

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

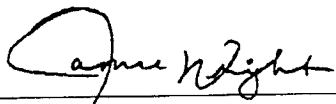
In the Matter of the Accusation Against:)	
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)	
Michael Angelo Basco, M.D.)	MBC File # 800-2016-021288
)	
)	
Physician's & Surgeon's)	
Certificate No. G 88898)	
)	
_____ Respondent.)	

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "CAPTION" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "caption" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the caption will conform to the Board's correct caption.

IT IS HEREBY ORDERED that the caption contained on the Decision Order Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc to show the caption as "In the Matter of the Accusation Against" and the time for action having expired as "5 p.m. on November 10, 2016".

March 2, 2017



Jamie Wright, J.D.,
Chair
Panel A

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Reconsideration of:)
)
Michael Angelo Basco, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 88898)
)
Respondent.)
)
_____)

Case No. 800-2016-021288

**DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by Respondent, and the time for action having expired at 5 p.m. on 11/10/2016, the petition is deemed denied by operation of law.

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	
)	MBC No. 800-2016-021288
Michael Angelo Basco, M.D.)	
)	
Physician's and Surgeon's)	ORDER GRANTING STAY
Certificate No. G 88898)	
)	(Government Code Section 11521)
)	
_____ Petitioner)	

Wendy Wilox, Esq. on behalf of Michael Angelo Basco, M.D., has filed a Petition for Reconsideration of the Decision in this matter with an effective date of November 3, 2016.

Execution is stayed until November 10, 2016.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: October 26, 2016


Kimberly Kirchmeyer
Executive Director
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

Michael Angelo Basco, M.D.)

Case No. 800-2016-021288

**Physician's and Surgeon's)
Certificate No. G 88898)**

Respondent)

_____)

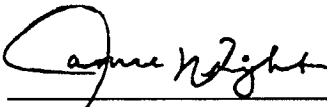
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 3, 2016.

IT IS SO ORDERED October 4, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 

**Jamie Wright, J.D., Chair
Panel A**

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ANGELO BASCO, M.D.,

Physician and Surgeon's Certificate No.
G 88898,

Respondent.

Case No. 800-2016-021288

OAH No. 2016061086

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 1, 2016.

Carolyne Evans, Deputy Attorney General, represented complainant.

Respondent Michael Angelo Basco, M.D., was present and was not represented.

Submission of the matter was deferred to September 9, 2016, for receipt of certified documents from the Maryland Board of Physicians. The certified documents were received on September 6, 2016, and considered. The matter was submitted on September 6, 2016.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer made this accusation in her official capacity as the Executive Director of the Medical Board of California (Board).
2. On March 16, 2011, Physician and Surgeon's Certificate No. G 88898 was issued by the Board to Michael Angelo Basco, M.D. (respondent). Respondent's certificate is renewed and current, and will expire on October 31, 2016.

Cause for Discipline – Discipline, Restriction, or Limitation Imposed by Another State

3. On December 30, 2015, the Maryland Board of Physicians issued a Final Decision and Order (Maryland Order) against respondent. The Maryland Order found that respondent engaged in unprofessional conduct in that he engaged in sexual misconduct with

a patient and an employee. As a result of the unprofessional conduct, the Maryland Board of Physicians ordered that respondent's license be suspended a minimum of six months and that he complete an ethics course pertaining to sexual boundary violations and enroll in the Maryland Professional Rehabilitation Program (MPRP) for evaluation, and if necessary, treatment and compliance with the MPRP's recommendations.

4. Respondent's conduct and the action of the Maryland Board of Physicians constitute unprofessional conduct and conduct subject to discipline within the meaning of the law.

5. Respondent attended a Professional Boundaries Course February 19 – 21, 2016. Respondent presented a letter dated August 11, 2016, from the MPRP stating that he evaluated by Walter W. Windisch, Ph.D., and the clinical team endorses reinstatement of respondent's license based on the statement that respondent does not intend to practice clinical medicine. His license has not been reinstated in Maryland.

6. Respondent presented a Psychological Test Report from Dr. Windisch. The report recommends that respondent would benefit substantially from some form of psychotherapy to address his continuing reactions to his childhood abuse, which will otherwise continue to impair his decision-making in high-stress situations. Respondent has not started psychotherapy.

7. Respondent has a hearing set for November 21, 2016 in Maryland concerning his suspension.

8. Respondent did not present any witnesses or letters of recommendation. On September 26, 2014, in a prior action before the Medical Board of California, respondent's license was subject to discipline by way of a Public Reprimand. That decision is final.

9. Respondent continues to deny any wrongdoing and considers himself the victim of sexual harassment.

10. It would be against the public interest to allow respondent to continue to practice medicine in California. Should respondent's situation change in Maryland, he can petition for reinstatement pursuant to Government Code section 11522.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Factual Findings 3, and 4, cause for disciplinary action exists pursuant to Business and Professions Code sections 2305 (out of state discipline - unprofessional conduct), and 141, subdivision (a) (out of state discipline).

2. The matters set forth in Factual Findings 5 through 10, have been considered in making the following order.

ORDER

Physician and Surgeon's Certificate No. G 88898 issued to respondent Michael Angelo Basco, M.D., is hereby revoked pursuant to the Legal Conclusions set forth above.

DATED: September 12, 2016

DocuSigned by:
Ruth Astle
67DFD3D2A043441

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 800-2016-021288

13 **Michael Angelo Basco, M.D.**
14 **1115 4th Street SE**
Washington, DC 20003

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G88898,**

17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).

25 2. On or about March 16, 2011, the Board issued Physician's and Surgeon's Certificate
26 Number G88898 to Michael Angelo Basco, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
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1 expire on October 31, 2016, unless renewed. However, the Certificate is suspended pursuant to
2 Section 2310(a) of the Business and Professions Code.

3 **JURISDICTION**

4 3. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 4. Section 2227 of the Code provides, in part, that the Board may revoke, suspend for a
7 period not to exceed one year, or place on probation, the license of any licensee who has been
8 found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

9 5. Section 2305 of the Code provides, in part, that the revocation, suspension, or other
10 discipline, restriction or limitation imposed by another state upon a license to practice medicine
11 issued by that state, or the revocation, suspension, or restriction of the authority to practice
12 medicine by any agency of the federal government, that would have been grounds for discipline in
13 California under the Medical Practice Act, constitutes grounds for discipline for unprofessional
14 conduct.

15 6. Section 141 of the Code states:

16 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
17 department, a disciplinary action taken by another state, by any agency of the federal government,
18 or by another country for any act substantially related to the practice regulated by the California
19 license, may be a ground for disciplinary action by the respective state licensing board. A
20 certified copy of the record of the disciplinary action taken against the licensee by another state,
21 an agency of the federal government, or another country shall be conclusive evidence of the
22 events related therein.

23 "(b) Nothing in this section shall preclude a board from applying a specific statutory
24 provision in the licensing act administered by that board that provides for discipline based upon a
25 disciplinary action taken against the licensee by another state, an agency of the federal
26 government, or another country."

27 ///

28 ///

1 **CAUSE FOR DISCIPLINE**

2 **(Discipline, Restriction, or Limitation Imposed by Another State)**

3 7. On or about, December 30, 2015, the Maryland Board of Physicians issued a Final
4 Decision and Order (Maryland Order). The Maryland Order found that Respondent engaged in
5 unprofessional conduct in that he engaged in sexual misconduct with a patient and an employee.
6 As a result of the unprofessional conduct, the Maryland Board of Physicians ordered that
7 Respondent's license be suspended for a minimum of six (6) months and that he complete an
8 ethics course pertaining to sexual boundary violations and enroll in the Maryland Professional
9 Rehabilitation Program (MPRP) for evaluation, and if necessary, treatment and compliance with
10 the MPRP's recommendations.

11 8. Respondent's conduct and the actions of the Maryland Board of Physicians as set
12 forth in paragraph 7, above, and within the actual Maryland Board of Physicians' documents
13 attached as Exhibit A, constitute cause for discipline pursuant to sections 2305 and/or 141 of the
14 Code.

15 **DISCIPLINARY CONSIDERATIONS**

16 9. To determine the degree of discipline, if any, to be imposed on Respondent,
17 Complainant alleges that on or about September 26, 2014, in a prior disciplinary action *entitled In*
18 *the Matter of the First Amended Accusation Against Michael Angelo Basco, M.D.* before the
19 Medical Board of California, in Case Number 16-2013-232621, Respondent's license was subject
20 to discipline by way of a Public Reprimand. That decision is now final and is incorporated by
21 reference as if fully set forth herein.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Medical Board of California issue a decision:

25 1. Revoking or suspending Physician's and Surgeon's Certificate Number G88898,
26 issued to Michael Angelo Basco, M.D.;

27 2. Revoking, suspending or denying approval of Michael Angelo Basco, M.D.'s
28 authority to supervise physician assistants, pursuant to section 3527 of the Code;

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3. Ordering Michael Angelo Basco, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: May 12, 2016



KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A
Maryland Board of Physicians' Final Decision and Order

IN THE MATTER OF	*	BEFORE THE
MICHAEL A. BASCO, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D72935	*	Case Number: 2014-0045

* * * * *

FINAL DECISION AND ORDER

On September 29, 2014, Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") charged Michael A. Basco, M.D., an obstetrician/gynecologist, with unprofessional conduct in the practice of medicine. See Md. Code Ann., Health Occ. § 14-404(a)(3)(ii). Disciplinary Panel B also charged Dr. Basco with sexual misconduct against patients or key third parties. See COMAR 10.32.17. The charges alleged that Dr. Basco touched two patients in a sexual manner and acted in an inappropriate manner toward three coworkers. The case was forwarded to the Office of Administrative Hearings ("OAH") for an evidentiary hearing and a proposed decision. Prior to Dr. Basco's evidentiary hearing, the Administrative Law Judge (the "ALJ") denied Dr. Basco's motion *in limine* to exclude State's exhibits 2 through 16, which concerned Dr. Basco's prior disciplinary history.

Following an eight-day hearing, the ALJ issued a proposed decision on July 23, 2015. The ALJ found that Dr. Basco was guilty of unprofessional conduct in the practice of medicine and sexual misconduct against Patient B by inappropriately handling her breasts, lowering her pants, and commenting on her appearance. The ALJ also found that Dr. Basco acted unprofessionally by placing ice down the pants of a co-worker, Employee A. The ALJ did not find that Dr. Basco committed unprofessional conduct or sexual misconduct against Patient A, nor did the ALJ find that Dr. Basco committed unprofessional conduct in his actions related to

Employee B or Employee C. The ALJ recommended: a (1) six-month suspension; (2) one-year probation; (3) evaluation as recommended by the Maryland Professional Rehabilitation Program; and (4) enrollment in an ethics course. Both the State and Dr. Basco filed exceptions. On October 14, 2015, Disciplinary Panel A of the Board (“the Panel”) heard arguments on the parties’ exceptions.

FINDINGS OF FACT

The Panel adopts the ALJ’s Proposed Findings of Fact. The ALJ’s Proposed Findings of Fact (pages 8-26) are incorporated by reference into the body of this document as if set forth in full. *See* attached ALJ Proposed Decision, Exhibit 1. The Panel also adopts the ALJ’s discussion set forth on pages 26-51, except as otherwise provided herein. The factual findings were proven by a preponderance of the evidence.

To summarize, at his first employer (“Physician A’s office”), with respect to Employee A and Patient B, the ALJ found that Dr. Basco engaged in unprofessional conduct. The ALJ found that Dr. Basco placed ice down Employee A’s pants (the “ice incident”). Concerning Patient B, Dr. Basco directed and assisted her in lifting her shirt and placed a stethoscope on her chest. While performing this examination, Dr. Basco handled Patient B’s breasts while positioning the stethoscope. He lowered Patient B’s pants, exposing her buttocks, felt her spine in several places, and, after pulling up her pants, told her “you look cute and everything is fine.” The Panel adopts these findings.

The ALJ found that there was insufficient evidence to establish unprofessional conduct based upon the allegations of Patient A, which occurred at Dr. Basco’s second employer’s office. Because Patient A had been under the anesthetic Ketamine when alleged sexual contact

occurred, the ALJ found her perceptions unreliable. The Panel adopts the ALJ's findings that there was insufficient evidence to support allegations pertaining to Patient A.

The ALJ also found that there was insufficient evidence to establish unprofessional conduct based upon the pertaining to Employees B and C at Physician A's office. The ALJ found that Dr. Basco became agitated in the presence of Employee B and shook her desk and kicked the wall. The ALJ concluded that these actions did not rise to the level of unprofessional conduct. The Panel adopts the ALJ's conclusion. Dr. Basco was also charged based on allegations by Employee C that there was a list of patients who refused to see Dr. Basco and that he routinely saw patients without a chaperone. The ALJ found insufficient evidence to support these allegations and the Panel adopts the ALJ's finding that there was no unprofessional conduct with regard to Employee C as alleged in Paragraph 29 of the charging document.

UNDISPUTED ISSUES

Before addressing the exceptions filed by the parties, the Panel notes that Dr. Basco did not file any exceptions pertaining to the ice incident with Employee A. The ALJ found that placing ice down Employee A's pants was unprofessional behavior that degrades the atmosphere of professionals in the office, diminishes the safety of a medical environment, and reflects poorly on the medical profession. The Panel adopts the ALJ's undisputed findings of facts, conclusion of law, and discussion related to this incident.

The Panel also notes that the State did not file any exceptions to the ALJ's failure to find a violation related to Employee C's allegations of unprofessional conduct. The charges alleged that patients complained to Employee C about Dr. Basco's inappropriate comments, that the practice kept a list of patients who refused to see him, and that he routinely saw patients without a chaperone. The ALJ found the charges were not supported by the evidence. The Panel adopts

the ALJ's finding that the charges in paragraph 29 of the charging document related to Employee C were unsupported by the evidence.

Dr. Basco filed an exception ("exception 1") regarding the ALJ's failure to formally dismiss the charges related to Employee C. The State responded that the issue was moot. The Panel concludes that it cannot dismiss the charge of unprofessional conduct because the Panel finds Dr. Basco acted unprofessionally related to Patient B and Employee A. *See Geier v. State Bd. of Physicians*, 223 Md. App. 404, 440 (2015). The Panel does note, however, that its finding of unprofessional conduct is based solely on Dr. Basco's conduct related to Employee A and Patient B.

EXCEPTIONS

I. Prior discipline is admissible for sanctioning purposes - (Respondent Exception 5)

Dr. Basco filed an exception to the admission of State's Exhibits 2-16 at the hearing, which consisted of prior disciplinary actions against Dr. Basco. Dr. Basco argued in his exceptions that these exhibits had no probative value, were highly prejudicial, and were improperly admitted before a finding of culpability.

The Panel finds that the ALJ correctly admitted this evidence. Dr. Basco claims that the evidence was improperly admitted before a finding of culpability. The Office of Administrative Hearings, however, does not conduct bifurcated hearings separating culpability findings and sanctions. COMAR 28.02.01. To admit this evidence, the State was required to introduce it at the hearing. Under State Gov't § 10-213(a)(1), "[e]ach party in a contested case shall offer all of the evidence that the party wishes to have made part of the record."

The Panel finds that evidence of Dr. Basco's prior disciplinary history was probative for deciding a sanction. The Board's regulations specifically list prior disciplinary history as an

aggravating factor that should be considered by a Panel. COMAR 10.32.02.09B(6)(a) (“Aggravating factors may include[:] . . . [t]he offender has a previous . . . administrative disciplinary history[.]”). The Panel, therefore, rejects Dr. Basco’s assertion that this evidence was not probative. Because the evidence of prior discipline was probative, the ALJ appropriately admitted the evidence. State Gov’t § 10-213(b).

Dr. Basco argues that evidence of his prior disciplinary history was irrelevant to the charges and placed Dr. Basco in a bad light.¹ Here, the admission of prior disciplinary history did not prejudice the ALJ because the prior discipline was only considered for sanctioning purposes and not to prove the underlying claims. *See* ALJ’s Proposed Decision at 47-48. The ALJ’s proposed decision does not discuss, allude to, or consider the prior discipline for any reason other than determining the appropriate sanction.

Dr. Basco implies that the evidence is prejudicial because the ALJ would not be able to separate the prejudicial nature of the documents from the proper purpose of considering a sanction. But, “[i]t is well settled that a legally trained judge, unlike a lay jury, is capable of compartmentalizing his thinking and of preventing knowledge which might inflame a jury from influencing his own decisions.” *Ehrlich v. State*, 42 Md. App. 730, 739–40 (1979) (citing *State v. Hutchinson*, 260 Md. 227 (1970)). “[I]t is clear that we have consistently reposed our confidence in a trial judge’s ability to rule on questions of admissibility of evidence and to then assume the role of trier of fact without having carried over to his factual deliberations a prejudice on the matters contained in the evidence which he may have excluded.” *Graves v. State*, 298 Md.

¹ Dr. Basco also challenges the ALJ’s proposed decision because the ALJ failed to consider Dr. Basco’s disciplinary history when evaluating whether he had similar allegations in the past. Panel A cannot reconcile Dr. Basco’s objection to the Board admitting such information with his objection to failing to consider such information. The Panel only considered this discipline in ruling on whether to adopt the ALJ’s proposed sanction.

542, 547 (1984) (quoting *State v. Hutchinson*, 260 Md. 227, 236 (1970)). Compartmentalization, that is, “I may know something for certain purposes, but I don't know it for other purposes,” is considered “[m]other’s milk” for judges, and “[w]e trust the judge to compartmentalize.” *Polk v. State*, 183 Md. App. 299, 306-07 (2008). Both the ALJ and the Panel have the expertise to compartmentalize the determinations of underlying culpability and the sanction.

Dr. Basco also objected to the admission of the evidence of prior discipline because he claims it was repetitious. In other words, there were three underlying original cases that resulted in multiple reciprocal actions by other jurisdictions. The ALJ acknowledged the repetition, noting in her proposed decision that “[t]he majority of sanctions imposed upon the Respondent by various jurisdictions were due to reciprocity between jurisdictions, rather than a multiplicity of violations.” ALJ Proposed Decision at 47. The Panel thus considers Dr. Basco’s prior discipline with full awareness that exhibits 2-16 reflect three prior incidents that resulted in two disciplinary actions by the Board.

Dr. Basco also argues that the Panel should not consider prior consent orders because the orders “were settlement agreements and no party should be able to use settlements to prove liability for, or validity of, a charges in those actions.” The Board’s regulations do not limit consideration of prior discipline to non-consent orders, but instead includes all disciplinary actions. COMAR 10.32.02.09B(6)(a) (“Aggravating factors may include . . . [t]he offender has a previous criminal or administrative disciplinary history[.]”). Maryland courts have approved a health occupations board’s consideration of prior consent orders as evidence of prior discipline in consideration of imposing incremental discipline when determining sanctions. *See Rosov v. Maryland State Bd. of Dental Examiners*, 163, Md. App. 98, 121 (2005). Dr. Basco’s exception is denied.

II. Testimony Regarding the Use of a Chaperone - (Respondent Exception 2)

Dr. Basco claims that the ALJ ignored evidence that Dr. Basco consistently had a chaperone with him when examining patients. He cites seven witness statements to demonstrate that he consistently used a chaperone. Dr. Basco claims that the Panel should find that he used a chaperone and, therefore, was not alone in the room with Patient B, as she alleged.

Of Dr. Basco's seven witness statements, the majority do not support his claim that he used a chaperone. Two witness statements do not concern his use of a chaperone at all. Specifically, a former patient of Dr. Basco did not testify about Dr. Basco's use of a chaperone and the Acting Human Resources Director at his second employer, did not testify about Dr. Basco's use of a chaperone.

Physician A, Dr. Basco's former employer, discussed chaperones in his testimony, but did not verify that Dr. Basco used a chaperone. Rather, he testified that a team of people were *available* to Dr. Basco to serve as a chaperone.

Dr. Basco presented written statements from a medical assistant who worked with Dr. Basco at Physician A's office and a nurse co-worker at his second employer. The medical assistant stated that she never saw Dr. Basco enter a patient room without a chaperone. The nurse stated that she did not see Dr. Basco alone with a patient.

Two other witnesses who describe Dr. Basco's use of a chaperone were Employee C, a receptionist/assistant at the Physician A's office, and Employee D, a nurse midwife at Physician A's office. These witnesses also testified about the specific day at issue regarding Patient B. The ALJ deemed these witnesses' statements to be "questionable, if not overtly false." Employee D testified that she herself was the chaperone for Dr. Basco and Patient B on June 18, 2012. This testimony was untrue. Employee D's testimony was contradicted by rebuttal

witnesses, who presented convincing evidence that Employee D was out of the office on June 18, 2012. Accordingly, the Panel does not find Employee D's testimony regarding Dr. Basco's use of a chaperone credible. Employee C testified that Patient B was rushed and angry when she departed from the office. The ALJ deemed this to be unlikely and thus, the ALJ did not find her testimony credible. The Panel adopts the ALJ's credibility determination regarding Employee C.²

Patient B testified that Dr. Basco touched her breasts and back and lowered her pants to reveal her buttocks. The ALJ found Patient B's demeanor supported her testimony. The ALJ found that Patient B's testimony was sincere, specific, consistent, straightforward, and steady. The Panel accepts the ALJ's credibility determination of Patient B.

In contrast, the ALJ found that Dr. Basco's testimony describing their encounter was "embellished, exaggerated, and dramatized as to diminish his credibility." ALJ Proposed Decision at 42. The ALJ rejected Dr. Basco's suggestions about Patient B's motives for lying. The Panel also rejects this claim. In sum, the ALJ questioned Dr. Basco's interpretation of events and declared his version of events flimsy and rebutted. The Panel accepts this finding.

After considering the witness statements and testimony presented by Dr. Basco regarding his practice of using a chaperone and the direct testimony of Dr. Basco, Patient B, Employee C, and Employee D about the June 18, 2012 examination of Patient B, the Panel concludes that the ALJ correctly determined that Dr. Basco sexually touched Patient B.

² Dr. Basco also argues that the ALJ should have considered Dr. Basco's prior disciplinary history as proof of his use of a chaperone. As mentioned previously, however, Dr. Basco had argued the opposite, that the ALJ should not have admitted Dr. Basco's prior discipline at all. The Panel agreed with the ALJ's use of the prior discipline in this case only for purposes of considering a sanction.

III. Investigator's and Physician A's Statements – (Respondent's Exception 3)

Dr. Basco argues that the ALJ erred by failing to consider testimony of Physician A or the investigator that he hired related to the investigation conducted regarding the allegations of Patient B. Physician A hired an attorney to investigate Patient B's complaint. The investigator reviewed Patient B's written complaint and interviewed Dr. Basco over the telephone. The investigator did not interview Patient B. The investigator did not attempt to locate or identify the chaperone that Dr. Basco claimed was present at the appointment, nor did he interview any chaperone. Physician A and the investigator concluded that Dr. Basco did not engage in the conduct alleged by Patient B. The investigator testified at the hearing before the ALJ about Dr. Basco's denial of Patient B's allegations. Dr. Basco asks the Panel to consider the conclusions of these witnesses and reject the conclusions of the ALJ. The Panel denies this request.

Dr. Basco suggests that the ALJ should have relied on the investigator's investigation and adopted his conclusion, and, by implication, discounted her own credibility determinations. In contrast to the investigator's phone interview with Dr. Basco, the testimony heard by the ALJ was in-person and under oath. The ALJ observed testimony from each of the persons who claimed to be present: Patient B, Dr. Basco, and the alleged chaperone, Employee D. The Panel rejects Dr. Basco's suggestion that the ALJ should have disregarded her own impressions of the live testimony and instead should have substituted the investigator's second-hand impressions.

In addition, Maryland law does not permit opinion testimony on the credibility of other witnesses. *Riggins v. State*, 155 Md. App. 181, 206 (2004). "It is the settled law of this State that a witness, expert or otherwise, may not give an opinion on whether he believes a witness is telling the truth. Testimony from a witness relating to the credibility of another witness is to be rejected as a matter of law." *Bohnert v. State*, 312 Md. 266, 278 (1988). "Whether a witness on

the stand personally believes or disbelieves testimony of a previous witness is irrelevant, and questions to that effect are improper, either on direct or cross-examination.” *Id.* at 277. In his exceptions, Dr. Basco highlights in bold and underlines the sections of the investigator’s testimony related to whether he believed Dr. Basco was telling the truth and the reasons for that belief. The Panel finds this evidence improper witness bolstering and gives it little weight.

Dr. Basco also asks the Panel to find that Physician A was correct when he concluded that there was no “concrete evidence” of sexual misconduct by Dr. Basco. According to State Gov’t § 10-213(d), the Panel may exclude evidence that is incompetent, irrelevant or immaterial. Generally, opinions by lay witnesses are “limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” Md. Rule 5-701. Crucially, the admissibility is premised on the fact that it is “derived from first-hand knowledge.” *Robinson v. State*, 348 Md. 104, 118 (1997). Lay opinion based on information learned from third parties rather than first-hand knowledge is generally inadmissible. *Smith v. State*, 182 Md. App. 444, 491 (2008). In *Smith*, the Court of Special Appeals found that a detective was not permitted to offer an opinion based on the hearsay statements of the witnesses rather than first-hand knowledge. Physician A’s opinion about sufficiency of the evidence against Dr. Basco was based on the investigator’s oral report relaying his interview with Dr. Basco, not based on Physician A’s first-hand knowledge. The Panel declines to give Physician A’s opinion any weight and concludes that the ALJ properly decided not to adopt Physician A’s opinion.

IV. Adequacy of the Charges – (Respondent’s Exception 4)

Dr. Basco claims that the ALJ committed error because she failed to find that the Board’s investigation was incomplete and inadequate to support the charges. The adequacy of the

investigation was not an issue before the ALJ and is not an issue before the Panel. The Panel, like the ALJ, makes its determination of factual findings and conclusions of law regarding Dr. Basco's alleged unprofessional conduct and sexual misconduct based on the testimony of witnesses and admission of exhibits at the OAH hearing.

V. State's Exceptions

The State argues that the Panel should reject the ALJ's conclusion that there was insufficient evidence to find that Dr. Basco sexually violated Patient A. The Panel declines to do so. The Panel adopts the ALJ's finding that there is insufficient evidence to prove sexual misconduct because Patient A was under the anesthetic Ketamine when the sexual abuse was alleged. The State also argues that Dr. Basco's outburst related to Employee B was unprofessional conduct. The Board adopts the ALJ's finding that this outburst was not unprofessional conduct in the practice of medicine.

CONCLUSIONS OF LAW

The Panel concludes that Dr. Basco is guilty of unprofessional conduct in the practice of medicine in violation of § 14-404(a)(3)(ii) of the Health Occupations Article based on his inappropriate sexual touching of Patient B and his putting ice down Employee A's pants. The Panel also concludes that Dr. Basco's conduct related to Patient B was sexual misconduct in violation of COMAR 10.32.17.03. The Panel concludes that Dr. Basco's conduct related to Patient A, Employee B, and Employee C does not constitute unprofessional conduct in the practice of medicine.

SANCTION

The Panel has considered Dr. Basco's current sexual violation committed against Patient B and the unprofessional conduct related to the ice incident with Employee A. The Panel also has considered Dr. Basco's prior Maryland disciplinary history including (1) a reciprocal action

based on a medical recordkeeping violation and (2) a nine month suspension followed by eighteen months probation with terms and conditions based on unprofessional conduct in the practice of medicine, failing to meet the standard of care, failing to keep adequate medical records, and practicing medicine with an unauthorized person. The Panel declines to assign any weight to Exhibits 2 and 3 because these disciplinary actions by other states occurred outside of Maryland, over 12 years ago, and prior to Dr. Basco's receiving his Maryland license. The Panel adopts the sanction recommended by the ALJ with modifications. The Panel will suspend Dr. Basco's license for six months followed by one year of probation. The Panel will also require Dr. Basco to be evaluated through the Maryland Professional Rehabilitation Program (the "MPRP"), and, if necessary to be enrolled in the MPRP for monitored treatment. In addition, the Panel will require that Dr. Basco take an ethics course focused on boundary issues.

ORDER

It is, by an affirmative vote of a majority of a quorum of Disciplinary Panel A, hereby

ORDERED that fifteen days after the date of this Order, the license of Michael A. Basco, M.D. is **SUSPENDED** for a minimum of **SIX MONTHS** and until Dr. Basco has fully satisfactorily complied with the following requirements:

1. Dr. Basco shall complete an ethics course pertaining to sexual boundary violations. Dr. Basco shall submit to the Board written documentation regarding the particular course he proposes to fulfill this condition. The Board reserves the right to require Dr. Basco to provide further information regarding the course he proposes, and further reserves the right to reject his proposed course and require submission of alternative proposals. The Board will approve a course only if it deems the curriculum and the duration of the course adequate to fulfill Dr. Basco's education needs. The course may not be used to fulfill continuing medical education credits required for license renewal. Dr. Basco shall be responsible for all costs incurred in fulfilling the course requirements and for submitting written documentation to the Board of his successful completion of the course;
2. Within fifteen days, Dr. Basco shall enroll in the Maryland Professional

Rehabilitation Program ("MPRP") for evaluation and, if necessary, treatment;

3. Once enrolled in the MPRP, Dr. Basco shall undergo an evaluation by the MPRP or its agents to determine whether Dr. Basco is able to appropriately manage his behavior with regard to his interactions staff and patients professionally, and what conditions, if any, are appropriate for his return to practice;
4. Dr. Basco shall fully cooperate in the evaluation and, if necessary, treatment, including complying with all of the MPRP's recommendations. Dr. Basco shall provide the MPRP with all records and information requested by the MPRP, and Dr. Basco shall sign any written release/consent forms to ensure that the MPRP is able to obtain all records and information including treatment information and mental health records and information, necessary for complete and thorough evaluation and treatment;
5. Should the MPRP recommend it, Dr. Basco may be required to enter into a Board-monitored Participant Rehabilitation Agreement. Dr. Basco shall fully and timely cooperate and comply with all the MPRP recommendations, referrals, rules, and requirements including, but not limited to, the terms and conditions of any Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered into with the MPRP, including any treatment and evaluations recommended by the MPRP;
6. Dr. Basco shall sign any written release/consent forms, and update them, as required by the Panel and the MPRP. Specifically, Dr. Basco shall sign any written release/consent forms required by the Panel to authorize the MPRP to make verbal and written disclosures to the Panel, including disclosure of any and all MPRP records and files.

IT IS FURTHER ORDERED that once the MPRP completes its evaluation, the Panel will review the evaluation and meet with Dr. Basco and the administrative prosecutor. The Panel will then determine whether to terminate the suspension based on whether Dr. Basco presents a risk to patient safety; and it is further

ORDERED that if the Panel declines to terminate the suspension, then Dr. Basco shall continue treatment with the MPRP until such time that the Panel determines that he is not a risk to patient safety; and it is further

ORDERED that if the Panel votes to terminate the suspension, the Panel will determine appropriate probationary terms and conditions, if any, to be imposed; and it is further;

ORDERED that when the Panel votes to terminate the suspension of Dr. Basco's license, Dr. Basco shall be placed on **PROBATION** for a minimum of one year from the date of the termination of the suspension and Dr. Basco shall fully, timely, and satisfactorily cooperate and comply with all terms and conditions imposed by the disciplinary panel upon termination of Dr. Basco's suspension; and it is further

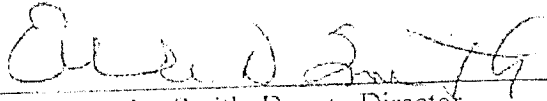
ORDERED that if Dr. Basco fails to comply with any condition of the suspension, probation, or this Final Decision and Order, the Board or Disciplinary Panel, after notice and an opportunity to be heard, may impose any sanction which the Board or Panel may have imposed in this case under section 14-404(a) or 14-405.1 of the Health Occupations Article, including additional probation, a reprimand, suspension, revocation, or a civil monetary penalty; and it is further

ORDERED that after one year from the date of his commencement of his probation, Dr. Basco may submit a written petition to the Board requesting termination of the probation. After consideration of the petition, the probation may be terminated through an order of Disciplinary Panel A. Disciplinary Panel A will grant the termination if Dr. Basco has fully and satisfactorily complied with all of the terms of probation; and it is further

ORDERED that Dr. Basco is responsible for any costs incurred in fulfilling the terms of this Order; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101-4-601 (2014).

12/30/15
Date


Ellen Douglas Smith, Deputy Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408(a), Dr. Basco has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

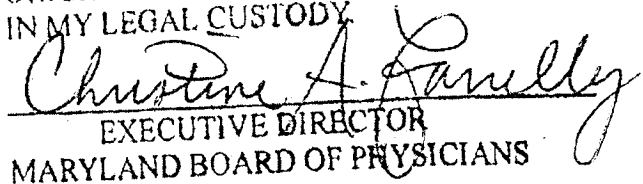
If Dr. Basco files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215

Notice of any petition should also be sent to the Board's counsel at the following address:

David S. Finkler
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201

I HEREBY ATTEST AND CERTIFY UNDER
PENALTY OF PERJURY ON 3/16/16
THAT THE FORGOING DOCUMENT IS A
FULL, TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE AND
IN MY LEGAL CUSTODY.


EXECUTIVE DIRECTOR
MARYLAND BOARD OF PHYSICIANS