

17 I'm handing the Sergeant what's been

18 marked as Exhibit R-3.

19 BY DR. IQBAL:

20 Q. Is that your name Lawrence J. Itri. Is

21 that you?

22 A. That's me, yes.

22. the incident, which makes it either 8/2nd, 2015 or

23. 8/3rd 2015

24. Is that Correct?

25. A. No. I took this report on the

29th of

Sargent's Court Reporting Service, Inc

(814) 536-8908

2/26. page 253

1. have any questions for this witness?

2 DR. IQBAL: I do

4.. CROSS EXAMINATION

6 Q. BY DR. IQBAL:

7. You have heard Mrs. Smith today?

8.Yes.

9. She was emotional even today?

10. A Yes

11. She said that she suffers from

12 depression? She also testified that she went

to the

13 police in two days. Did you hear that?

14 A. Yes.

15 Q. But she told you that she went to the

16 police a month later?

17 A. She didn't give an exact date, but she

18 said she went after her vacation.

She said she took

19 a vacation and went after the vacation.

20 Q. This was different today.

21 ATTORNEY DELAURENTIS: Objection.

22 This is testimony.

23 DR. IQBAL: I'll withdraw the

24 question.

25 HEARING EXAMINER: Okay.

Sargent's Court Reporting Service,

Inc. (814) 536-89

2/26

1 HEARING EXAMINER: That's - hearsay is
2 the basis of your objection then. I sustain that
3 objection.

4 DR. IQBAL: Your Honor, this is Police
5 Report and the police officer is scheduled to appear
6 before here.

7 HEARING EXAMINER: Then you are able
8 to ask the police officer about the contents of his
9 report. This witness did not prepare the report.

10 DR. IQBAL: So I would like to
11 preserve my right to question the witness again,
12 once the police officer identifies the document
13 written by them and -.

14 HEARING EXAMINER: Okay.

15 That's fine. You can do that. You
16 can preserve that right, assuming that the officer
17 is going to testify.

18 BY DR. IQBAL:

19 Q. Mrs. Smith, you said you went to the
20 police the next day?

21 A. I believe it was a couple of days later.
22 I don't believe it was the next day.

23 DR. IQBAL: Your Honor, I have a
24 document which suggests that she went to the police
25 after a month.

2/26

1 BY DR. IQBAL:

2 Q. Sir, did you file a report?

3 A. Yes, I did.

4 Q. Is that report somewhere there?

5 HEARING EXAMINER: And are you
6 referring to what's been marked -?

7 DR. IQBAL: Yes, it's on the report
8 bottom, yes. It's the report 1, 2, 3.

9 ATTORNEY DELAURENTIS: I don't know if
10 I left that up there.

11 THE WITNESS: I don't see it up here.
12 Is it in the file?

13 ATTORNEY DELAURENTIS: No.

14 HEARING EXAMINER: Okay.

15 Here, I'll give you my copy. There
16 you go.

17 I'm handing the Sergeant what's been
18 marked as Exhibit R-3.

19 BY DR. IQBAL:

20 Q. Is that your name Lawrence J. Itri. Is
21 that you?

22 A. That's me, yes.

23 Q. Is that what she said - the time reported
24 is 8/29/2015, at 15:49?

25 A. Yes. That's the time I took the report.

1 Q. And is that the day they showed up?

2 A. That's the date that Mrs. Smith and her
3 husband came to the station. Yes, it is.

4 Q. Did they come before this date? Is this
5 the first time ever you saw them?

6 A. Yes. That was the first time I've seen
7 them.

8 Q. I don't know, Sergeant, where you were
9 before Mrs. Smith took the stand today and she said
10 she came two days later after the incident.

11 Is that correct?

12 ATTORNEY DELAURENTIS: Objection. I'm
13 not clear on the question.

14 HEARING EXAMINER: Sure. Just
15 rephrase the question.

16 BY DR. IQBAL:

17 Q. Sergeant, before you took the stand, Mrs.
18 Smith took the stand.

19 A. Yes.

20 Q. And she said she came to the pol - to
21 you, to the police department, within two days of
22 the incident, which makes it either 8/2nd, 2015 or
23 8/3rd, 2015.

24 Is that correct?

25 A. No. I took this report on the 29th of

1 have any questions for this witness?

2 DR. IQBAL: I do.

3 ---

4 CROSS EXAMINATION

5 ---

6 BY DR. IQBAL:

7 Q. You have heard Mrs. Smith today?

8 A. Yes.

9 Q. She was emotional even today?

10 A. Yes.

11 Q. She said that she suffers from
12 depression? She also testified that she went to the
13 police in two days. Did you hear that?

14 A. Yes.

15 Q. But she told you that she went to the
16 police a month later?

17 A. She didn't give an exact date, but she
18 said she went after her vacation. She said she took
19 a vacation and went after the vacation.

20 Q. This was different today.

21 ATTORNEY DELAURENTIS: Objection.

22 This is testimony.

23 DR. IQBAL: I'll withdraw the
24 question.

25 HEARING EXAMINER: Okay.

1 Q. You indicated that Eddie told you to tell
2 a supervisor or did he call a supervisor?

3 A. I can't remember if I called or if he
4 called. I can't remember.

5 Q. Okay.
6 Did you end up reporting this to that
7 supervisor?

8 A. Yes.

9 Q. And who was that?

10 A. Kris.

11 Q. Mankey?

12 A. Mankey.

13 Q. Okay.

14 And did you end up then reporting this to
15 anyone else in the UPMC chain of command?

16 A. On my way home, I believe I called my
17 manager, Denise.

18 Q. Sponcer?

19 A. Yes.

20 Q. Okay.

21 And did you report this to the police?

22 A. Yes. I believe a couple of days later we
23 had reported it to the McCandless Police. They're
24 the -.

25 DR. IOBAL: Objection, Your Honor.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Zafar Iqbal, M.D.,
Respondent

File No. 17-49-14398

COMMONWEALTH'S WITNESS LIST

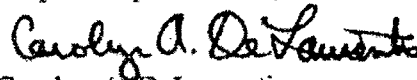
TO THE HONORABLE HEARING EXAMINER OF SAID PROCEEDING:

The Commonwealth of Pennsylvania, Department of State, by and through Deputy Chief Counsel Carolyn DeLaurentis, respectfully submits this witness list to assist the presiding officer and the Respondent in the conduct of the above-captioned hearing. This witness list will identify witnesses intended to be called by the Commonwealth in the prosecution of this case.

Detective Donald Cokus, North Fayette Township Police Department
Sgt. Eric Egli, McCandless Police Department
Kimberly Ferketic
Dr. Gary Fischer, Commonwealth's Expert
Professional Conduct Investigator Allen Flemm
Professional Conduct Investigator Barbara Gretz
Sgt. Lawrence Itri, McCandless Police Department
Dr. Zafar Iqbal
Dr. Steven R. Jones, retired, UPMC
Kristina Mankey, UPMC
Dr. Rupa Mokkapatti, UPMC
Dr. Philip Pollice, UPMC
Melissa Smith
Denise Sponcer, UPMC
Dr. Robert Volosky, UPMC

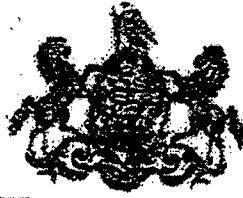
The Commonwealth reserves the right to call additional witness or modify this witness list during its case in chief or in rebuttal to the Respondent's case.

Respectfully submitted,



Carolyn A. DeLaurentis
Deputy Chief Counsel, Prosecution Division

Dated: 2/21/2020



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL

Amanda N. Wojciechowski
Prosecuting Attorney

May 4, 2017

awojciecho@pa.gov
Prosecution Division

Zafar Iqbal, M.D.
205 Essex Court
Gibsonia, PA 15044

RE: File No.: 16-49-02357

Dear Dr. Iqbal:

I have been assigned as the prosecuting attorney before the Pennsylvania State Board of Medicine with regard to allegations that you may be unable to practice as a medical physician and surgeon with reasonable skill and safety to patients by reason of illness, addiction to hallucinogenic, narcotic or other drugs or alcohol, or mental incompetence.

Enclosed are the Order, Notice, and Petition to Compel a Mental/Physical Exam issued by the State Board of Medicine. You are to report to the office of Robert M. Wettstein, M.D. (Dr. Wettstein) at 10 A.M. on June 19, 2017 at 401 Shady Ave, Suite B-103, Pittsburgh, PA 15206, Telephone Number (412) 661-0300. Please call Dr. Wettstein IMMEDIATELY to confirm that you will be submitting to the evaluation on this date and to discuss the procedure for you to release required medical and mental health records to the doctor.

Prior to your examination by Dr. Wettstein, you are to sign releases for your medical records and have any of your past or present physicians, hospitals or other health care providers send your records directly to Dr. Wettstein in time for the date of the evaluation. Please do not delay in making the requests for your records to all of your providers. Also, please provide Dr. Wettstein with a copy of your current resume. If you have any questions as to what records Dr. Wettstein will need, please contact him at (412) 661-0300. Please note that pursuant to the Board's Order, you may be held responsible for any costs associated with your failure to appear for the examination as Ordered.

If you have any questions or would like to discuss this matter, please feel free to contact me at any time. If you decide to have an attorney represent you, have your attorney contact me with any questions or comments.

Sincerely,

Amanda N. Wojciechowski
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State

ANW/anw

DEPARTMENT OF STATE / OFFICE OF CHIEF COUNSEL / PROSECUTION DIVISION
2601 NORTH 3RD STREET / P.O. BOX 69521 / HARRISBURG, PA 17106-9521
PHONE: 717-783-7200 / FAX: 717-787-0251 / WWW.DOS.PA.GOV



Protecting public health and
ensuring the integrity of the
Pennsylvania State Board of Medicine
Protecting patient care

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MELISSA SMITH and CRAIG SMITH,
her husband,

CIVIL DIVISION

No. GD 16 - 10615

Plaintiffs,

vs.

ZAFAR IQBAL, M.D., an individual

Defendant.

NOTICE

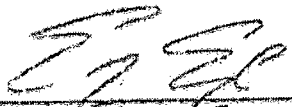
TO: McCandless Police Department
9955 Grubbs Road
Wexford, PA 15090

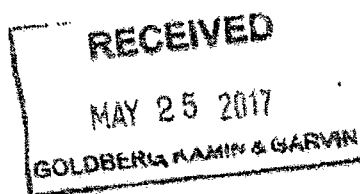
You are required to complete the following Certificate of Compliance when producing documents or things pursuant to the Subpoena.

**CERTIFICATE OF COMPLIANCE WITH SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.23**

I, DET. ERIC EGLI, corporate representative for McCANDLESS
POLICE DEPARTMENT, certifies to the best of my knowledge, information and belief that all
documents or things required to be produced pursuant to the subpoena issued on May 19, 2017,
have been produced.

Date: 5/23/17


Name: ERIC EGLI
Title: DETECTIVE



R-3



Incident Report

McCandless Police Department
9955 GRUBBS RD
WEXFORD, PA 15090

Phone: (412)369-7992 Fax: (412)364-4884

Incident #		Reference #		Municipality	TOWN OF MCCANDLESS (108)
20150831M8358		MCP1507542		Report Type	INCIDENT
				Location	8100 BABCOCK BVD - PITTSBURGH 15237
				Landmark	UPMC PASSAVANT HOSPITAL
				Premise	
Criminal Code	Title :				
	Section :				
	Sub-Section :				
	Description :				
UCR Codes	3500	SUSPICIOUS PERSONS OR CIRCUMSTANCES			
				Point of Entry	
				Meth. of Entry	
				Patrol Zone	DIST Grid
				Reported	08/29/2016 @ 15:49 (Sat)
				Discovered	@
				Last Secure	@
				Received	15:49 Dispatched 16:05
				Arrived	16:05 Cleared 17:08
				Status	FURTHER INVESTIGATION
				Disposition	
				Clear Date	
				Badge	235 - LAWRENCE J. ITRI, SERGEANT

Investigating Officer

Signature

Date

Approving Officer

Signature

Date

Persons Involved

IQBAL, ZAFAR

Arrest Date :

Disposition Date :

Role	Incident Classification	How Charged	Disposition
INVOLVED PARTY	3500 SUSPICIOUS PERSONS OR CIRCUMSTANCES		

Alias

Age-DOB 61 - 01/15/1954

Race WHITE

Sex MALE

Ethnicity NON-HISPANIC

Marital Stat

Residency

SSN

Gang

Tattoo

Clothing

GBM Id

-Entered / /

-Released / /

OLN/State /

Injury

Height

Weight 0

Hair

Eyes

Build

Complex.

Home Addr 205 ESSEX CT
GIBSONIA, PA 15044

Home Ph #

Work Ph #

Cell Ph # (412)460-3372

Other Ph #

E-Mail

Employer UPMC PASSAVANT
(PHYSICIAN)

Occupation

Addl Addr None

No Photo

SMITH, MELISSA M.

Arrest Date :

Disposition Date :

Role	Incident Classification	How Charged	Disposition
REPORTING PARTY	3500 SUSPICIOUS PERSONS OR CIRCUMSTANCES		

Alias

Age-DOB 40 - 05/24/1975

Race WHITE

Sex FEMALE

Ethnicity NON-HISPANIC

Marital Stat

Residency

SSN

Gang

Tattoo

Clothing

GBM Id

-Entered / /

-Released / /

OLN/State 23651725/PA

Injury

Height

Weight 0

Hair

Eyes

Build

Complex.

Home Addr 115 CRESTVIEW DR
BUTLER, PA 16001

Home Ph #

Work Ph #

Cell Ph # (724)355-2976

Other Ph #

E-Mail

Employer UPMC PASSAVANT (NURSE)

Occupation

Addl Addr None

No Photo

Main Narrative
LAWRENCE J. ITRI, SERGEANT (236)

Melissa Smith and her husband, came to the station to report an assault. Smith stated on 8/1/15 at approximately 12:00 pm, she was at the Nurses' Station on the fifth floor, Rehab. Smith stated that Dr. Zafar Iqbal approached her and then hugged her. Dr. Iqbal then said lets go to a quiet place and they went further down the hall. While down the hall, Dr. Iqbal asked Smith to have an affair with him. Smith replied, "No, I am married." Again, Dr. Iqbal said let's go somewhere quiet. They both then got into the elevator. While they were in the elevator, Dr. Iqbal kissed Smith and put his tongue in Smith's mouth. Smith then pressed the button to open the elevator. When the door opened, Smith went to her unit and Dr. Iqbal went another way. About a half hour later, Dr. Iqbal returned to Smith's unit, but nothing happened.

At approximately 12:45 pm, Smith reported this incident to the charge nurse, Ed Plezia. Then Smith told the nurse supervisor, Kris Mankey. Smith called her boss, Denise Sponcek, on he way home from work at around 5:00 pm.

On Sunday, Dr. Iqbal again approached Smith and tried to hug her. Smith said no and Dr. Iqbal left her alone. Since this was reported, Smith has been told that Dr. Iqbal is no longer at UPMC Passavant Hospital.

Smith has talked with VOICE out of Butler, PA. Smith also stated that on Tuesday, 9/1/15, she has to meet with the Physicians Board at UPMC Passavant Hospital at 5:00 pm. Smith was given PFA information.

Supplemental Narrative

ERIC J. EGLI (258)

On 9/1/15 I spoke with Dr. Zafar Iqbal by phone in reference to this complaint. Dr. Iqbal said he was aware a complaint had been made against him by a nurse he worked with at UPMC Passavant Hospital. Dr. Iqbal said he is unsure of the name of the nurse, however he is friends with her, because her father is a patient of his. Dr. Iqbal said the incident happened on 8/1/15. Dr. Iqbal stated while making his rounds he stopped to talk with the nurse. Dr. Iqbal said the nurse asked him to look at her arm because she told him it was feeling "numb". Dr. Iqbal said he is a kidney specialist, but said he would look at the arm because of his friendship with the nurse. Dr. Iqbal said there were a lot of staff and patients walking around where they were standing so he told her to move down the hall where there was less activity. Dr. Iqbal said he then looked at her arm and suggested she call a specialist, because if there was nerve damage she may need surgery. Dr. Iqbal said when they were finished, he gave her a hug and kiss on the cheek as a way of consoling her because she was upset about her father's health and her arm. Dr. Iqbal said they then got in the elevator together and as they got off, he again gave her a hug and kiss as a way of consoling her. I asked Dr. Iqbal if he kissed her on the lips and he stated the second time he was trying to kiss her cheek, but accidentally kissed the corner of her mouth. They then went their separate ways.

Dr. Iqbal said he never mentioned an affair, has no sexual attraction to the nurse and said she is probably twenty years younger than he is. Dr. Iqbal said he was simply trying to console a friend, who was upset and apologized many times if it made her feel uncomfortable. Dr. Iqbal said he already wrote a letter of apology for making her feel uncomfortable.

I then contacted Melissa Smith and advised her what Dr. Iqbal said. Smith informed me she is speaking with several attorneys and will call back after she consults them. I advised Smith she can have her attorney call me as well and provided contact information.

Supplemental Narrative

ERIC J. EGLI (258)

On September 9, 2015, I spoke with Laura Balzarini, a civil attorney representing Melissa Smith, in this case. Balzarini requested a copy of the police report and she was advised she would have to obtain a court order due to the case being an open investigation.

I then spoke with Melissa Smith by phone and I explained the process if a harassment charge would be filed against Iqbal. Smith said she was still deciding on whether she wanted to pursue criminal charges and advised she would call back when she makes her decision.

- (2) Except for November 2004 to August 2005², Dr. Iqbal, a nephrologist, has been a member of the UPMC Passavant medical staff since 1991.
- (3) The following is a summary of the events, in or around early August 2015, derived from written statements and from interviews conducted by the Investigating Committee:
- (a) Prior to August 1, 2015, Nurse Smith had known Dr. Iqbal for about two years. She interacted with him frequently.
 - (b) On Saturday, August 1, 2015, around lunchtime, Dr. Iqbal arrived on the Rehab Unit.
 - (c) On August 1, Nurse Smith and Dr. Iqbal greeted each other with a hug and had done so in the past.
 - (d) In response to a question from the Investigating Committee, Nurse Smith said that she did not consider Dr. Iqbal a friend.
 - (e) Dr. Iqbal initiated a discussion with Nurse Smith, whom he addressed as "Melissa." The discussion was initially about Nurse Smith's father, who had been a patient of Dr. Iqbal's for about a year.
 - (f) Dr. Iqbal then asked Nurse Smith more personal questions, such as "are you happy?" and "what meds are you on?" Nurse Smith responded to these questions.
 - (g) Nurse Smith acknowledged talking to Dr. Iqbal about her medical condition in the past. Nurse Smith did not ask Dr. Iqbal for medical advice on August 1, 2015.
 - (h) Dr. Iqbal asked Nurse Smith to go someplace quiet to talk and she followed him to the solarium.
 - (i) Dr. Iqbal then made a comment to Nurse Smith something to the effect of "I cannot have an affair with you."
 - (j) Nurse Smith told Dr. Iqbal that she was not interested, that she was a happily married woman.
 - (k) Dr. Iqbal then said something to the effect of "I would have dated you if I met you before I was married."

Dr. Iqbal voluntarily resigned his privileges during this time period pursuant to a court order enforcing a restrictive covenant.

- (l) Dr. Iqbal again suggested to Nurse Smith that they go someplace quiet to talk. Unsure of what to do and feeling as though she could not say "no" to a physician, Nurse Smith followed Dr. Iqbal onto the elevator.
- (m) Almost immediately upon entering the elevator, and after the elevator doors had shut, Dr. Iqbal aggressively kissed Nurse Smith. During the forced kiss, Dr. Iqbal stuck his tongue in Nurse Smith's mouth.
- (n) According to Nurse Smith, Dr. Iqbal kissed her and then the elevator door opened and he and she both got off of the elevator.
- (o) Nurse Smith said that the interaction on the elevator lasted between 30 seconds to a minute.
- (p) Nurse Smith was very clear and told the Investigating Committee that the elevator never moved. They never went to another floor and got off and back on the elevator.
- (q) When Nurse Smith and Dr. Iqbal exited the elevator, Dr. Iqbal told her to go back to her unit (Rehab) and he would go to the acute side of the hospital.
- (r) When Nurse Smith returned to the Rehab Unit, she immediately reported the incident to the charge nurse, Edwin Plezia, R.N. Mr. Plezia advised Nurse Smith to report the incident to the Nursing Supervisor, Chris Mankey.
- (s) Nurse Smith returned to work.
- (t) Soon after Nurse Smith had returned to the unit, and after she had reported the incident to Mr. Plezia, Dr. Iqbal also returned to the unit.
- (u) Nurse Smith said that Dr. Iqbal's daughter was in a relative's room and came out to ask him a question as he was approaching Nurse Smith. Dr. Iqbal introduced his daughter to "Melissa" by name.
- (v) Later that day, Nurse Smith reported the incident to Ms. Mankey when Ms. Mankey was on the unit getting reports. Ms. Mankey advised Nurse Smith to report the incident to Denise Spencer, the Unit Director.

- (w) Nurse Smith called Ms. Spencer at home, at 4:48 p.m., on August 1, 2015 to report the incident.
- (x) After reporting the incident to Ms. Spencer, Nurse Smith was offered the opportunity to go home early and she did.
- (y) The next day, August 2, 2015, Dr. Iqbal returned to the Rehab Unit at approximately noon. When Nurse Smith saw him, she told the HUC that she was going to the locker room and to call her when Dr. Iqbal left. However, Nurse Smith heard call lights going off and decided to respond.
- (2) Later, while she was passing meds, between Room 5710 and 5711, Dr. Iqbal approached Nurse Smith and asked "Is everything ok?" She said yes and then asked Dr. Iqbal "Is everything ok?" He said "yes." He then hugged Nurse Smith, which she stated made her feel even more uncomfortable and upset.
- (aa) On August 3, Nurse Smith reported the August 2 interaction with Dr. Iqbal to Ms. Spencer and described it as "awkward."
- (bb) On August 5, 2015, Paul Hanlon contacted Dr. Iqbal and invited him to meet with the Leadership Council that evening. Mr. Hanlon was not sure what time he made this call. Dr. Iqbal asked Mr. Hanlon what the meeting was about. Mr. Hanlon said that the Leadership Council would explain. Dr. Iqbal then asked "can you give me an idea? Is it personal or clinical?" Mr. Hanlon informed Dr. Iqbal that the matter was personal.
- (cc) At around noon on August 5, 2015, Dr. Iqbal was on the Rehab Unit. Ms. Spencer witnessed Dr. Iqbal approach Nurse Smith and speak to her, leaning over the wall at the nursing station. Dr. Iqbal asked Nurse Smith if she was "ok." Dr. Iqbal then asked Nurse Smith if she was working the next day or the day after. Nurse Smith responded that she would be on vacation. Dr. Iqbal asked Nurse Smith where she was going. Before Nurse Smith could answer Dr. Iqbal's question, Ms. Spencer intervened by asking Nurse Smith a patient-based question.
- (dd) Dr. Iqbal returned to the unit later that day (August 5), after Ms. Spencer left. According to Nurse Smith, Dr. Iqbal was looking for her. Nurse Smith hid in the med room until Dr. Iqbal left.
- (ee) Since Mr. Hanlon could not remember what time he called Dr. Iqbal, it is not clear whether Dr. Iqbal approached Nurse Smith

(10) Dr. Iqbal's statements that Nurse Smith sought him out on August 1, 2015 about her medical condition, asked his advice, and asked him to visit her in the hospital, are not credible. Nurse Smith told the Investigating Committee that, on an earlier occasion, she had discussed her condition with Dr. Iqbal and may have asked him for advice. However, sometime prior to August 1, Nurse Smith had already decided against the surgery and thus had no reason to be talking to Dr. Iqbal about the surgery on August 1. It appeared to the Investigating Committee that Dr. Iqbal was offering this explanation in an attempt to explain his actions.

(11) Following its interview with Dr. Iqbal, the Investigating Committee did not find Dr. Iqbal's statement, that on August 1, 2015, Nurse Smith followed him on and off the elevator three times, to be credible.

(12) In an effort to be as thorough and fair as possible, and out of an abundance of caution, the Investigating Committee sought to find a surveillance tape of the inside or outside of the elevator. The only surveillance tape which was available showed the outside of the elevators on the first floor of the Hospital. This surveillance tape was from the PNC ATM machine. The Investigating Committee requested the surveillance tape from PNC for the relevant time frame of 10:00 a.m. to 2:00 p.m. on August 1, 2015.

(13) The Investigating Committee obtained a copy of the surveillance tape on Friday, November 20, 2015. A copy of the surveillance tape is included as Exhibit 19.

(14) The Investigating Committee reviewed the surveillance tape in its entirety. The Investigating Committee did not see any evidence to confirm Dr. Iqbal's statement that he and Nurse Smith had got off of the elevator (and then back on the elevator) on the first floor.


(15) On the surveillance tape, there are multiple instances when for a short period of time (usually under a minute) the elevator doors are not visible because someone is blocking the view. However, based on all of the information available, the Investigating Committee concludes that Dr. Iqbal's statement to the Investigating Committee, that on August 1, 2015, Nurse Smith followed him on and off the elevator three times, is not credible.

(16) The comments that Dr. Iqbal made to Nurse Smith, including "I can't have an affair with you, I'm married" and "I would have dated you if I met you before I was married," are similar to the comments Dr. Iqbal made to Autumn Schiasshauser, R.N. in 2012. (See below.)

(17) The comments that Dr. Iqbal made to Nurse Smith, including "I can't have an affair with you, I'm married" and "I would have dated you if I met you

Respectfully submitted,

11/24/15
Date




Michael W. Weiss, M.D.
Chairperson, Investigating Committee

11/24/2015
Date



Philip Pollice, M.D.

11/24/2015
Date



Sharon L. Taylor, M.D.

B.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

MELISSA SMITH and CRAIG
SMITH, her husband,

Plaintiffs,

vs.

ZAFAR IQBAL, M.D., an
individual,

Defendant.

CIVIL DIVISION

No. GD 16-010615

Issue No.

PRECIPE TO SETTLE
AND DISCONTINUE

Filed on behalf of Plaintiff

Counsel of Record for this
Party:

Laura E. Balzarini, Esquire
PA I.D. #311358

Firm No. 013
BALZARINI & WATSON
3303 Grant Building
310 Grant Street
Pittsburgh, PA 15219

412-471-1200 (ph.)
412-471-8326 (fax)

FILED

18 FEB 27 PM 3:39

DEPT. OF ALLEGHENY
CIVIL DIVISION
ALLEGHENY COUNTY PA

RECEIVED
FEB 28 2018
GOLDEN, COURT OF ALLEGHENY

GENERAL RELEASE

FOR AND IN CONSIDERATION OF THE SUM OF TEN THOUSAND (\$10,000.00) DOLLARS, paid on behalf of ZAFAR IQBAL, M.D., on or before February 20, 2018, WE, MELISSA SMITH, and CRAIG SMITH ("Releasors"), being of lawful age, competent and duly authorized by law to execute this General Release ("Agreement"), do hereby release and forever discharge ZAFAR IQBAL, M.D., ("Releasee"), and by these presents do for ourselves, our heirs, successors and assigns, release and forever discharge the said Releasee, his heirs, successors, assigns and all other persons, firms, and corporations from any and all liability, claims, causes of action, damages, costs, expenses or demands of any kind whatsoever in law or in equity and specifically from any claims or joinders for sole liability, contribution, indemnity or otherwise, against the said Releasee, which the Releasors have, had, or which the Releasors may have in the future, or which their heirs, executors, successors, and assigns hereinafter may have by reason of any bodily or personal injury, damages to property and the consequences thereof, known or unknown, foreseen or unforeseen, arising, or which may arise, as a result of or in any way connected with the incident that occurred on or about August 1, 2015 on or about UPMC Passavant Hospital, Allegheny County, Pennsylvania ("the Incident"), as more fully set forth in the lawsuit captioned *Melissa Smith and Craig Smith, her husband, vs. Zafar Iqbal, M.D.*, filed at Docket Number GD 16-10615 in the Court of Common Pleas of Allegheny County, Pennsylvania ("the Lawsuit").

It is also mutually agreed that the terms and conditions of this Agreement are confidential. In consideration for the aforesaid terms and conditions, the Releasors mutually agree to keep the terms of this Agreement confidential and agree they will not disclose the terms or any documents relating to the Lawsuit to any third party, unless disclosure is required by law or legal process. The Releasors may disclose the terms to their respective legal counsel and/or financial advisors who are involved in this matter, provided such individuals are made aware of and agree to abide by the confidentiality terms of this Agreement. Should disclosure be required by law or legal process, the Releasor from whom

disclosure is being sought must give the other party's counsel, as identified herein, at least seven (7) days' written notice prior to making any disclosure. No one may issue any press release, public proclamation, or social media post concerning the matters covered by this Agreement. If asked, the Releasors (and their representatives) shall only state in words or substance: "The matters have been resolved by agreement, the terms of which are confidential. No further comment is permitted." Additionally, the Releasors, nor representative(s) of said party, will publish or otherwise communicate the terms of this Agreement to a legal journal, verdict reporter, newspaper, periodic, journal, radio broadcast or television broadcast, or other like communiqués. As additional consideration for entering into this Agreement, the Releasors agree to refrain from making any public remarks regarding the Releasee or his representative if such remarks are intended to and in the eyes of a reasonable person would be understood to disparage the Releasee or his representatives. This includes remarks made via Social Media, the Internet or in response to press inquiries.

The Releasors understand that they are responsible for all costs and fees that they incurred, including attorney's fees, arising from the action or the actions of their counsel in connection with the Lawsuit, this Agreement and all related matters. The Releasors further agree to direct their attorney to file a Praecipe to Settle and Discontinue, with prejudice, the Lawsuit with the Allegheny County Department of Court Records within five (5) days of receipt of the aforesaid settlement sum.

The Releasors declare that they fully understand the terms of this settlement, that the Releasors have had the benefit of legal counsel who has explained the terms of this Agreement and its legal consequences, that the amount stated herein is the sole consideration of this Agreement and that the Releasors voluntarily accept said sum for the purpose of a full and final compromise, adjustment and settlement of all claims for injuries, losses and damages, known or unknown, foreseen or unforeseen, arising or which may arise, as a result of or in any way connected with the Lawsuit. The Releasors confirm that this is the complete Agreement and that there are no written or oral understandings or agreements, directly or indirectly connected with this Agreement that are not incorporated herein.

1236

GOLDBERG, KAMIN & GARVIN, LLP
ATTORNEYS AT LAW
IOLTA ACCOUNT
437 GRANT ST. STE. 1806
PITTSBURGH, PA 15219

8-8/430
023

February 21, 2018

PAY TO THE ORDER OF Melissa Smith, Craig Smith and Balzarini & Watson \$ 10,000.00

TEN THOUSAND AND 00/100 ----- DOLLARS

MEMO


AUTHORIZED SIGNATURE

⑈001236⑈ ⑆043000096⑆ 1025980222⑈

GOLDBERG, KAMIN & GARVIN, LLP

IOLTA ACCOUNT

1236

#20640 Zafar Iqbal

GOLDBERG, KAMIN & GARVIN, LLP

IOLTA ACCOUNT

1236

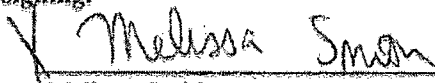
#20640 Zafar Iqbal

This Agreement shall be construed that wherever applicable, the use of the singular shall include the plural number and shall be binding upon and inure to the successors, assigns, heirs, executors, administrators, and the legal representatives of the undersigned.

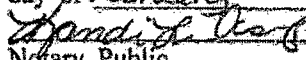
This Agreement shall be construed and applied under the laws of the Commonwealth of Pennsylvania.

I HAVE READ THE ABOVE, UNDERSTAND THE SAME, AND AGREE TO BE LEGALLY BOUND BY ALL THE TERMS OF THIS AGREEMENT.

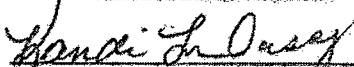
This is a RELEASE. Read before signing.


Melissa Smith


Sworn to and subscribed before
me this 22
day of February, 2018.


Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Kandi L. Nassy, Notary Public
Concord Twp., Butler County
My Commission Expires April 19, 2018
SWORN TO BEFORE ME IN ASSOCIATION OF NOTARIES

me this 22
day of February, 2018.


Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Kandi L. Nassy, Notary Public
Concord Twp., Butler County
My Commission Expires April 19, 2018
SWORN TO BEFORE ME IN ASSOCIATION OF NOTARIES

Laura E. Balzarini, Esquire
lbai@comcast.net
3303 Grant Building
310 Grant Street
Pittsburgh, PA 15219
412-471-1200


Craig Smith

GOLDBERG, KAMIN & GARVIN, LLP
Deborah R. Erbstein, Esquire
derbstein@gkgattorneys.com
David A. Wolf, Esquire
davidw@gkgattorneys.com

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219
P - (412) 281-1119
ATTORNEYS FOR DEFENDANT,
ZAFAR IQBAL, M.D.

Governing Body Meeting - Dr. Iqbal
Pittsburgh, PA
April 3, 2003

Governing Body Committee Decision Dated April 4, 2003

We the Governing Body Hearing Committee, agree that there is sufficient grounds for revocation of Dr. Iqbal's staff privileges at all the 2165-NA dialysis facilities where he currently has those privileges.

We believe that his delinquency in regard to keeping current monthly progress notes, history and physicals, long and short-term care plans, monitoring and the signing of physician's orders, justifies this revocation in principle.

However, we find the charges of sexual harassment were not substantiated. He was never warned, notified or censured about the allegations of harassment against him.

We believe the revocation of Dr. Iqbal's privileges should not stand. The company did not exercise properly its duties of oversight of Dr. Iqbal's performance in the past, the timing of the revocation and the lack of proper warning and notification of his clients.

Theresa Barker 45

Case #2 KF PreHearing Statement The attached documents are for reference.

1. Judge Bigley Court trial lacked the evidence of blood-stained shirt (police report). Detective Cokus also did not enter this evidence in his police report (E, G, I, H, J). There were no written incident reports from KF in criminal proceedings.

2. Detective Cokus conducted my interview at North Fayette Township police station on 11/10/2017, he did not ask me any questions about a blood-stained shirt. The police station was under audio and video surveillance as suggested by a sign posted on the wall.

3. Detective Cokus informed me that he is in possession of video surveillance from Curahealth, medical records department.

4. I entered a not-guilty plea on 4/19/18 and asked the Judge to preserve video surveillance at medical records department.

5. On 9/11/2018, Detective Cokus over a speaker phone informed my public defender, that he does not have any video surveillance from the hospital, and he misspoke to extract a confession.

6. On June 6, 2019, about 19 months from the first complaint, KF's written incident reports (now labeled R-11 and R-12) were revealed at her deposition on June 30, 2019. She admitted that she met me again on 11/8/2017 a day after the incident.

7. These revelations were not part of the criminal complaint (E, G, H, I, J) or plaintiff's Federal civil case pleadings.

8. KF wrote a second complaint 3 weeks later (R-12), which clearly omitted blood-stained garment.

9. KF by filing a second incident report which did not have blood-stained makes the entire report fabrication.

10. A motion was brought before US Judge Dodge dated August 21, 2019, to compel Detective Cokus regarding this physical evidence.

11. Plaintiff KF asked for continuance (p23) on August 27, 2019, without offering a response to her written statements.

12. After two more continuances and no response to these motions. Judge Dodge cancelled the status conference scheduled for 10/17/2019.

13. I brought a request to open a criminal case against all plaintiffs on October 21, 2019.

Appendix D

14. On October 22, 2019, both 3rd party plaintiffs; Curahealth, LLC, and Kindred Hospital LLC moved to dismiss the claims against me and were granted this dismissal.

15. On October 23, 2019, without denying my allegations and without offering any explanation to KF's written statements, plaintiff KF asked the Federal Judge to dismiss complaint against me. 16. Judge Joy Flowers Conti entered a dismissal court order dated October 24, 2019 (R-14).

17. There has been no financial settlement in this civil case from my end.

18. I have requested Judge Bigley for a review of criminal trial, mailed October 24, 2019.

Conclusions and Remarks:

Detective Cokus testimony will be vital to decide:

- a. Why did he not investigate blood-soaked garments?
- b. Why did he not make it part of the police report?
- c. Why blood-soaked shirt not part of criminal trial?

KF testimony will be key to decide:

- a. Why did she removed the blood-soaked garment in her second incident (R-12) report filed 3 weeks after filing the first (R-11) on 11/9/2017?
- b. Second amended complaint Case 2:18-cv-00842-CRE has no mention of blood-stained shirt, why?
- c. Why did she not mention our second meeting on 11/8/2017, in criminal complaint or in second amended complaint (p16-18) but admitted under oath on deposition on 6/6/2019?
- d. Why did she withdraw her civil complaint on 10/23/2019 (R-14).

I will request you to allow me to make concluding remarks after all testimonies being complete.

Zafar Iqbal MD

Feb 21, 2020

REPRODUCED TRANSCRIPT OF K.F. TESTIMONY.

KF: 2/27 page 126 lines

7. A. He had -he had blood on his shirt that.

8. A. is on my shirt that I wore that day. And my right

9. A. my right breast is starting to bruise....

12. Q. And when was this incident report written?

14. A. On the 9th | believe I have.

15.Q. And the second page, the second document, is that your-?

17. Hearing Examiner: And - and that's C-12. We marked it as C12.

19. BY DR. IQBAL:

20. Q. Is that yours too?

21. A. Uh-Uh (yes).

22. Q. When was that written?

23. A. They were written at the same time as far I can recall.

2/27 page 128 lines:

17-18. Q. The blood-stained shirt, where is that shirt now?

19. A. The detective took it.

Transcript from BPOA hearing Feb 26, 27, 2020

2/27

126

1. Q. Can you read it out loud, please?

2. thing or -?

3.Yes. Do you want me to read the whole

4.Q. No. Just the one with the

5. A. Just where you - the little wiggly line?

6. Q. Yeah.

7. A. He had - he had blood on his shirt that

8. is on my shirt that I wore that day. And my right -

9. my right breast is starting to bruise. It is very
10. sore now. I'm scared he will try to do this again.
11. Q. Okay.
12. And when was this incident report
13. written?
14. A. On the 9th I believe I have.
15. Q. And the second page, the second document,
16. is that your -?
17. HEARING EXAMINER: and - and that's C-
18. 12. So, we marked the document as C-12.
19. BY DR. IQBAL:
20. Q. Is that yours, too?
21. A. Uh-huh (yes).
22. Q. When was that written?
23. A. They were written at the same time as far
24. as I recall
25. ATTORNEY DELAURENTIS: And Your Honor,

Sargent's Court Reporting Service, Inc. (814) 536-8908

2/27.

128

16. BY DR. IQBAL:
17. Q. The bloodstained shirt, where is that
18. shirt now?
A. The detective took it.

2/27

126

1 Q. Can you read it out loud, please?

2 A. Yes. Do you want me to read the whole
3 thing or -?

4 Q. No. Just the one with the -.

5 A. Just where you - the little wiggly line?

6 Q. Yeah.

7 A. He had - he had blood on his shirt that
8 is on my shirt that I wore that day. And my right -
9 my right breast is starting to bruise. It is very
10 sore now. I'm scared he will try to do this again.

11 Q. Okay.

12 And when was this incident report
13 written?

14 A. On the 9th I believe I have.

15 Q. And the second page, the second document,
16 is that your -?

17 HEARING EXAMINER: And - and that's C-

18 12. So we marked the document as C-12.

19 BY DR. IQBAL:

20 Q. Is that yours, too?

21 A. Uh-huh (yes).

22 Q. When was that written?

23 A. They were written at the same time as far
24 as I can recall.

25 ATTORNEY DELAURENTIS: And Your Honor,

2/27

1 So this - all this handwriting up here
2 is - ma'am, this is not your handwriting.

3 Correct? At the top of -

4 THE WITNESS: Correct. That is not
5 mine.

6 HEARING EXAMINER: - of Exhibit R-12?
7 The handwriting is Dr. Iqbal's? Okay. But the
8 handwriting that's in the lines is your handwriting.

9 Correct?

10 THE WITNESS: Correct, yeah. And I
11 see on the bottom that has - has a date of 12/5/17.

12 HEARING EXAMINER: Okay.

13 Very good. Thank you, I appreciate
14 it. Go ahead. You - you - you may ask - you may
15 ask her questions now.

16 BY DR. IQBAL:

17 Q. The bloodstained shirt, where is that
18 shirt now?

19 A. The detective took it.

20 DR. IQBAL: Your Honor, can I say that
21 the detective took it and reported you and said he
22 never got one?

23 THE WITNESS: He said he didn't
24 recall.

25 HEARING EXAMINER: Thank you.

R-11



INCIDENT REPORT ADDENDUM

LABEL

Description of incident/treatment administered: I was in my office and DR. Iqbal

stopped by and asked if he had anything to sign. I was surprised about his visit because it was the first time he had done this. I gave him the charts and sat across from him @ the other desk to analyze charts and then to receive the charts once he signed. He then stood up took his jacket off walked to my door and locked it. He then told me to stand up. He walked over to me, wrapped his arms around me like a bear hug, looked down @ me said 'I'm kissing you' and then he stuck his

Investigation Comments: tongue down my throat. I then said that's enough. I walked over to another area closer to my door & my cart (trying to keep a distance - I was scared). He then came up behind me again from behind and wrapped his arms around me again. My arms were trapped down, he reached up grabbed both of my breasts. I tried to use my arms to break away. He reached his left arm into my shirt & grabbed my right breast and squeezed it again and pulled it out of my shirt. I kept saying stop this is enough. He started to put his head towards my breast like he was going to put his mouth on it. I was able to get away & say again 'Enough!' I then -

Signature: H.

Name & Title:

Date/Time:

went into my office & stood behind my desk.
He grabbed his coat, stood in my doorway & told
me that if I told anyone this happened I would
lose my job.

{ He had blood on his shirt that is on my shirt
that I wore that day and my right breast is
starting to bruise. It is very sore now. I'm
scared he will try to do this again. }

R-12



INCIDENT REPORT ADDENDUM

* Clarify some of the aspects of my initial Report. -- Additional Details.

Description of Incident: ^{probably} After Dr. Tabal bear hugged me and stuck his tongue down my throat he continued bear hugging me and pressed pressing his body up against mine (my arms where down my sides) He then stuck his face into my neck and shoulder area to the right of me. He was grinding up against ~~head~~ ^{then} pressed ^{up} on my neck. He said oh you smell good. Then as he continued to press his penis area up against my groin he asked me if I could feel

Investigation Comments: his penis rubbing up against my area. I told him to stop. He continued to keep me in this hold and grinding up against me for a while. ^{Asking 2-3 times if I could stop, this is enough!} I tried to wiggle ^{free} but it did not help in getting free. Once he did let go I then went by my door. I thought my cart would block him somehow I tried to do something with the chart. At that time he came up behind me, bear hugged me again with my arms to my side. This is when he grabbed both of my breasts and squeezed them hard. He was also grinding again with this time from behind me. Then he

Signature: *[Signature]* Date/Time: 12/5/17
Name & Title: *[Signature]* Nurse Supervisor

Available: Reached in my shirt and pulled it out of my shirt and grabbed my right breast & w/ his mouth open used left arm to kneel sweat & spin out of hospital.

REORDER FORM #C30501-0918 PH: 866-788-7100

REPRODUCED TRANSCRIPT OF DET COKUS:

2/27 page 83, lines:

11. Q. And did he say that it was consensual?

12. A. Initially yeah. He believed it was consensual .

2/27 page 84, line:

11. Q. What happened to first statement that he gave you?

15. A..... I disposed of that after I read it....

2/27-page 87-lines:

3. Q. Okay. Going back, how did you dispose of the statement? The first statement?

6. A. The first statement?

7. Q. Yeah

8. A. I either tore it up or I crumbled it up and threw it in the garbage can.

2/27 Page 84 lines:

1. A. which she alleges that there was ultimately bruising. We did not see....

**(THE COKUS's TESTIMONY OF DESTROYING A VOLUNTARY
STATEMENT AND OBTAINING ANOTHER UNDER DURESS, STANDS IN
CONTRAST TO BPOA CONCLUDING STATEMENT (Appendix B, page 4).**

2/27page 92, lines:

4. Q. And, you also said there is a video surveillance of the medical records.

6. A. I told you there was

7. Q. Yes.

8. A. -video absolutely-

9. Q. And that was a lie?

10. A. Absolutely.

11. Q. So, you lied to me?

12. A. What-did I lie to you? Yes, absolutely.

2/27 page 94 lines:

3.Q. Did she give you a blood-stained garment?

4.A. I don't believe so.

(ABOVE WRITTEN STATEMENTS ARE OWNED BY K.F. HER TESTIMONY STANDS IN DIRECT CONTRAVENTION TO DONALD COKUS. KF CLAIMS OF BLOOD-STAINED GARMENTS AND CLAIM OF INJURY NEVER MADE TO POLICE REPORT (I) EXHIBITS CONTRADICTING, BPOA CONCLUSION (Appendix B, page 4).

Transcript of Detective Cokus

2/27 83

11.. Q. And did he say it was consensual?

12. A. Initially yeah. He believed it was

13. A. consensual

2/27. 84

11.. Q. What happened to the initial statement

12. Q. he gave you?

15. A....., I disposed that after I read

2/27 87

3. Q. Okay

4. Q. Going back, how did you dispose of the

5. Q. statement? The first statement?

6. A. The initial statement?

7. A. Yeah.

8. A. I either tore it up or I crumbled it up

9. and threw it in the garbage can.

2/27.

84

1.A..... which she alleged that there was

2. ultimately bruising. We did not see.

2/27

92

4. Q. And, you also said there is a video surveillance of the medical

5. records.

6. A. I told you there was-

7.Q. Yes

8. A. -video absolutely-

9. Q. And that was a lie?

10. A. Absolutely.

11.Q. So, you lied to me?

12. A. What-did I lie to you? Yes, absolutely.

2/27

94

3. Q. Did she give you a bloodstained garment?

4. A. I don't believe so.

2/27

1 you're supposed to read it, now it's in your mind.
2 Now she is talking about it.

3 THE WITNESS: Okay.

4 BY ATTORNEY DELAURENTIS:

5 Q. Okay.

6 So and what - what did Dr. Iqbal say at
7 first?

8 A. He admitted that he entered the - Ms.
9 Ferketic's office and locked the door, and that they
10 had contact with each other.

11 Q. And did he say that it was consensual?

12 A. Initially, yeah. He believed that it was
13 consensual, but after there was further discussion
14 between the two of us on the interview process, he
15 admitted that it was not consensual.

16 Q. And what specifically was the sexual
17 contact that he had?

18 A. The sexual contact that was reported and
19 that we had spoken about was approaching her from
20 the front with a bear hug, him kissing her and
21 putting his tongue in her mouth. The disengagement
22 from Ms. Ferketic, which is ultimately, there is
23 another engagement where he was behind her and gave
24 her another bear hug and put his left hand in - on
25 the inside of her shirt and grabbed her right breast

2/27
1 and squeezed it. Which she alleged that there was
2 ultimately bruising. We did not see. She was sent
3 to the hospital for that. And that he tried to
4 place his mouth on her breast.

5 Q. Okay.

6 Did Dr. Iqbal indicate whether he was
7 willing to provide a written statement?

8 A. He did.

9 Q. And did he do so?

10 A. He did.

11 Q. What happened to the first statement that
12 he gave you?

13 A. He provided two written statements. The
14 first statement was not indicative of the - of our
15 interactions in our interview. I disposed of that
16 after I read it, and - and said this - this is not
17 what he told me. This is not what our interview
18 was. I'm going to give you an opportunity to write
19 a second statement.

20 So I provided him the same blank document
21 that he was provided initially, and he wrote the
22 second statement which was much closer to what his
23 verbal statement was to me.

24 Q. Okay.

25 I'd like you to turn in the book, I'll

2/27

1 what the Respondent verbally expressed to you?

2 A. It was. It was more consistent.

3 Q. Okay.

4 Going back, how did you dispose of the
5 statement? The first statement?

6 A. The initial statement?

7 Q. Yeah.

8 A. I either tore it up or I crumbled it up
9 and threw it in the garbage can.

10 Q. Okay.

11 And why did you do that?

12 A. Because that was inconsistent with what
13 his - his - his verbal statement during our
14 interrogation.

15 Q. Okay.

16 And did the Respondent deny physical
17 contact with the victim at any point?

18 A. He did not.

19 Q. What did you do after the Respondent
20 finished his statement?

21 A. He was free to leave. He was allowed to
22 leave.

23 Q. Is this when you gave him a pat on the
24 back?

25 A. Probably - probably that's when I shook

1 A. An incident report? I don't recall
2 reviewing an incident report from her.

3 Q. Did she give you a bloodstained garment?

4 A. I don't believe so.

5 DR. IQBAL: Your Honor, I have a
6 written statement I'd like to enter and show to -
7 to -.

8 HEARING EXAMINER: A written - a
9 written statement from who?

10 DR. IQBAL: From Ms. Ferketic.

11 HEARING EXAMINER: You can't -.

12 DR. IQBAL: I can show that if he has
13 ever seen it.

14 HEARING EXAMINER: Okay.

15 You can ask him if he's seen it, okay?

16 But that's the extent you can ask him - unless he
17 says - unless he will testify that he's seen it,
18 okay?

19 THE WITNESS: I don't recall seeing
20 that statement.

21 BY DR. IQBAL:

22 Q. Did -?

23 A. I'm sorry.

24 Q. Police Officer, are you supposed to lie
25 to your - to - we are under your protection. You

Reproduced Affidavit Exhibit I of police report by Detective Cokus.

Your Honor, your affiant is Corporal Donald J. Cokus Jr. I am a Detective with North Fayette Township police and I am currently assigned to investigation division.

On November 9th, 2017, the North Fayette Police Department was dispatched to CuraHealth to speak with a female regarding a sexual assault. The female victim's identity is known to Your affiant and will be available for court proceedings, until that time she will be known as "Victim #1.

In speaking with Victim # 1 she stated she was in her office at CuraHealth on November 7th, 2017 at approximately 1300 hours. At that time, the defendant (Dr. Zafar Iqbal) entered and asked if she had any medical charts for him to sign. Victim # 1 stated that defendant then closed and locked the office door. The defendant approached the victim #1 and kissed her by "shoving his tongue" in her mouth. The victim indicated she did not consent to the contact, and backed away. Victim #1 indicated that the defendant approach from behind, and hugged her by "pinning" both of her arms against her body, down at the side. The victim stated the defendant then kissed her again, and placed her left hand inside of her shirt. The defendant " squeezed" the right breast of victim # 1 tightly and removed it from her bra, attempting to make facial contact with it.

Victim # 1 stated she backed away again, and advised the defendant to leave and he complied.

I conducted an interview of the defendant at the North Fayette Police Department on November 10th, 2017. He was provided a Waiver of rights, and agreed to speak with me. In doing so, the defendant admitted to having aforementioned contact with Victim # 1. The defendant acknowledged that the victim did not consent, and he provided a written statement of his involvement accordingly..

Your Honor, probable cause does exist to file the charges located here in, based on the aforementioned facts and circumstances.

I, Donald Cokus BEING DULY SWORN ACCORDING TO THE LAW DEPOSE
AND SAY THAT THE FACTS SET FORTH IN FOREGOING AFFIDAVIT ARE
TRUE AND CORRECT TO BEST OF MY KNOWLEDGE, INFORMATION AND
BELIEF.

Signature of Affiant

Sworn to me and subscribed before me this 15th day of November, 2017.

Anthony Saveikus District Judge . Signature



POLICE CRIMINAL COMPLAINT

Book Number CL 311-17	Date Filed 11-7-17	Civil Action Number 0793010-1	Complaint Number 17-11804
Defendant Name First: ZAFAR	Last: IQBAL	Mobile:	

Your Honor, Your Affiant is Corporal Donald J Cokus Jr. I am a Detective with the North Fayette Township Police and I am currently assigned to the Investigations Division.

On November 9, 2017, the North Fayette Police Department was dispatched to Cura Health, to speak with a female regarding a sexual assault. The female victim's identity is known to Your Affiant, and will be available for court proceedings. Until that time, she shall be known as "Victim #1".

In speaking with Victim #1, she stated that she was in her office at Cura Health on November 7, 2017 at approximately 1300 hours. At that time, the defendant (Dr Zafar Iqbal) entered, and asked if she had any medical charts for him to sign. Victim #1 stated that the defendant then closed and locked the office door. The defendant approached Victim #1 and kissed her by "shoving his tongue" in her mouth. The victim indicated that she did not consent to the contact, and backed away. Victim #1 indicated that the defendant then approached her from behind, and hugged her by "pinning" both of her arms against her body, down at the side. The victim stated the defendant then kissed her again, and placed his left hand inside of her shirt. The defendant "squeezed" the right breast of Victim #1 tightly and removed it from her bra, attempting to make facial contact with it. Victim #1 stated she backed away again, and advised the defendant to leave, and he complied.

I conducted an interview of the defendant at the North Fayette Police Department on November 10, 2017. He was provided a Waiver of Rights, and agreed to speak with me. In doing so, the defendant admitted to having the aforementioned contact with Victim #1. The defendant acknowledged that the victim did not consent, and he provided a written statement of his involvement accordingly.

Your Honor, I believe that probable cause does exist to file the charges located herein, based on the aforementioned facts and circumstances.

I, **DONALD COKUS**, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Signature of Affiant

Sworn to me and subscribed before me this 15th day of November, 2017

Date , Magisterial District Judge

My commission expires first Monday of January,

ANTHONY W. SAVEIKIS,
MAGISTERIAL DISTRICT JUDGE
MAGISTERIAL DISTRICT 05-3-17
MY COMMISSION EXPIRES ON THE
FIRST MONDAY IN JANUARY, 2020



Commonwealth of Pennsylvania
v.
Zafar Iqbal

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

DOCKET NO: CP-02-CR-0003120-2018
DATE OF ARREST: 11/10/2017
OTN: G 793010-1
SID: 212-48-52-5
DOB: 01/15/1954

ORDER OF SENTENCE

AND NOW, this 20th day of November, 2018, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows. The defendant is to pay all applicable fees and costs unless otherwise noted below:

Count 1 - 18 § 5126 §§ A1 - Indec Asslt-W/O Cons Of Other (M2)
Offense Disposition: Not Guilty

Count 2 - 18 § 2709 §§ A4 - Harassment - Comm. Lewd, Threatening, Etc. Language (M3)
To be placed on Probation - County Regular Probation - for a minimum period of 1 Year(s) and a maximum period of 1 Year(s) to be supervised by Allegheny County Probation.
The following conditions are imposed:
Other: Defendant is to receive a mental health evaluation.
Contact - No Contact: Defendant is to have no contact with victim.
This sentence shall commence on 11/20/2018.

Count 3 - 18 § 2701 §§ A - Simple Assault (M2)
To be placed on Probation - County Regular Probation - for a minimum period of 2 Year(s) and a maximum period of 2 Year(s) to be supervised by Allegheny County Probation.

Count 4 - 18 § 2709 §§ A4 - Harassment - Comm. Lewd, Threatening, Etc. Language (M3)
To be placed on Probation - County Regular Probation - for a minimum period of 1 Year(s) and a maximum period of 1 Year(s) to be supervised by Allegheny County Probation.

Count 5 - 18 § 2709 §§ A4 - Harassment - Comm. Lewd, Threatening, Etc. Language (M3)
To be placed on Probation - County Regular Probation - for a minimum period of 1 Year(s) and a maximum period of 1 Year(s) to be supervised by Allegheny County Probation.

Count 6 - 18 § 2709 §§ A1 - Harassment - Subject Other to Physical Contact (S)
Offense Disposition: Charge Changed

CERTIFIED FROM THE RECORD

Michael M. [Signature]
DIRECTOR, DEPT. OF COURT RECORDS

LINKED SENTENCES:

Link 1
CP-02-CR-0003120-2018 - Seq. No. 5 (18 § 2709 §§ A4) - Probation is Consecutive to
CP-02-CR-0003120-2018 - Seq. No. 4 (18 § 2709 §§ A4) - Probation is Consecutive to
CP-02-CR-0003120-2018 - Seq. No. 3 (18 § 2701 §§ A) - Probation is Consecutive to
CP-02-CR-0003120-2018 - Seq. No. 2 (18 § 2709 §§ A4) - Probation

BY *[Signature]*
Clerk

Printed: 11/20/2018 2:47:58PM

CPCMS 2056

EXHIBIT
C-15

Commonwealth of Pennsylvania

v.

Zafar Iqbal

Order of Sentence

B

Docket No: CP-02-CR-0003120-2018

BY THE COURT:



Judge Kelly Bigley

11/20/2018



EXHIBIT R14

②

zafar iqbal <ziqbalm@gmail.com>

Activity in Case 2:18-cv-00842-JFC-PLD FERKETIC v. CURAHEALTH PITTSBURGH, LLC, et al. Order on Motion to Dismiss

Thu, Oct 24, 2019, 3:07 PM

<ecf_intake_pawd@pawd.uscourts.gov>
To: <pawd_ecf@pawd.uscourts.gov>

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.
---NOTE TO PUBLIC ACCESS USERS--- Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 90 page limit do not apply.

U.S. District Court
Western District of Pennsylvania

Notice of Electronic Filing

The following transaction was entered on 10/24/2019 at 3:06 PM EDT and filed on 10/24/2019

Case Name: FERKETIC v. CURAHEALTH PITTSBURGH, LLC, et al.

Case Number: 2:18-cv-00842-JFC-PLD

Filer:

Document Number: 146

Docket Text:

ORDER granting [144] Plaintiff's Motion to Dismiss pursuant to this Court's authority under Rule 41(a)(2), Plaintiff's claim against Defendant Iqbal is dismissed. Signed by Judge Joy Flowers Conti on 10/24/2019. (smc)

2:18-cv-00842-JFC-PLD Notice has been electronically mailed to:

Michael D. Jones mdjones@eckertseamans.com, dferrante@eckertseamans.com

Fallon C. Stephenson fstephenson@gordonrees.com

Rachel E. King rking@eckertseamans.com, dferrante@eckertseamans.com

Kurt A. Miller kmiller@clarkhill.com, uruxton@clarkhill.com, diavelle@clarkhill.com, jstoltman@clarkhill.com, mbordogna@clarkhill.com, ablanner@clarkhill.com

A. Patricia Diulus-Myers apdm@apbmilaw.com

Charles A. Lambertson cal@clambertonlaw.com

ZAFAR IQBAL ziqbalmd@gmail.com

2:18-cv-00842-JFC-PLD Filer must deliver notice by other means to:

The following document(s) are associated with this transaction:

REPRODUCED ORDER OF JUDGE CONTI R-14

Activity in Case 2:18-cv-00842-JFC-PLD

FERKETIC vs CuraHealth Pittsburgh, LLC, et al.

ORDER ON MOTION TO DISMISS

Docket text: Order granting (144) Plaintiff's motion to Dismiss pursuant to this Court's authority under Rule 41(a) (2), Plaintiff's claim against defendant Iqbal is dismissed.

Signed by Judge Joy Flowers Conti on 10/24/2019.

U. S. District Court,

Western District of Pennsylvania

REPRODUCED DOCUMENT R-15

Original part of Appendix C as well

Governing body Hearing -Dr Iqbal

Governing Body Committee Decision April 4, 2003

We the governing body Governing Committee agree that there is sufficient evidence grounds for revocation of privileges at all FMC-NA dialysis facilities where he currently has those privileges. We believe his deficiencies in regard to keeping current monthly notes, history and physical, long and short term care plans, rounding and signing physician's orders justifies this revocation in principle.

However we feel that charges of sexual harassment are not substantiated. He was never warned, notified, counseled about the allegations against him.

We believe the revocation of Dr. Iqbal's privileges should not stand. The company did not execute properly in terms of oversight of Dr. Iqbal's performance in the past, the timing of the revocation and lack of proper warning and notification of his dismissal.

Committee

Signature