

State Medical Board of Ohio

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med.ohio.gov

November 13, 2013

Patrick Eugene Muffley, D.O.
2242 Bold Venture Drive
Lewis Center, OH 43035

RE: Case No. 13-CRF-013

Dear Doctor Muffley:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 2013, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, and adopting an Amended Order.

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

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

*J. Craig Stafford, MD, MPH
AEH*
J. Craig Stafford, M.D., M.P.H.
Secretary

JCS:jam
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7032 2897 6545
RETURN RECEIPT REQUESTED

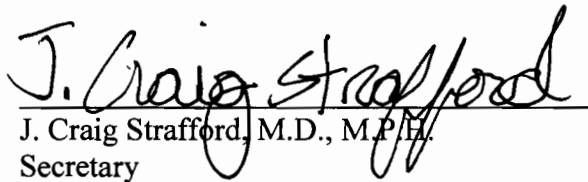
CC: Elizabeth Y. Collis, Esq.
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Mailed 11-21-13

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 2013, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Patrick Eugene Muffley, D.O., Case No. 13-CRF-013, as it appears in the Journal of the State Medical Board of Ohio.

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

 *J. Craig Strafford* MD/MPH
J. Craig Strafford, M.D., M.P.H.
Secretary AEH

(SEAL)

November 13, 2013

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 13-CRF-013

PATRICK EUGENE MUFFLEY, D.O.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 13, 2013.

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

Rationale for Amendment: A thirty-day period is provided for the purpose of referring obstetric patients.

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** Commencing on the thirty-first day after the date on which this Order becomes effective, the certificate of Patrick Eugene Muffley, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 60 days. During the thirty-day interim, Patrick Eugene Muffley, D.O., shall not undertake the care of any patient not already under his care.

- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Muffley's certificate to practice medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Muffley shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

 2. **Personal/Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Muffley shall provide acceptable documentation of

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

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

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

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

The Board may consider the three-day course completed by Dr. Muffley on *Maintaining Proper Boundaries* at Vanderbilt University as evidence of compliance with this reinstatement condition.

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

- C. **PROBATION:** Upon reinstatement or restoration, Dr. Muffley's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Muffley shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Muffley shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Muffley's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Muffley shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Muffley's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Third-Party Presence During Exam/Treatment:** Dr. Muffley shall have a third party present while examining or treating obstetric and gynecologic patients.
 5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Muffley is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
 6. **Required Reporting of Change of Address:** Dr. Muffley shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Muffley's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Muffley violates the terms of this Order in any respect, the Board, after giving his notice and the

opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

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

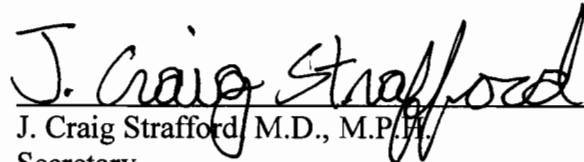
In the event that Dr. Muffley provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Muffley receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Muffley shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Muffley shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Muffley receives from the Board written notification of the successful completion of his probation.
3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Dr. Muffley shall provide a copy of this Order to all persons and entities that provide chemical dependency/abuse treatment to or monitoring of Dr. Muffley. This requirement shall

continue until Dr. Muffley receives from the Board written notification of the successful completion of his probation.

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

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


J. Craig Strafford, M.D., M.P.H.
Secretary

MD/MPH
AET

(SEAL)

November 13, 2013

Date

2013 JUL 12 PM 3: 08

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 13-CRF-013

Patrick Eugene Muffley, D.O.,

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Hearing Examiner Blue

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated March 13, 2013, the State Medical Board of Ohio ("Board") notified Patrick Eugene Muffley, D.O., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on an allegation that, beginning in February 2011, Dr. Muffley exchanged communications with Patient 1 that included sexualized comments and sexual fantasy despite an ongoing physician-patient relationship.

The Board further alleged that Dr. Muffley's acts, conduct, and/or omissions constitute:

"violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule promulgated by the board," as set forth in Ohio Revised Code Section ("R.C.") 4731.22(B)(20), to wit: Ohio Administrative Code ("Rule") 4731-26-02, Prohibitions. Pursuant to Rule 4731-26-03, a violation of Rule 4731-26-02 also constitutes a violation of R.C. 4731.22(B)(6), which is "a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

Accordingly, the Board advised Dr. Muffley of his right to request a hearing in this matter, and received his written request on March 18, 2013. (State's Exhibits ("St. Exs.") 1A, 1B)

Appearances

Mike DeWine, Attorney General of Ohio, and Heidi W. Dorn, Assistant Attorney General, for the State of Ohio. Elizabeth Y. Collis, Esq., for Dr. Muffley.

Hearing Date: June 6, 2013

PROCEDURAL MATTER

Upon review of the transcript, the Hearing Examiner redacted patient-identifying information and replaced the information with the term “family member.”

SUMMARY OF THE EVIDENCE

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

Background Information

1. Patrick E. Muffley, D.O., received his medical degree from the Ohio University College of Osteopathic Medicine in 1997. Upon graduation, Dr. Muffley completed a one-year rotating internship followed by a four-year residency in obstetrics and gynecology at the Naval Medical Center in Portsmouth, Virginia. Dr. Muffley was first licensed to practice medicine in Ohio in 2004. He is also licensed to practice medicine in West Virginia, Montana, and Virginia. He is board-certified in obstetrics and gynecology. (Respondent’s Exhibit (“Resp. Ex.”) A; Hearing Transcript (“Tr.”) at 180-183, 292-295)
2. From 2001 through 2009, Dr. Muffley’s employment history was as follows:
 - From 2001 to 2002, he was the Department Head in Obstetrics and Gynecology at the Naval Hospital in Keflavik, Iceland.
 - From 2002 to 2004, he was a staff attending in Obstetrics and Gynecology at the Naval Hospital in Bremerton, Washington.
 - From 2004 through 2007, he was on the clinic staff in the Department of Obstetrics and Gynecology at the Holzer Clinic in Gallipolis, Ohio.
 - From 2006 through 2009, he worked as a locum tenens physician at various locations in Oklahoma, Virginia, and Ohio.
 - From 2007 to 2008, he was on the clinic staff in the Department of Obstetrics and Gynecology at the Billings Clinic in Billings, Montana.(Resp. Ex. A; Tr. at 296-299)
3. From October 2009 through February 2012, Dr. Muffley was employed as an obstetrician/gynecologist (“OB/GYN”) at Women’s Contemporary Health-Care in Westerville, Ohio. In addition, he testified that, from 2009 through 2012, he was employed by Ohio Women’s Health Partners which provides overnight coverage for obstetrics and gynecology at Grant Medical Center in Columbus, Ohio. (Resp. Ex. A; Tr. at 178, 180, 300-301)

4. Dr. Muffley is currently a solo practitioner at Embody Wellness Obstetrics and Gynecology which has two locations in Columbus, Ohio. He stated that he employs an office manager and three part-time receptionists. He testified that he currently holds hospital privileges at Mount Carmel Health System and Grant Medical Center. (Resp. Ex. A; Tr. at 176-178, 182)
5. Dr. Muffley was married in 1997 and is currently still married. He has one daughter. (Tr. at 297, 301)

Patient 1

6. Patient 1 is a 34-year-old female. She testified that she is a respiratory therapist at two Central Ohio hospitals. She was married in 2005 and is currently married. She has three children. (St. Ex. 2; Joint Exhibit A; Tr. at 60-62, 81, 122)
7. On April 6, 2010, Patient 1 became a patient of Dr. Muffley at Women's Contemporary Health-Care in Westerville. At her first office visit on April 6, 2010, Patient 1 presented pregnant with twins and had a prior medical history of post-partum depression. For the next several months, Patient 1 saw Dr. Muffley along with midwives at the practice for her prenatal visits. Patient 1 described her prenatal visits with Dr. Muffley as appropriate and "professional." On September 27, 2010, Dr. Muffley delivered Patient 1's twins via c-section at Grant Medical Center without any complications. (St. Ex. 2; Tr. at 65-68, 130, 186, 188, 305)
8. Two weeks following the delivery of her twins, Patient 1 had her first post-partum visit with Dr. Muffley. At this visit, Patient 1 complained of feeling depressed but denied suicidal or homicidal ideations. She reported taking supplements and expressed that she believed that the supplements were helping with her depression. Dr. Muffley noted that, if Patient 1 saw no improvement by the following week, she was advised to consider an SSRI. (St. Ex. 2 at 41; Tr. at 192-193)
9. On October 26, 2010, Patient 1 had a follow-up office visit with Dr. Muffley for post-partum depression. She reported that she still had some breakthrough depression and that she had stopped taking the supplements. She denied suicidal or homicidal ideations. Dr. Muffley prescribed Wellbutrin, an anti-depressant. (St. Ex. 2 at 39; Tr. at 194)
10. On November 9, 2010, Patient 1 had another office visit for post-partum depression. Patient 1 reported that she had started Wellbutrin the previous week but that she was still dealing with depression. She complained of being anxious and tearful but denied suicidal and homicidal ideations. Dr. Muffley increased her dosage of Wellbutrin and prescribed Ativan. Dr. Muffley testified that he prescribed Ativan for episodic anxiety attacks. (St. Ex. 2 at 31; Tr. at 195-196, 313)

11. On December 7, 2010, Patient 1 had another follow-up office visit with Dr. Muffley. She reported that she felt much better. Dr. Muffley continued Patient 1 on Wellbutrin for six months at the same dose. It was noted that she was due for an annual examination in May 2011. (St. Ex. 2 at 26; Tr. at 197-198, 314)
12. Patient 1 testified that, in January 2011, she returned back to work and that, by then, her post-partum depression was manageable. (Tr. at 134)

Facebook Messages Between Dr. Muffley and Patient 1: February 2011 to March 2011

13. In February 2011, Patient 1 and Dr. Muffley randomly saw each other at the Orlando airport and briefly spoke. Despite not being a “Facebook friend” of his, Patient 1 testified that she sent Dr. Muffley a private Facebook message later that evening.¹ (Tr. at 77-78, 200-201, 320-321) Patient 1 explained why she sent him a message:

There was a[n] ice storm in Ohio and a lot of flights were canceled, so I sent him a message on Facebook asking if his flight, you know, was canceled or if he made it home okay.

* * *

I had some reservations about it. I wasn't sure it was entirely appropriate, but I felt so much gratitude and kind of indebtedness, if that's the right word, after everything that he had done for me. And I was friends with the midwives within the practice and with a couple of * * * his patients whom I was personal friends with were also friends with him on Facebook. So I thought, you know, it would be nice to be able to check in every so often and, you know, say hi every once in a while.

(Tr. at 77-79)

14. Dr. Muffley acknowledged that he responded to Patient 1's Facebook message. Patient 1 testified that Dr. Muffley responded to her message by asking her if she made it home okay, how her trip was, and reiterated “how great I looked when he saw me.” (Tr. at 80, 201-202)
15. Patient 1 testified that she subsequently sent a friend request on Facebook to Dr. Muffley and explained why:²

¹ Patient 1 explained that “you can send anyone a message on Facebook as long as you are not blocked by that person * * *. And it still goes to their inbox and they are able to get your messages.” (Tr. at 78)

² Patient 1 explained that “you can go to their [Facebook] page and you click ‘Add Friend,’ they can either accept or deny.” (Tr. at 86)

I was looking for a friend. I thought how neat it would be to have had this great experience with this person who did so much for me, and how great would it be, you know, friends on Facebook that can see pictures, you know, of his family, and I can, you know, occasionally say hey, how are you doing, or seeing what's going on professionally, and kind of have a - - a friendship of sorts, a connection, more than just, you know, seeing him once a year. Especially since I knew he was friends with other people on Facebook.

(Tr. at 86, 138, 162)

16. Dr. Muffley acknowledged that he accepted Patient 1's friend request and explained why:

It was just they were - - you'd see pictures of their babies, they'd be posting pictures of the kids as they were growing up.

I thought it [was] kind of neat because, you know, I had never been someplace long term enough to see babies that I delivered grow up. So I found that was interesting, you know.

(Tr. at 138, 201, 326)

17. Both Patient 1 and Dr. Muffley admitted that, from February 2011 through March 2011, they exchanged private messages to each other on Facebook.³ Patient 1 claimed that, at first, they discussed benign topics such as work and day-to-day life but that, by mid-February, their conversation turned to compliments and sexual innuendo. However, Dr. Muffley denied that their messages were inappropriate. (Tr. at 85-88, 137, 209-210, 328)
18. Patient 1 explained why she continued to send messages to Dr. Muffley despite the change in tone:

I felt very flattered and, you know, it definitely was an ego boost for me, especially after having been through, you know, a twin pregnancy, which is very difficult and, you know, you don't feel very attractive. Having someone give you all this attention is obviously - - very nice to hear.

(Tr. at 88-89)

19. Both Patient 1 and Dr. Muffley denied meeting in person between February 2011 and March 2011. (Tr. at 90, 203)

³ The parties did not submit a copy of the Facebook messages Dr. Muffley and Patient 1 sent to each other during this time frame.

20. In the beginning of March 2011, Patient 1 and Dr. Muffley stopped sending messages to each other on Facebook because Patient 1 obtained information that Dr. Muffley had been previously charged with sexual imposition. (Tr. at 91) Patient 1 testified that, after she reviewed the court documents, she sent Dr. Muffley a message asking him about the charge:

I simply stated that I obtained court documents, I read them, that I was very shocked, that it was his business, but if he wanted to elaborate, I would like to know his side of the story.

That having read those really made me think about what we were doing with this messaging. And that I was coming from a place of wanting acceptance, liking, you know, the positive compliments, that I felt very indebted to him and very, you know - - I had such a bond and I felt like I owed him a lot, but that this wasn't fair to our spouses and it just wasn't right.

(Tr. at 94)

21. Dr. Muffley testified that, in response, he sent Patient 1 a message stating "enjoy your new reading materials" and cut off the conversation. (Tr. at 140, 204)
22. Dr. Muffley explained that he was criminally charged with sexual imposition in Gallia County, Ohio, and that a civil lawsuit was filed against him for sexual harassment. He testified that both the criminal charge and civil suit were eventually dismissed against him. (Tr. at 206, 329-330)
23. Patient 1 testified that, on March 17, 2011, she sent a message to Dr. Muffley on Facebook wishing him a "Happy St. Patrick's Day." Dr. Muffley testified that he did not recall receiving this message. Patient 1 acknowledged that Dr. Muffley did not respond to her message. (Tr. at 96, 331) When asked why she sent him another message after Dr. Muffley had cut off communication with her, Patient 1 stated:

Because I felt, you know, my feelings were hurt, that I thought I offended him, I thought I upset him, I thought he was mad at me, and I didn't feel like leaving it feeling like he was upset with me.

(Tr. at 140)

24. Dr. Muffley and Patient 1 had no communication from March 2011 through July 2011. (Tr. at 166, 208)

July 27, 2011 Office Visit

25. On July 27, 2011, Patient 1 had her annual examination with Dr. Muffley in which Dr. Muffley instructed Patient 1 that if an area of concern had not resolved in one month to contact him. Both Patient 1 and Dr. Muffley claimed that the office visit was professional. (St. Ex. 2 at 22-25; Tr. at 97-98, 208)⁴ However, Patient 1 claimed that, at the end of the office visit, Dr. Muffley put his arm around her and asked her:

Are you okay with this? Are - - Did this make you uncomfortable?" And I said, "No."

(Tr. at 97-98)

26. When asked why she returned to Dr. Muffley after their prior communications on Facebook, Patient 1 answered:

I had to think long and hard about going back. And after going back, you know, it was very, you know, professional, very much what I was thinking, you know, we would go back to, just patient-doctor relationship at that point.

* * *

I felt like, you know, the messages were in the past, nothing happened. I felt there was a lot of guilt being like I felt like I was being judgmental of his past if that didn't truly happen.

And I just felt really bad, like here I am, one of his patients, and I would be just another person that just left because of false allegations, and he's already been through so much. You know, the messages are over, you know, he's - - he's already taken care of me, you know, through a pregnancy and delivered my children. We can just go back - - it's been many months. We can just go back to a doctor-patient relationship.

(Tr. at 98)

27. When asked why he did not terminate Patient 1 as a patient after their prior Facebook communications, Dr. Muffley replied:

In hindsight, yes, absolutely, I could have. You know, I don't think I knew what to do with the situation. I really didn't. I didn't know what to

⁴ Patient 1 testified that, by June 2011, she had weaned herself off Wellbutrin. (Tr. at 132) -

do with it. Like I said, I was just surprised to even see her on my schedule.

(Tr. at 227-228)

28. Patient 1 claimed that Dr. Muffley sent her a message on Facebook after her July 27, 2011 annual examination. However, Dr. Muffley denied it; rather, Dr. Muffley stated that Patient 1 messaged him first after her annual appointment. (Tr. at 99, 208-209)
29. Both Patient 1 and Dr. Muffley agreed that, beginning in August 2011, they began frequently sending messages to each other again on Facebook. (Tr. at 100, 209) Patient 1 explained why she resumed messaging Dr. Muffley:

[i]t brought back all the old kind of feelings of, you know, flattery and, you know, all the good feelings you get when someone bestows a lot of extra attention to you that I - - I did like.

(Tr. at 100)

Facebook Messages Between Dr. Muffley and Patient 1: August 17, 2011 – August 20, 2011

30. Both Patient 1 and Dr. Muffley acknowledged that State's Exhibit 4 contained a copy of their messages to each other on Facebook from August 17, 2011 through August 20, 2011. However, both acknowledged that some of their messages are missing from the exhibit. (Tr. at 101-102, 147, 158, 210)
31. Both Patient 1 and Dr. Muffley acknowledged that the below-mentioned messages contained sexual innuendo and sexual fantasy. (Tr. at 100, 107, 210, 216, 334)

August 17, 2011 Message

32. Dr. Muffley and Patient 1 sent the following messages to each other on August 17, 2011 beginning at 10:30 a.m.:

* * *

Dr. Muffley: Does it involve faux fur, Baby oil, and me??

Patient 1: try bananas, zucchini, and you.

Dr. Muffley: Gulp. Should I be concerned

Patient 1: thought I would add that i definitely do not have a nut allergy. that would really suck☺

Dr. Muffley: Whew glad you can handle nuts safely

Patient 1: oh i am an excellent nut handler! decided to go with banana bread it's in the oven right now, saving the zucchini for lasagna tonight. but, I ran out of nuts☹ see that's where you would have, uh, came in handy!

Dr. Muffley: they will be anxiously awaiting for u at grant tonite.

(St. Ex. 4 at 3-4)

33. Dr. Muffley admitted that this message contained sexual innuendo. Patient 1 admitted that she was referring to male testicles when she used the term "nuts." (Tr. at 103, 211-212)

August 17, 2011 to August 18, 2011 Messages

34. The following Facebook exchange occurred between Dr. Muffley and Patient 1 from August 17, 2011 beginning at 10:48 p.m. through August 18, 2011 at 3:18 p.m.:

Dr. Muffley: Tittle winks

Patient 1: Tittle winks? Not sure I am familiar. Can you explain the game to me?

Dr. Muffley: Well you slowly strip for me ... then I slowly kiss your neck and work my way down your chest and tummy an[d] then . . .

Patient 1: Wait, I think you made this game up! So what happens next?

Dr. Muffley: You tell me

Patient 1: I have never played this game before, I'd hate to do something inappropriate.

Dr. Muffley: No such thing

Patient 1: Are there no rules I need to adhere to? How do I know who wins?

Dr. Muffley: Thats the beauty. No losers.

Patient 1: So, let's see . . . I have stripped down but how bout you?

Dr. Muffley: Dunno u havnt said

Dr. Muffley: Ok done

Dr. Muffley: Yes. Keep going

Patient 1: Huh? Oh I finished solo and went to sleep...ZZZZZZZZZZZZ

Dr. Muffley: Ouch

Dr. Muffley: I was gonna make sure you were done first!

Patient 1: That's very selfless of you. However, you cannot leave a resourceful, horny girl alone for too long before she is forced to take matters into her own hands.

Dr. Muffley: R u ...Horny?

Patient 1: yep. right now my bed is looking pretty damn sexy * * *

Dr. Muffley: Is it possible for u to have the hots for me?? * * * I am hoping u r getting to kno[w] me

Patient 1: Anything is possible!!☺

(St. Ex. 4 at 6-10)

35. Dr. Muffley admitted that this exchange contained sexual innuendo. Dr. Muffley denied that "ok done" referred to masturbation and adamantly denied masturbating to any of these messages. (Tr. at 216)

August 19, 2011 Message

36. The following Facebook exchange occurred between Dr. Muffley and Patient 1 on August 19, 2011:

Patient 1: was busy cleaning * * * so here I am putting off making dinner yet again. bad [Patient 1]!!!

Dr. Muffley: I think I likey bad [Patient 1].

Patient 1: what's your favorite attribute? My inadequate housekeeping skills? sub par meal preparation? my propensity to put off doing either poorly?

Dr. Muffley: General mass procrastination. And your inherently naughty nature.

Patient 1: Naughty? Me? I am sure you must have me confused with someone else. I am very good!

Dr. Muffley: Awwwww I was sure hoping for NAUGHTY.

Patient 1: Well, the night is still young. And it look[s] like I have too much life helping to tend to so far.

Patient 1: There should have been a *doesn't* between it and look.

Dr. Muffley: Life help away naughty girl

Patient 1: Maybe I can life help you tonight. Gotta keep my skills up you know.

Dr. Muffley: Mouth to mouth

Dr. Muffley: Can I do mouth to neck?

Patient 1: Absolutely, I would like that a lot actually. Is that part of the new bls guidelines? If so I better practice on you prior to my recert.

Dr. Muffley: Sounds awesome!!!! Tell me when

(St. Ex. 4 at 14-16)

August 20, 2011 Message

37. The following Facebook exchange occurred between Dr. Muffley and Patient 1 on August 20, 2011:

Patient 1: I am feeling so bad now. since i cannot make it up to you in person due in part to my intense need for sleep i will attempt to make you laugh. dirty(ish) joke of the day:
what did the muffin say during sex?
i'm gonna crumb!

that help?

Dr. Muffley: A little but I'll still let you make it up to me in person.
Yummy

Patient 1: my muffins are yummy. would you like me to make you
some? hot and moist from the oven!

Dr. Muffley: Yes your muffins but not the kind from the kitchen

Patient 1: No? Guess I have not instilled much confidence in my
culinary skills but I assure you I do make some good
muffins. Still not interested?

Dr. Muffley: I'm sure your muffins are delicious. And you kno[w] I'm
VERY interested in your muffins.

Patient 1: Good, and yes they are very tasty muffins for sure.
Another slow night at work...who knew my decision to
wear a white t shirt en lieu of my typical scrub top would
garner so much attention. Have gotten multiple comments
so far.

Dr. Muffley: Send me a pic

Dr. Muffley: Are we talking about muffins or MUFFINS or both

Patient 1: Both are tasty although I have only sampled one kind and
am relying on peer review of the other. Here is a pic:

Dr. Muffley: Oh funny girl. I want a pic of you in your white t

Patient 1: Let's see if this works....

Dr. Muffley: Oh yea...That works. When can we start mouth to mouth
practice

Dr. Muffley: And that mouth to mouth??

Patient 1: You still in need of resuscitation? Sounds serious...

Dr. Muffley: Yes ma'am. Could you help me

- Patient 1: Possibly. I need to know exactly what sort of issues you are experiencing so that I may assist you the most efficiently.
- Dr. Muffley: A general lack of attention to my lips etc.
- Patient 1: More dire than originally thought. I think some nice slow kisses with just the right amount of tongue will do the trick. What else is going on that I can assist with?
- Dr. Muffley: Overall lack of intimacy
- Patient 1: Bad predicament, esp. when not self imposed. That will require a lot more attention to many different areas. Well, I think your lips have been tended to so I think my next move would be working on your neck and ears with my lips. My hands might wander during this as well. Hope you don't mind. What should I work on next?
- Dr. Muffley: Ur headed in the right direction keep going. My hands would b[e] wondering too hope that's ok
- Patient 1: Yeah, I like wandering hands. My hands would be rubbing your back and arms and then, oh my, there is something very hard between your legs. Mmmm, will definitely take my time there. In fact, it think I might need to use my lips and mouth about now.
- Dr. Muffley: Ok. I may have to return the favor!!!
- Patient 1: Oh, I should hope so. By this point I am bound to be noticeably turned on. What will your mouth and hands be doing to help me with that?
- Dr. Muffley: Lots of kissing to [y]our neck and chest as my hands slide down your sides to the small of your back and on to your...
- Patient 1: well don't stop there! good morning to you too, that is quite a wake up call. maybe I should brush my teeth first....

Dr. Muffley: Slowly untie your scrubs and let them slide to the floor, you take your top off. Holding you tightly the heat of your body against mine is intoxicating

Patient 1: once I have undressed you we kiss passionately with our bodies still pressed together. you unhook my bra and caress and kiss. as things begin to get more heated we lie down and I feel the weight of you[r] body on mine.

Dr. Muffley: Kissing between your breasts and down your stomach I lift your legs and return your earlier favor...

Patient 1: hmmm, you are making me moan as I rock my hips back and forth. but before I finish turn you on your back and climb on top of you and let you slowly slide inside of me.

Dr. Muffley: Mmmm you are making my heart race. Feeling you grind your hips on me. Caressing your breasts gently. Reaching up and getting a handful of your gorgeous hair

Patient 1: you feel so good inside of me. The sensation of you moving in and out is driving me crazy. You put your hands on my hips and swing me around so you can get a view of my backside as I continue to ride you.

Patient 1: I ride you faster and faster and am moaning louder and louder until we both finish. My body is trembling, hot, and sweaty as I lie down next to you.

Dr. Muffley: Omg. When can I see you??

Patient 1: When am I due for my next annual?
J/k☺
That was pretty fun though.

Dr. Muffley: Not gonna come true??

Patient 1: Oh, I didn't say that! But I am not quite ready for that yet.

Dr. Muffley: Closer tho?

Patient 1: you could say that.

Dr. Muffley: I could say that. Or should say or would say

Patient 1: How bout might say

Dr. Muffley: How about do say?

Dr. Muffley: I am a simple man.

Patient 1: Ok then you got it. Yes. Ok, I forget what I am saying yes to.

Dr. Muffley: Everything

Patient 1: What exactly does 'everything' entail? Are you taking advantage of my simple yes? Might have to return to my ambiguous answers.

Dr. Muffley: Would never take advantage. Want u to want me.

Patient 1: Is there any question as to whether or not I do? Now you are just being silly!

Dr. Muffley: Good. Cause I really want you too.

(St. Ex. 4 at 17-30)

38. Despite asking Patient 1 "when do I get to see you," Dr. Muffley denied that he wanted to meet up with her in person. (Tr. at 218) He explained his statement:

Other than saying wish you were here, nice to meet you, I never made any concrete plan or had any concrete idea in my head about meeting her any specific plan, place, time at all. This was all just offline, I think she said it, Facebook life or Facebook friends and real life. This was not real life to me.

(Tr. at 222-223)

39. Dr. Muffley admitted that this exchange contained sexual innuendo and sexual fantasy. (Tr. at 221-222)

August 21, 2011

40. Both Patient 1 and Dr. Muffley acknowledged that, on August 21, 2011, they started texting each other instead of sending messages to each other on Facebook. Patient 1

testified that their text messages also contained sexual innuendo. (Tr. at 110-111, 337-338)

41. Patient 1 testified that they stopped texting each other because “my [family member] found my Facebook page open and saw that Dr. Muffley had been messaging me and I had been messaging him back. And rightfully so, he got very angry. And that’s when I cut it off.” (Tr. at 111-112, 152)
42. Patient 1 testified that, on the morning of August 22, 2011, she sent a text message to Dr. Muffley indicating that her family member had discovered their messages and that he should hire an attorney. Patient 1 claimed that Dr. Muffley begged her not to report it. Patient 1 and Dr. Muffley have not spoken since. (Tr. at 112-114)
43. Dr. Muffley affirmed that he asked Patient 1 not to hire an attorney because “[t]o me, all of this was just online fantasy. I mean, * * *, we hadn’t met, we hadn’t physically - - we hadn’t done anything.” (Tr. at 225)
44. Patient 1 and Dr. Muffley never met for intimate relations. (Tr. at 107)

Testimony of Patient 1’s Family Member

45. Patient 1’s family member is an attorney. He testified that he attended all of Patient 1’s prenatal visits at Women’s Contemporary Health-Care. He stated that he did not have any concerns with Dr. Muffley’s treatment of Patient 1 during her prenatal care. In regard to Patient 1’s post-partum visits, he testified that he attended only one of Patient 1’s office visits and felt “uncomfortable” because Dr. Muffley “kept commenting on how great [Patient 1] looked.” (Tr. at 22-26)
46. Patient 1’s family member confirmed that Patient 1 had severe post-partum depression with their first child and, as a result, he stated that it was a “huge concern after the twins were born.” He stated that, after the twins were born, Patient 1 would sit on the couch, cry, and have trouble caring for their children. Patient 1’s family member acknowledged that Dr. Muffley put Patient 1 on medication for her post-partum depression. (Tr. at 24-25)
47. Patient 1’s family member testified that he was not aware that Patient 1 and Dr. Muffley were sending messages to each other on Facebook until, in mid-August 2011, he discovered Patient 1’s Facebook page open on their computer. Patient 1’s family member testified that he discovered “hundreds of messages with sexual fantasy” between Dr. Muffley and Patient 1 that dated back to February 2011. (Tr. at 28-29, 40)
48. Patient 1’s family member testified that he confronted Patient 1 about the messages. He stated that Patient 1 subsequently deleted the messages and blocked Dr. Muffley on

Facebook so he could no longer message her. (Tr. at 29-30) He explained how Patient 1 explained the Facebook exchanges to him:

She really had trouble explaining it. You know, all she said is it will be over. And she couldn't really explain how she got caught up in it or why she didn't stop it. * * *

(Tr. at 54)

49. Patient 1's family member testified that he was able to retrieve a majority of the Facebook messages exchanged between Patient 1 and Dr. Muffley including the messages that had been deleted by Patient 1. However, he stated that he was unable to recover any messages before August 2011. (St. Ex. 4; Tr. at 32-34)
50. Patient 1's family member testified that, prior to this incident, his marriage was "the best marriage in the world." (Tr. at 56) He further explained how this situation has affected him and his family:

I mean, you know, this is by far the most horrible thing that's ever happened to me. You know, I've had a lot of things happen to me in my life. The - - You know, I wake up angry, I go to bed angry. I have violent dreams. I feel the way I'd feel if one of my children were molested. You know, I think that it's been two years now, I'm not any less angry. I feel other people out there are in danger, which upsets me.

You know, I'm short with my kids. I don't think I'm as good of a father as I was. And it's - - you know, I feel like I need to protect my wife now and - - instead of being kind of equal partners with her. It's changed our relationship, obviously. It's - - I mean, it's horrible.

I can't believe that this - - you know, I can't believe he is allowed to practice medicine. I can't believe at this point he was allowed to practice medicine, I can't believe that he has continued to practice medicine, I can't believe he thinks he - - he has the right to continue to practice medicine after this.

(Tr. at 39-40)

Additional Testimony from Patient 1

51. Patient 1 testified that, as a respiratory therapist, she is required to take continuing education courses to maintain her professional license. She acknowledged that, because she works in a hospital setting, she is familiar with the concept of professional

boundaries. Patient 1 stated that she understands that her patients are not her friends.
(Tr. at 124-125)

52. Patient 1 stated that she never had any intention of having a romantic relationship with Dr. Muffley; rather it was about “getting the attention; that’s where he was driving it; and I knew that that that’s how I kept his attention.” (Tr. at 163-164) She further explained:

And part of that was because previously I knew that he had no interest in me as a person really in terms of day-to-day life. He was more interested in, you know, discussing sex and, you know - - or innuendo-type stuff, so that’s what I gave him.

(Tr. at 100-101)

53. Patient 1 described her marriage as “strong” when she began sending messages to Dr. Muffley on Facebook. However, she testified that, after her family member discovered the messages, they underwent marriage counseling and she sought personal counseling.
(Tr. at 116, 156)

54. Patient 1 testified how this incident has affected her and her family:

It’s had devastating effects. My [family member] has been, you know, torn apart by this. It’s been, you know - - we were on the verge of, you know, deciding whether or not we were going to stay together, with three young children. There was a ton of added stress.

I was dealing with all kinds of conflicting emotions of guilt and blame and, you know, on the one side where my [family member] really wanted to go after Dr. Muffley and, you know, go to the Medical Board, I was not sure. I just felt like, you know, this was all my fault, you know, I couldn’t possibly do this to him.

And then, you know, the - - time with the counseling. Sometimes it was three appointments a week. Our appointments were 45 minutes away each way. I had to find child care for three children, this was a huge cost. It was a lot of time.

And then the added stress has been felt by our children definitely. Our tempers are shorter. They - - Kids can sense when there is unrest in the family and that was definitely noted with our kids.

(Tr. at 119-120)

55. Patient 1 further added:

You know, when I was dealing with all the conflicting feelings, you know, guilt and shame, I feel like through, you know, the help of my counselors and stuff, I realized that I wasn't really the one doing the wrong here; that someone took advantage of me, especially being vulnerable, and taking what's a very intimate sacred relationship between a doctor and patient using that to fulfill what I assume is his own sexual fantasies.

(Tr. at 121)

56. Patient 1 testified that she is pregnant and has chosen to see a female doctor. She claimed that she does not "want any male providers having any contact [with her] during the entire pregnancy." (Tr. at 118)

Additional Testimony from Dr. Muffley

57. When asked whether he recalled complimenting Patient 1 at her post-partum office visit, Dr. Muffley replied:

I don't recall it specifically, but it wouldn't be out of character for me to compliment a patient. I mean, she just had major surgery, just had a baby. I don't see anything wrong with complimenting a patient on how - - how they look.

(Tr. at 198-199)

58. Dr. Muffley testified that he could never have said in person what he typed in his messages to Patient 1 on Facebook. He explained:

To me, the communication, the Facebook, just all fantasy. It was - - didn't seem real to me. I didn't feel - - you know, there was plenty of response and initiation. I didn't - - There was no feeling of, you know, forcing someone to say this or that. It - - but it just - - it didn't feel real.

I just separated the two. I didn't really even - - I know it sounds stupid. I didn't consider the fact that she was a patient. I mean, the patient part was the patient part; this part was the Facebook part. I mean, it didn't - - I - - wrongly so, I didn't think about it in that way.

(Tr. at 339-340)

59. Dr. Muffley acknowledged that he could have stopped sending messages to Patient 1 but he chose to keep communicating with her. (Tr. at 223)

60. Dr. Muffley acknowledged that his online relationship with Patient 1 exceeded the physician-patient boundary. He testified that his first boundary violation was accepting Patient 1 as a friend on Facebook. (Tr. at 337) He explained why he did it:

To be honest, I wasn't thinking that being okay or not okay. It was flattering. She's way younger than I am, very attractive. I was, like, 40 pounds heavier, I - - why would anybody be interested - - why would she - - someone like that be interested in me? So I found it very flattering, and it was ego boosting and, you know, I didn't think about this is right or wrong, you know. I thought - - I clearly wasn't thinking.

(Tr. at 226-227)

61. Dr. Muffley testified that he has only recently told his wife about his messages to Patient 1 and the Board's allegations. (Tr. at 340) He explained why he waited:

It's embarrassing. I didn't want to hurt her. It seemed like every time I worked up the courage to talk to her about it and something would come up with our daughter, or we would be going somewhere or something would be - - I found all kinds of excuses to not tell her.

Just it's embarrassing more than anything else. And then the fact that it jeopardizes my ability to make a living, and pay our mortgage, and to pay my daughter's schooling. And it's ridiculous. I'm a grown man. Just embarrassment more than anything else. I'm ashamed. I'm ashamed of it.

(Tr. at 366)

Remedial Measures Taken by Dr. Muffley at his Practice

62. Dr. Muffley testified that he is no longer Facebook friends with any of his patients. (Tr. at 230, 361)
63. Dr. Muffley attended a three-day course at Vanderbilt University entitled *Maintaining Proper Boundaries* from February 20 – 22, 2013. Dr. Muffley explained what he learned from the course:

Things like grooming behaviors. I mean, we talk about certain patient types, patient psychiatry diagnoses, borderline personalities, you know, what to look for in your practice. What they referred to as grooming behaviors.

* * *

It's things like testing the water. Saying something maybe a little inappropriate but seeing how the other person reacts to it. Or a patient, * * * they've seen you only twice and telling you, oh, you're the best surgeon ever, you're the only one that can help me. Or - - and then it just - - it go - - whatever you accept, it keeps going, they keep pushing the boundary. And physicians can do the same thing. But pushing the boundaries.

And then that leads to reaching over and straightening your tie for you, or gift giving, or things like that. So that's - - that's what grooming techniques are, is basically finding out what the other person is comfortable with and how far you can go.

* * *

The power differential. I mean, we - - the first day that's one of the first lectures and the first discussions that we had. And then just role playing as the physician or the patient, and working on responses for inappropriate comments that are made to you by patients. * * *

I mean, they're very - - even about having personal photos in your office that patients can see of your children, of whether they should even know that you have children. * * *

It was very worthwhile. I mean, if I had done this before this episode, this never would have happened if I had had this before.

(Tr. at 342-345)

64. Dr. Muffley listed the following changes that he has made to his personal and professional life since completing the Vanderbilt course:

- Shows a DVD from the Vanderbilt course to all new employees;
- Stepped down from six committees;
- Wears a clinical jacket instead of scrubs;
- Scrubbed Facebook;
- Started exercising;
- Changed his professional schedule to keep his work hours reasonable;
- Stopped doing in-house shifts and moonlighting;
- Scheduled vacations in advance;
- Cut back on out-of-state travel as a proctor on robotics;
- Text messages go straight to his spouse's iPad;

- Office manager and spouse have access to business e-mails;
- Attends men's group at church on a regular basis;
- Plays more golf; and
- Attends therapy with Dr. Rahe Corlis.

(Tr. at 346-354)

65. Dr. Muffley testified that "this will never happen again." (Tr. at 369)

Testimony of Character Witnesses

66. Alicia Brenneman, a registered nurse and labor and delivery educator at Grant Medical Center, testified that she has worked with Dr. Muffley for four years. She also disclosed that she has been his patient since June 2012. She testified that Dr. Muffley is "professional" with staff and patients. She denied that he is flirtatious or cocky. In regard to the Board's allegations against Dr. Muffley, she remarked that she was surprised and that it was not in his character. (Tr. at 235-241)

67. Angela L. Miller, a certified surgical first assistant at Grant Medical Center, testified that she has worked with Dr. Muffley in the robotics setting for four years. She described Dr. Muffley as "a pretty relaxed surgeon," "very professional," and "congenial." She denied that he is flirtatious or cocky. (Tr. at 243-249) In regard to the Board's allegations against him, she remarked that:

I thought on the things that I see and hear on a regular basis in the OR that that was so miniscule, that I was surprised it was being brought to the Medical Board.

(Tr. at 249)

68. Lisa Fillihart testified that she is the office manager and medical assistant to Dr. Muffley at Embody Wellness OB/GYN. She testified that she has worked in the health care industry for twenty years including 10 years at a hospital and 10 years in private practice. She described her current job duties as taking a patient's vital signs, history, and being present in the room with Dr. Muffley for his examination of a patient. (Tr. at 252-255)

Ms. Fillihart testified that Dr. Muffley is "very professional" and "caring" with his patients. She denied that Dr. Muffley is flirtatious or egotistical. She denied receiving any complaints from Dr. Muffley's patients. (Tr. at 258-259)

69. Ms. Fillihart testified regarding the changes instituted at Dr. Muffley's practice since he attended the boundaries course at Vanderbilt:

Just that - - definitely that it's a physician-patient relationship and there's not a whole lot of chitchatting about anything personal. It's all business. It's all down to business.

And we also put some things into place in the office about teaching our staff about boundaries and how to realize this and how to see it. And I didn't even really see it until I learned more about it, to be honest with you. And we were very confident about me going in the rooms with - - when he's there and to make sure that it isn't - - it isn't crossed.

* * *

All of our messaging - - We have a call center. So all of our messaging goes through the call center and then it comes through me. So the only messaging he should be getting, receiving, is through labor and deliveries or ER, any kind of physician contact to him. But any patient-related messaging goes through me.

Also he - - he is supposed to schedule more vacation time off, and limited some of the boards that he was on, committees, and trying to take more time for himself. And he plays more golf, so that's good. He needs to be on the golf course more.

(Tr. at 261-263)

Testimony of Rahe Corlis, Ph.D.

70. Rahe Corlis, Ph.D., has been a licensed psychologist in Ohio since 1973. He testified that, since the 1970s, he has operated a clinical practice in Columbus. He described his practice as a "wide-ranging" general practice that treats adolescents and adults. He also stated that, from 1995 to 1999, he served as a member of the State Board of Psychology and added that he is very familiar with the disciplinary process. He testified that, in his practice and as a Board member, he is familiar with professional boundary cases including physician-patient relationships. (Tr. at 272-276)

71. Dr. Corlis testified that, on January 7, 2013, and at the request of Dr. Muffley's attorney, he performed a psychological evaluation of Dr. Muffley. He further commented that he has seen him twice since. (Tr. at 277-278, 282)

On May 22, 2013, Dr. Corlis sent a letter to the Board regarding his evaluation and subsequent visits with Dr. Muffley. His letter stated in pertinent part:

I have been seeing Dr. Muffley off and on since 1/7/2013. Dr. Muffley appeared at each session on time and was serious about developing more

awareness about what is appropriate and what is not appropriate with his patients. He has reported to me that in the past he engaged in inappropriate communications with a patient.

One aspect of Dr. Muffley's personality is that he needs approval from nearly everyone and has trouble saying 'no' when it is appropriate to do so. He was very clear with me about his short comings and resulting occasional boundary issues.

We spent the bulk of our sessions going over the whole concept of boundary issues. During the course of our sessions, he showed a significant, in depth understanding and grasp of why boundaries are so critically important. I believe he now has a thorough understanding of these issues and is committed to conscientiously being aware of any potential boundary issues.

As a result of our sessions and any other learning situation he may have been exposed to, he is now committed in a profound way to not cross any boundaries with any patient. It is my clinical opinion that he has learned the lesson and will likely not be in such a situation again.

(Resp. Ex. C)

72. Dr. Corlis testified that Dr. Muffley was "very forthcoming" regarding his history with Patient 1. However, he acknowledged that he had not reviewed the Facebook messages exchanged between Dr. Muffley and Patient 1. (Tr. at 278, 280, 288) Dr. Corlis provided the following opinion regarding the Facebook messages:

Although, I might say, is as he described it to me, it sounded more like it was - - it was a sexual nature, there's no doubt about that, but it sounded more like gaming-ness, like an adolescent gaming thing. It didn't sound like he was putting the make on somebody. * * *

I don't think he felt like he was doing some terrible thing. On the other hand, I - - that's part of what had a gamey feel to it. It wasn't like all that serious. It's like playground stuff. But he knew it was not - - he shouldn't be doing that in any case.

(Tr. at 280-282)

73. Dr. Corlis testified that Dr. Muffley violated the physician-patient boundary. However, Dr. Corlis opined that Dr. Muffley's behavior is not the same as a physician who has had sex with a patient because he had no physical contact with Patient 1 "other than in his office appropriately." (Tr. at 284)

74. Dr. Corlis stated that this Board should feel comfortable to allow Dr. Muffley to continue to practice medicine in Ohio. Dr. Corlis testified that Dr. Muffley has “grown up” and “learned an awful lot.” (Tr. at 282, 287)

RELEVANT RULES AND STATUTE

4731-26-01 Definitions

For purposes of Chapter 4731-26 of the Administrative Code:

* * *

(H) “Sexual misconduct” means conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include expressions of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes sexual impropriety, sexual contact, or sexual interaction as follows:

- (1) “Sexual impropriety” means conduct by the licensee that is seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to the following:

* * *

- (e) Participation by the licensee in conversation regarding the sexual problems, sexual preferences, or sexual fantasies of the licensee;
- (f) Requesting details of the patient’s sexual history, sexual problems, sexual preferences, or sexual fantasies when not clinically indicated for the type of health care services;

* * *

4731-26-02 Prohibitions

Sexual misconduct, as that term is defined in paragraph (H) of rule 4731-26-01 of the Administrative Code, between a licensee and a patient is never diagnostic or therapeutic.

- (A) A licensee shall not engage in sexual misconduct with a patient or third party, as that term is defined in paragraph (C) of rule 4731-26-01 of the Administrative Code.

4731-26-03 Violations, miscellaneous

(A) Except as otherwise provided in paragraph (C) of this rule, a violation of rule 4731-26-02 of the Administrative Code, as determined by the board, shall constitute the following:

- (1) For a physician, “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

FINDINGS OF FACT

1. On April 6, 2010, Patrick Eugene Muffley, D.O., undertook the care of Patient 1, as identified in a Confidential Key, at Women’s Contemporary Health-Care in Westerville, Ohio. At the time Dr. Muffley undertook the care of Patient 1, she was pregnant. Dr. Muffley treated Patient 1 during her pregnancy, and, following her delivery, he treated Patient 1 for symptoms including post-partum depression. On July 27, 2011, Dr. Muffley saw Patient 1 and instructed her to follow up with him in one month if a certain area of concern had not been resolved.
2. Commencing in or about February 2011, and despite Dr. Muffley’s ongoing physician-patient relationship, Dr. Muffley exchanged communication with Patient 1 that included sexualized comments and sexual fantasy. Examples of such communications Dr. Muffley made to Patient 1 included:
 - Whew glad you can handle nuts safely;
 - I think I likey bad [Patient 1];
 - I was sure hoping for naughty;
 - Well you slowly strip for me. Then I slowly kiss your neck and work my way down your chest and tummy;
 - Slowly untie your scrubs and let them slide down to the floor, you take your top off. Holding you tightly the heat of your body against mine is intoxicating;
 - Lots of kissing to tour [*sic*] neck and chest as my hands slide down the [*sic*] to the small of your back and on your...

Further, Dr. Muffley asked Patient 1 to meet with him.

CONCLUSIONS OF LAW

The acts, conduct, and/or omissions of Patrick Eugene Muffley, D.O., as set forth in Findings of Fact 1 and 2, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as set forth in R.C. 4731.22(B)(20), to wit: Rule 4731-26-02, Prohibitions. Pursuant to Rule 4731-26-03, a violation of Rule 4731-26-02 also constitutes a violation of R.C. 4731.22(B)(6), which is “a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.”

DISCUSSION OF PROPOSED ORDER

It is undisputed that Dr. Muffley violated the Board’s rules concerning physician-patient boundaries and the standard of care. As evidenced by State’s Exhibit 4 and the testimony of Dr. Muffley and Patient 1, Dr. Muffley engaged in sexual misconduct with Patient 1 by exchanging messages with her on Facebook that contained sexual innuendo and sexual fantasy.

Counsel for the parties agreed that this is a case of first impression for the Board because it deals with social media and does not involve any inappropriate physical contact between the physician and patient. Counsel for the parties further agreed that discipline is appropriate in this matter. However, counsel for the parties argued that this Board should not impose the same discipline upon Dr. Muffley as previously ordered in cases in which physicians have had sex with their patients. The Hearing Examiner agrees but notes the following:

Although the Hearing Examiner recognizes that this is the first physician-patient boundary case involving social media only, it does not discount the fact that a physician abused his position of trust with Patient 1 and that, because of his online relationship with Patient 1, a family was adversely affected. According to Patient 1’s family member, this incident “was by far the most horrible thing that’s ever happened to me” and “I feel the way I’d feel if one of my children were molested.” Both Patient 1 and Patient 1’s family member testified that this incident almost destroyed their marriage and has caused stress upon their children. Patient 1 and Patient 1’s family member acknowledged that, as a result of this incident, they have undergone marriage counseling and personal counseling.

However, the Hearing Examiner also finds that there are mitigating factors present in this case. First, Dr. Muffley understands that he has made an error in judgment and has learned from it. Second, Dr. Muffley proactively took courses in *Maintaining Proper Boundaries* in February 2011 before the Board issued the citation. Third, Dr. Muffley has taken remedial measures both in his personal and professional life to assure that this type of incident will never occur again. Finally, Dr. Muffley has had no prior formal disciplinary action before this Board.

Based on the foregoing, the Hearing Examiner recommends a 60-day suspension of Dr. Muffley's certificate and probation for two years. Before applying for reinstatement or restoration, Dr. Muffley must complete a course or courses on personal and professional ethics and physician/patient boundaries. The Hearing Examiner notes that the Board may consider the Vanderbilt courses on Maintaining Proper Boundaries as acceptable education to fulfill the reinstatement condition as it has done in the past. Finally, after Dr. Muffley's license is reinstated or restored, Dr. Muffley must have a third party present during exams/treatment of patients.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Patrick Eugene Muffley, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 60 days.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Muffley's certificate to practice medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Muffley shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Personal/Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the Board, Dr. Muffley shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

3. **Course(s) Concerning Physician/Patient Boundaries:** At the time he submits his application for reinstatement or restoration, or as otherwise approved by the

Board, Dr. Muffley shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

The Board may consider the three-day course completed by Dr. Muffley on *Maintaining Proper Boundaries* at Vanderbilt University as evidence of compliance with this reinstatement condition.

4. **Additional Evidence of Fitness to Resume Practice:** In the event that Dr. Muffley has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of the fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Muffley's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Muffley shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Muffley shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Muffley's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Muffley shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Muffley's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is

rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Third-Party Presence During Exam/Treatment:** Dr. Muffley shall have a third party present while examining or treating obstetric and gynecologic patients.
5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Muffley is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
6. **Required Reporting of Change of Address:** Dr. Muffley shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Muffley's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Muffley violates the terms of this Order in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**


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

In the event that Dr. Muffley provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date

of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Muffley receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Muffley shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Muffley shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Muffley receives from the Board written notification of the successful completion of his probation.
3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Dr. Muffley shall provide a copy of this Order to all persons and entities that provide chemical dependency/abuse treatment to or monitoring of Dr. Muffley. This requirement shall continue until Dr. Muffley receives from the Board written notification of the successful completion of his probation.
4. **Required Documentation of the Reporting Required by Paragraph B:** Dr. Muffley shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



Danielle R. Blue, Esq.
Hearing Examiner

State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 13, 2013

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Steinbergh announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Steinbergh asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Stephen Michael Cardamone, D.O.; Walter Francis Finan, M.D.; Yousuf Masood, M.D.; Jorrod Eugene Miller, L.M.T.; Edward W. Millunchick, M.D.; Gareth J. Morris-Stiff, M.D.; Patrick Eugene Muffley, D.O.; Anil Choudary Nalluri, M.D.; and Anthony Donald Zucco, D.O.

A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Dr. Saferin	- aye
	Dr. Soin	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- aye
	Mr. Kenney	- aye
	Mr. Giacalone	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Dr. Saferin	- aye
	Dr. Soin	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- aye
	Mr. Kenney	- aye
	Mr. Giacalone	- aye

Dr. Steinbergh noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code,

Dr. Sethi	- aye
Dr. Talmage	- abstain
Mr. Kenney	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye

The motion to amend carried.

Dr. Saferin moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Patrick Eugene Muffley, D.O. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Strafford	- abstain
Dr. Bechtel	- abstain
Dr. Saferin	- aye
Dr. Soin	- aye
Dr. Ramprasad	- abstain
Dr. Steinbergh	- abstain
Dr. Sethi	- aye
Dr. Talmage	- abstain
Mr. Kenney	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye

The motion to approve carried.

State Medical Board of Ohio

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

(614) 466-3934
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March 13, 2013

Case number: 13-CRF- 013

Patrick Eugene Muffley, D.O.
2242 Bold Venture Drive
Lewis Center, OH 43035

Dear Doctor Muffley:

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

- (1) On or about April 6, 2010, you undertook the care of Patient 1 at a women's health care clinic in Westerville, Ohio. Patient 1 is identified in the attached Patient Key, which is confidential and shall be withheld from public disclosure. At the time you undertook the care of Patient 1, she was pregnant. You treated Patient 1 during her pregnancy and following her delivery continued to treat her for symptoms including post-partum depression. On or about July 27, 2011, you treated Patient 1 with instructions to her to follow up with you in one month if a certain area of concern had not been resolved.
- (2) Commencing in or about February 2011, and despite your ongoing physician-patient relationship, you exchanged communication with Patient 1 that included sexualized comments and sexual fantasy. Examples of such communication you made to Patient 1 included:
 - Whew glad you can handle nuts safely;
 - I think I likey bad [Patient 1];
 - I was sure hoping for naughty;
 - Well you slowly strip for me. Then I slowly kiss your neck and work my way down your chest and tummy;

Mailed 3-14-13

- Slowly untie your scrubs and let them slide to the floor, you take your top off. Holding you tightly the heat of your body against mine is intoxicating;
- Lots of kissing to tour [*sic*] neck and chest as my hands slide down side [*sic*] to the small of your back and on your . . .

Further, you asked Patient 1 to meet with you.

Your acts, conduct, and/or omissions that occurred on or after November 30, 2010, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code, Prohibitions. Furthermore, pursuant to Rule 4731-26-03, Ohio Administrative Code, violation of Rule 4731-26-02, Ohio Administrative Code, also constitutes violation of Section 4731.22(B)(6), Ohio Revised Code.

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

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

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

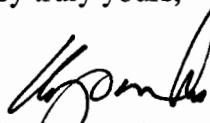
Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate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

Patrick Eugene Muffley, D.O.

Page 3

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Krishnamurthi Ramprasad, M.D.
Acting Secretary

KR/KHM/pev

Enclosures

CERTIFIED MAIL #91 7199 9991 7031 2767 5020

RETURN RECEIPT REQUESTED

cc: Elizabeth Y. Collis, Esq.
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive
Suite 225
Columbus OH 43204

CERTIFIED MAIL #91 7199 9991 7031 2767 5013

RETURN RECEIPT REQUESTED

**IN THE MATTER OF
PATRICK EUGENE
MUFFLEY, D.O.**

13-CRF-013

**MARCH 13, 2013, NOTICE OF
OPPORTUNITY FOR HEARING -
PATIENT KEY**

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