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

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| In the Matter of the Accusation Against<br><br>Nihar Bhavesh Gala, M.D.<br><br>Physician's and Surgeon's Certificate No. A 143658<br><br>Respondent. | Case No. 800-2019-055916 |

## 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 February 10, 2021.

IT IS SO ORDERED January 11, 2021.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

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

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

**NIHAR BHAVESH GALA, M.D.,**

**Physician's and Surgeon's Certificate No. A 143658**

**Respondent.**

**Agency Case No. 800-2019-055916**

**OAH No. 2020080115**

## PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 3, 2020, by videoconference.

Supervising Deputy Attorney General Jane Zack Simon represented complainant William J. Prasifka, Executive Officer of the Medical Board of California.

Attorney Fredrick M. Ray represented respondent Nihar Bhavesh Gala, M.D., who was present for the hearing.

The matter was submitted for decision on December 3, 2020.

## FACTUAL FINDINGS

1. The Medical Board of California (CA Board) issued Physician's and Surgeon's Certificate No. A 143658 to respondent Nihar Bhavesh Gala, M.D., on July 7, 2016. This certificate expired July 31, 2020.

2. Effective June 11, 2020, the CA Board suspended respondent from practicing medicine in California, because of the Delaware disciplinary order described below in Finding 9. The suspension remained in effect at the time of the hearing.

3. Acting in her official capacity as Interim Executive Director of the CA Board, Christine J. Lally filed an accusation against respondent on March 17, 2020. Complainant William J. Prasifka later replaced Lally as the CA Board's Executive Director.

4. Complainant seeks revocation of respondent's California physician's and surgeon's certificate on the ground that the Delaware Board of Medical Licensure and Discipline (DE Board) has revoked respondent's Delaware medical license for conduct that qualifies under California law as unprofessional conduct.

5. Respondent requested a hearing on his suspension (described in Finding 2) and on the accusation (described in Findings 3 and 4).

### Education and Professional History

6. Respondent graduated from medical school in 2012. He began but did not complete a residency in neurological surgery.

7. In 2015, respondent received a license to practice medicine in Delaware, and began working as a primary care physician in walk-in and urgent care clinics in

Delaware. He obtained his California physician's and surgeon's certificate because he thought he might accept a temporary assignment in California, but he has never practiced here.

8. Respondent currently serves as the administrative and business manager for a medical practice in Delaware. He has no clinical role in that practice, and no plan to begin practicing medicine in California.

## Delaware Disciplinary Order

9. The DE Board revoked respondent's Delaware medical license effective June 4, 2019.

10. Respondent appealed this order to the Delaware Superior Court, which affirmed the order. At the time of the hearing, respondent's further appeal was pending before the Supreme Court of Delaware.

11. The DE Board found, after a four-day evidentiary hearing, that respondent had prescribed and provided opioid medications to a patient who was dependent on those drugs, and had "made repeated sexual advances and requested certain sexual favors from [the patient] that she complied with for fear of losing her prescriptions for controlled substances." These events occurred in late 2016, less than two years after respondent had left residency and begun practicing primary care medicine in Delaware. The DE Board characterized respondent's actions as violating several statutes and regulations governing medical practice in Delaware, and revoked respondent's Delaware medical license because his behavior toward the patient was "inexcusable."

## Rehabilitation

12. Respondent testified about the events that caused the DE Board to revoke his Delaware license, but his testimony conflicts with the DE Board's factual findings. In particular, respondent denied having had any sexual relationship with the patient, stating that she was able at the DE Board hearing to describe his home only because he had hired her to clean it. Respondent also testified that he had prescribed opioid medications to the patient carefully, in accordance with sound medical practices, as a pain management trial. Aside from its inconsistency with the DE Board's findings, respondent's hearing testimony about these events is not credible.

13. Respondent regrets having taken on a high-risk patient, having attempted to treat her with opioids, and having developed any personal relationship with her. He did not testify to having taken any courses about professional boundaries or to having undergone any peer counseling or psychotherapy, but testified that he understands professional boundaries much more clearly now than he did in 2016.

14. Respondent provided character reference letters from several patients who praised his care, and from a friend. Some of the patients state that they do not believe that the events on which the DE Board based its revocation order occurred. Others, and the friend, do not state directly that they disbelieve the facts the DE Board found; they do state that they believe respondent to have learned from his "mistakes," such as the mistake of having allowed an unstable patient to mischaracterize his actions.

## LEGAL CONCLUSIONS

1. Discipline against a medical license respondent holds in another state, on grounds that would have been cause for discipline in California, is cause for discipline against respondent's California physician's and surgeon's certificate. (Bus. & Prof. Code, § 2305.) The out-of-state disciplinary order itself is "conclusive evidence" of the facts the order states. (*Id.*, § 141, subd. (a).)

2. The CA Board may suspend a California physician's and surgeon's certificate if another state's medical licensing agency suspends or revokes that physician's medical license. (Bus. & Prof. Code, § 2310, subd. (a).) An administrative law judge may rescind the suspension if the suspended physician shows that the other state's suspension was on grounds that would not have been cause for discipline in California, or if the other state lifts the order. (*Id.*, subd. (c).)

3. A physician's sexual misconduct with a patient, including specifically the act of trading drugs or access to them for sex, is cause for professional discipline in California. (Bus. & Prof. Code, §§ 726, subd. (a), 729, 2234, 2242; Health & Saf. Code, § 11153, subd. (a).)

4. The matters stated in Finding 9 constitute discipline against respondent's Delaware medical license. The matters stated in Finding 11 confirm that the DE Board's reasons for revoking respondent's Delaware medical license constitute cause as well for disciplinary action in California. These matters constitute cause under Business and Professions Code section 2305 for the CA Board to take disciplinary action against respondent, and cause under Business and Professions Code section 2310 for the CA Board to have suspended respondent's physician's and surgeon's certificate.

5. The matters stated in Finding 10 show that the DE Board could lift its order revoking respondent's Delaware medical license, but they do not show that the DE Board has lifted that order. These matters do not constitute cause to rescind the California suspension order described in Finding 2.

6. The CA Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines, 12th Edition 2016" (Cal. Code Regs., tit. 16, § 1361, subd. (a)), call for a minimum of seven years' probation for a physician who has committed sexual misconduct with a patient. The matters stated in Findings 7 and 8 do not show, however, that the CA Board effectively could supervise respondent on probation. Furthermore, the matters stated in Findings 12 through 14 show no insight by respondent into his own behavior, and no rehabilitation whatsoever. Revocation of respondent's California physician's and surgeon's certificate is necessary to protect public safety.

## ORDER

1. The order of suspension effective June 11, 2020, for Physician's and Surgeon's Certificate No. A 143658, held by respondent Nihar Bhavesh Gala, M.D., is affirmed.

2. Physician's and Surgeon's Certificate No. A 143658, held by respondent Nihar Bhavesh Gala, M.D., is revoked.

DATE: 12/14/2020

Juliet E. Cox

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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

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|---|---|
| In the Matter of the Accusation Against:<br><br>**NIHAR BHAVESH GALA, M.D.**<br>12 Stephanie Court<br>Berlin, NJ 08009<br><br>Physician's and Surgeon's Certificate<br>No. A143658<br><br>Respondent. | Case No. 800-2019-055916<br><br>**A C C U S A T I O N** |

## PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On July 7, 2016, the Medical Board issued Physician's and Surgeon's Certificate Number A 143658 to Nihar Bhavesh Gala, M.D. (Respondent). The Physician's and Surgeon's Certificate is renewed and current with an expiration date of July 31, 2020.

## JURISDICTION

3. This Accusation is brought before the Medical Board of California under the authority of the following sections of the California Business and Professions Code (Code) and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has

been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

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

C. Section 141 of the Code provides:

> "(a) For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or by another country shall be conclusive evidence of the events related therein.
>
> "(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by the board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

## FIRST CAUSE FOR DISCIPLINE

### (Discipline, Restriction, or Limitation Imposed by Another State)

4. On June 4, 2019, the Delaware Board of Medical Licensure and Discipline issued a Final Board Order permanently revoking Respondent's Delaware medical license. The license revocation was based on findings that Respondent, who operated a pain management and addiction treatment practice, initiated treatment in 2016 of a patient with a history of substance abuse and treatment with Suboxone. Respondent took the patient off Suboxone, and instead prescribed opioids, including oxycodone, fentanyl and OxyContin. During his treatment of the patient, Respondent made repeated sexual advances and requested sexual favors that the patient complied with for fear of losing her prescriptions for controlled substances. A copy of the Final

Board Order issued by the Delaware Board of Medical Licensure and Discipline is attached as Exhibit A.

5. Respondent's conduct and the action of the Delaware Board of Medical Licensure and Discipline as set forth in in paragraph 4, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the Code.

**PRAYER**

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 143658, issued to Nihar Bhavesh Gala, M.D.;

2. Revoking, suspending or denying approval of Nihar Bhavesh Gala, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Nihar Bhavesh Gala, 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: MAR 17 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

Certified True Copy
Delaware Division of Professional Regulation

**BEFORE THE DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

| | | |
|---|---|---|
| **IN RE: NIHAR BHAVESH GALA, M.D.** | ) | **Case No.: 10-107-16** |
| | ) | |
| **LICENSE NO.: C1-0011360** | ) | **FINAL BOARD ORDER** |

**ORDER**

At its meeting on May 7, 2019, the Board of Medical Licensure and Discipline considered the recommendation of the hearing officer. A hearing was held before the hearing officer on March 11-15, 2019 and the hearing officer recommendation was mailed out to Dr. Gala and the State, pursuant to 29 *Del. C.* § 8735(v)(1)d, on April 12, 2019. Written exceptions were received from both Dr. Gala and the State, and both parties addressed the Board at its May 7, 2019 meeting. This is the Board's final disciplinary order in this matter. The duly appointed hearing officer has filed the attached written report in which the hearing officer makes a number of findings of fact, which the Board is bound by pursuant to 29 *Del. C.* § 8735(v)(1)d. Some of those findings of fact are highlighted herein.

The hearing officer found as a matter of fact that Dr. Gala is a medical doctor licensed by this Board since 2015. The hearing officer found as a matter of fact that at some point in the fall of 2016, the relationship between Dr. Gala and Dr. A[redacted] with whom Dr. Gala worked, deteriorated substantially. Dr. Gala testified that Dr. A[redacted] began barring Dr. Gala from the electronic medical records system, and this caused Dr. Gala to keep some medical charting on a laptop. Dr. Gala sent the laptop to India so that "an unnamed person" could extrapolate the medical charts from the laptop. The laptop was then lost and could not be forensically examined by the State. Dr. Gala testified that he was able to print out the charts, and these were produced to the State months after the initial subpoena to Dr. Gala's practice, because the paper records were in the custody of Dr. Gala or his counsel. The hearing officer found as a matter of fact that the records

submitted by Dr. Gala, that he alleged were created during the course of his treatment of S.G. on his personal laptop and later extracted, were not created simultaneous with the medical care which it purports to document and were created after the fact.

The remaining findings of fact pertain to Dr. Gala's treatment of one patient, S.G. The hearing officer found as a matter of fact that Dr. Gala began treating S.G. in September of 2016, at which time she initially presented as a patient with a history of substance abuse and treatment with Suboxone. Dr. Gala indicated S.G. was seeking treatment for "pain management" and prescribed her Oxycodone 10 mg, one every 12 hours. At S.G.'s second visit one month later, Dr. Gala renewed the prescription for Oxycodone and added Fentanyl film. S.G.'s urine drug screen at her second visit was positive for the Oxycodone, and other controlled substances not prescribed by Dr. Gala. At S.G.'s last documented visit one week later, Dr. Gala switched the Fentanyl film prescription for OxyContin 20 mg, in addition to the Oxycodone 10mg she was already taking.

In addition to the documented office visits, the hearing officer found as a matter of fact that Dr. Gala prescribed Oxycodone 20 mg IR and Dilaudid in November 2016. In December 2016, the hearing officer found that S.G. spoke with two employees of Dr. Gala's practice about an improper and unethical sexual relationship she was having with Dr. Gala. On January 11, 2017, the hearing officer found that S.G. made the same report to the Delaware State Police. The hearing officer found that during the time the medical records reflect Dr. Gala was treating S.G., Dr. Gala made repeated sexual advances and requested certain sexual favors from S.G. that she complied with for fear of losing her prescriptions for controlled substances.

Conclusions of Law

As a result of the findings of fact, the hearing officer made a number of recommended conclusions of law. The hearing officer recommends that the Boar find Dr. Gala violated 24 *Del.*

*C.* § 1731(b)(1) insofar as he created and offered records that were created two years after the care he provided for S.G. and represented thy were prepared contemporaneously with his treatment. The hearing officer recommends the Board find as a matter of law that Dr. Gala engaged in fraudulent, deceitful, dishonest or unethical practices by his creation of these records.

The hearing officer next recommends a finding of unethical conduct in violation of Section 1731(b)(1) as a result of Dr. Gala's sexual relationship with S.G., a known drug addict who the hearing officer found was vulnerable to and dependent on Dr. Gala for a supply of controlled substances.

The hearing officer recommends that the Board find that Dr. Gala violated 24 *Del. C.* § 1731(b)(2) in that he engaged in conduct constituting a crime substantially related to the practice of medicine in that he delivered controlled substances to S.G. while involved in unethical sexual activity in his home, outside of the channel of a valid and lawful prescription. The hearing officer recommends the Board find this constitutes a crime pursuant to 16 *Del. C.* § 4754. The hearing officer further recommends the Board find that Dr. Gala engaged in witness intimidation by telling S.G. that if she reported him, it would be "big trouble" for her. The hearing officer recommends the Board find this conduct constitutes the crime of witness intimidation.

The hearing officer recommends that the Board find as a matter of law that Dr. Gala violated 24 *Del. C.* § 1731(b)(3) in that he engaged in conduct that is dishonorable, unethical, or likely to deceive, defraud, or harm the public. Specifically, the hearing officer recommends that the Board find as a matter of law that Dr. Gala violated Board Regulation 8.1.2 which defines this conduct as an "exploitation of the doctor/patient privilege for personal gain or sexual gratification;" Board Regulation 8.1.3 which defines this conduct as "sexual impropritety including, but not limited to, sexually suggestive behavior, gestures, expressions, statements and

failure to respect a patient's privacy;" and Board Regulation 8.1.12 in that he failed to comply with the Board's regulations governing the use of controlled substances for the treatment of pain.

The hearing officer recommends that the Board find as a matter of law that Dr. Gala violated 24 *Del. C.* § 1731(b)(6) in that he used, distributed, or issued a prescription for a dangerous or narcotic drug for something other than a therapeutic or diagnostic purpose.

Finally, the hearing officer recommends that the Board find as a matter of law that Dr. Gala violated Board Regulation 18 and 24 *Del. C.* § 1731(b)(11) in that his charting for S.G. is almost completely devoid of proper documentation and he thereby engaged in a pattern of negligence in the practice of medicine. Balancing the aggravating and mitigating factors that the hearing officer finds exist in this case against the findings of fact and recommended conclusions of law, the hearing officer recommends that the Board revoke Dr. Gala's license to practice medicine in the State of Delaware.

Following the issuance of the hearing officer's recommendation, Dr. Gala and the State were awarded 20 days to provide comments on the recommendation for the Board's consideration. 29 *Del. C.* § 10126(b). By letter dated April 24, 2019, the State provided comments, urging the Board to accept the hearing officer's findings of fact and conclusions of law. By letter dated May 1, 2019, counsel for Dr. Gala argued that license revocation is not warranted in light of the fact that the complaint alleged improper prescribing practices with only one patient and was therefore a single act of unprofessional conduct, over two years have passed since Dr. Gala prescribed to this patient, the patient testified that she consented to a sexual relationship with Dr. Gala, there was no significant injury caused by Dr. Gala's misconduct, Dr. Gala "seems to" counsel to be of sound mind and body, there is potential for successful rehabilitation, this was an isolated incident that will not happen again, and the general public is already "likely under the impression that the

appropriate laws have been applied and the appropriate safeguards have been imposed." Dr. Gala's counsel argues that the hearing officer's finding that S.G. was an "unwitting psychological hostage" was not alleged by the state and Dr. Gala's constitutional right of due process was violated by the hearing officer unilaterally making this finding. Dr. Gala's counsel argues that the hearing officer's finding that Dr. Gala manufactured patient records was a violation of Dr. Gala's due process rights as falsifying records was not an allegation of the complaint. Finally, Dr. Gala's counsel argues that the hearing officer's editorialization of the testimony of S.G. makes clear that the hearing officer was improperly influenced by sympathy for that patient.

Analysis

The Board is charged with ensuring that medical practice in the State of Delaware is conducted professionally and competently. 24 *Del. C.* § 1710. To ensure the carrying out of this duty, the Board is vested with the power to promulgate rules and regulations designed to carry out its duties as provided by the General Assembly. 24 *Del. C.* § 1713(a)(12). The failure to comply with the Board's rules is a failure to maintain the minimal assurance of competency and professionalism promulgated by this Board to assure the people of Delaware that a physician possessing a Delaware license will practice in a safe, competent manner. Therefore, the Board finds that it cannot allow any physician to continue to practice, without consequence, in violation of its rules and regulations, as the Board cannot assure the citizenry that the practice will be safe and competent. The Board is bound by the findings of fact made by the hearing officer; however, it may affirm or modify the hearing officer's recommended conclusions of law and penalty. 29 *Del. C.* § 8735(v)(1)d. Here, the Board carefully considered the hearing officer's recommendation.

The findings of fact detail the clearly inappropriate sexual relationship Dr. Gala had with

his patient, S.G. S.G. reported Dr. Gala's behavior to his staff and then to the Delaware State Police, candidly admitting she was participating in a sexual relationship with Dr. Gala because she was afraid of losing her prescriptions for controlled substances. Dr. Gala's purported explanation, that Dr. A[redacted] had put S.G. up to this in order to retaliate against Dr. Gala, does not ring true. Dr. Gala's prescribing practice with this patient was reckless in light of her admitted substance abuse problem in the weeks leading up to her initial appointment with Dr. Gala. The Board rejects the hearing officer's characterization of S.G. as a "psychological hostage" insofar as this diagnosis is outside of the hearing officer's expertise. However, the Board finds that the power dynamic between a patient with an admitted substance abuse problem and a doctor who is willing to write prescriptions for controlled substances without adherence to this Board's Regulation 18 regarding the keeping of records makes Dr. Gala's exception that S.G. was a consenting party ring hollow. The Board is not swayed by Dr. Gala's characterization of his treatment of this patient as occurring long enough ago that it should mitigate any discipline. The treatments detailed in the hearing officer's findings of fact occurred in 2016, two and one-half years before he was brought before this Board to answer for the conduct, and only one year after he began practicing. Dr. Gala's counsel asserts this is a situation that will never repeat itself, but the Board does not have a long history of discipline free conduct to back up that assertion.

The Board rejects the recommended conclusion of law of the hearing officer that Dr. Gala violated 24 *Del. C.* § 1731(b)(1) by falsifying medical records. Because falsifying medical records was not pled in the State's complaint, Dr. Gala was not adequately on notice that he would have to defend against this allegation.

The Board accepts the remaining recommended conclusions of law of the hearing officer and finds that Dr. Gala did violate the statute and regulations as recommended by the hearing

officer. In determining the appropriate discipline, the Board finds that this is not a case of technical Rule 18 errors or benign charting problems. The manner in which S.G. was treated is inexcusable. Dr. Gala's practices show a clear priority on himself at the expense of appropriate patient care. There is a real concern for public safety with this type of flagrant disregard for the Delaware law and the Board's Regulations. Although Dr. Gala has no prior disciplinary history, there are a number of aggravating factors in this case that warrant deviation from the Board's disciplinary matrix. These aggravating factors include the nature and extreme gravity of the allegation (Rule 17.14.4), Dr. Gala's dishonest and selfish motive (Rule 17.14.6), his motivation for personal gain (Rule 17.14.7), his failure to comply with the Board rules (Rule 17.14.9), his refusal to acknowledge the wrongful nature of his conduct and the vulnerability of his victim (Rule 17.14.10); the abuse of trust (Rule 17.14.12), the potential for injury ensuing from his actions (Rule 17.14.17), the vulnerability of his victim (Rule 17.14.15); the pattern of misconduct established in this case (Rule 17.14.19), the illegality of his behavior (Rule 17.14.20), and the fact that Dr. Gala's actions bring ill repute upon the medical profession (Rule 17.14.22). In light of these factors, and for all of the reasons discussed herein, the Board finds that Dr. Gala's license must be permanently revoked.

**THEREFORE**, the hearing officer report and recommendation is entered as an Order of this Board, modified as established in this order, and Dr. Gala's license is hereby permanently revoked.

**IT IS SO ORDERED this 4 day of June, 2019.**

**DELAWARE BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

Garrett H. Colmorgen, M.D., President
Pursuant to 29 *Del. C.* § 10128(g)

Date Mailed: 6/5/2019

**BEFORE THE DELAWARE BOARD OF**
**MEDICAL LICENSURE AND DISCIPLINE**

| | | |
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| In the Matter of: | ) | |
| | ) | Case No. 10-107-16 |
| Nihar Bavesh Gala | ) | |
| Lic. No. C1-0011360 | ) | |

## RECOMMENDATION OF CHIEF HEARING OFFICER

### Nature of the Proceedings

The State of Delaware, by and through the Department of Justice, has filed a professional licensure complaint against Nihar Bavesh Gala, M.D., an active licensee of the Delaware Board of Medical Licensure and Discipline (the "Board"). The initial complaint was filed in October 2018 and was amended to correct certain minor errors on March 1, 2019. The State has also filed a complaint seeking discipline of Dr. Gala's Controlled Substance Registration (CSR) before the Secretary of State. The factual allegations in the two complaints are similar or identical.

In the amended complaint filed before the Board, the State alleges that, at relevant times, Dr. Gala was employed as a physician at certain "Got-a-Doc" medical clinics in [redacted] and [redacted] DE, and perhaps elsewhere. At the current time, the State alleges that Dr. Gala operates Alpha Care Medical in [redacted] where he engages in the practice of pain management and addiction treatment.

The State contends that during September and October 2016, Dr. Gala treated patient S.G. for pain management over the course of three documented office visits. During that period he prescribed for S.G. Oxycodone, Fentanyl and OxyContin. The State alleges that just before she presented to Dr. Gala, or simultaneously therewith, S.G. had been under Suboxone treatment for opiate addiction since December 2015. The State claims that Dr. Gala removed her from

Suboxone and wrote her a prescription for Oxycodone 10mg for pain management at the time of her first office visit with Dr. Gala on September 23, 2016.

The State further alleges that Dr. Gala failed to request or to review S.G.'s prior treatment records, nor to contact her previous medical providers, prior to writing the initial Oxycodone prescription. The State contends that on October 20, 2016, Dr. Gala prescribed for S.G. 30-day supplies of Fentanyl and Oxycodone for management of her pain. At the time of S.G.'s last office visit with Dr. Gala on October 28, 2016, the State alleges that Dr. Gala prescribed for her prescriptions for OxyContin 20mg and Oxycodone.

The State next alleges that on November 6, 2016 Dr. Gala prescribed for S.G. a 30-day supply of Oxycodone 20mg. However, the State alleges that Dr. Gala did not see S.G. on that date. Nor did he document any medical justification for the November 6 scripts, nor the medical justification for increasing dosage.

The State contends that in December 2016 S.G. appeared at Dr. Gala's practice and requested a script for Suboxone. An office employee reviewed her profile on the Prescription Monitoring Program (PMP) and determined that she had been prescribed a 30-day supply of hydromorphone on November 30, 2016. The State alleges that on November 30 Dr. Gala had not documented medical justification for that script, nor documented an office visit with her on that date, nor conducted a physical examination of S.G.

Apparently on November 30, 2016, the State alleges that S.G. revealed to a Got-a-Doc employee that, since October 2016, Dr. Gala had been giving her controlled substances without a valid prescription or concurrent medical treatment in exchange for sexual favors, and had prescribed controlled substances for sexual favors. The State contends that the employee to whom the disclosures were made contacted Dr. Gala. The State alleges that Dr. Gala denied

having seen S.G. for "several months", despite the issuance by him of prescriptions for her on November 6 and 30, 2016.

The State then alleges that on December 19, 2016, an employee of Alpha Health Center filed an administrative complaint against Dr. Gala with the Division of Professional Regulation. Thereafter, the State contends that Dr. Gala communicated several threats to S.G. and members of her family in order to persuade her to stop "cooperating with the investigation".

Based on the above allegations, the State contends that Dr. Gala has violated six provisions in the Delaware Medical Practice Act, 24 *Del. C.* Ch. 17, and five regulations adopted by the Board.

Over the course of four days during the period March 11-15, 2019, an administrative hearing was convened on the State's amended complaint in the offices of the Division at 861 Silver Lake Blvd., Dover DE. Prior to the hearing it was agreed by the parties that a single administrative hearing would provide a factual basis for recommendations by the undersigned both to the Board (with respect to Dr. Gala's medical License) and to the Secretary of State (with regard to Dr. Gala's CSR). The State was represented by Zoe Plerhoples, Deputy Attorney General. Dr. Gala attended the entire hearing with his counsel, Benjamin A. Schwartz, Esq. All witnesses testified under oath or affirmation. A registered court reporter was present during the entire hearing and made a stenographic record of the proceedings. This is the recommendation of the undersigned hearing officer to the Board after due consideration of all relevant evidence.

## Summary of the Evidence

### Pre-Hearing Proceedings

By agreement of counsel, a pre-hearing conference was convened in these matters on March 5, 2019. The primary purpose of the conference was to pre-admit certain documents and

thereby provide for a more efficient administrative hearing. During the March 5 conference both attorneys were present, as was Dr. Gala. A number of documents offered by both parties were admitted. At the request of counsel, the pre-hearing conference was conducted in the presence of a court reporter.

A binder of exhibits offered by the State was admitted as State Exhibit 1 ("SX 1"). That binder contains the following documents:

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| Tab 1 | State's Initial Licensure Complaint dated October 4, 2018 |
| Tab 2 | Administrative Complaint Filed with Division on December 19, 2016 |
| Tab 3 | Subpoena *Duces Tecum* to Got-a-Doc Walk-in Medical Center dated December 21, 2016 and Returned Documents |
| Tab 4 | Subpoena *Duces Tecum* to Got-a-Doc dated September 24, 2018 and Returned Documents |
| Tab 5 | Subpoena *Duces Tecum* to Dr. T[redacted] dated September 24, 2018 and Returned Documents |
| Tab 6 | Curriculum Vitae of S[redacted], M.D., MBA and Report by Dr. T[redacted] Dated November 8, 2018 |
| Tab 7 | Police Records and Justice of the Peace Court No. 2 Records |
| Tab 8 | Business Card of [redacted], Investigator, Exchange of Emails Between Dr. Gala and S.G. in November 2016, and Photocopy of Check From Dr. Gala to S.G. in November 2016 |
| Tab 9 | PMP Profile for S.G.from January 2012-September 2018 |
| Tab 10 | Summaries of Interviews of J[redacted] by Division Investigators in January 2017 |
| Tab 11 | Affidavit of Custodian of Records of Walgreen Company, Walgreen Record of Prescription Filled for S.G. in November 2016 |

In addition to the contents of the State's exhibit binder, the following documents were also admitted during the March 5, 2019 conference:

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| SX 12 | Amended Complaint Filed by State Before the Board of Medical Licensure and Discipline on March 1, 2019 |
| SX 13 | Amended Complaint Filed by State Before the Delaware Secretary of State on March 1, 2019 |
| SX 14 | Second Report of Dr. T[redacted] Dated February 21, 2019 |
| SX 15 | Copies of Fronts and Backs of Four (4) Checks Written by Dr. Gala During November-December 2016 |

After the State's exhibits were admitted, Dr. Gala was given the opportunity to offer his exhibits. On behalf of Dr. Gala, Mr. Schwartz offered several exhibits. A copy of an email from Mr. Schwartz, on behalf of Dr. G[redacted] to Dr. [redacted] A[redacted] and dated December 2, 2016 with draft suit papers was admitted as Respondent Exhibit 1 ("RX 1"). A copy of a letter from Mr. Schwartz to Joseph M. Stichler, Esq. of Gateway Risk Services in Allison Park PA, with attachments, and dated July 13, 2017, was admitted as RX 2. An exchange of emails between Dr. Gala and Dr. A[redacted] during the period October-November 2016 was marked for identification during the conference as RX ID B, and was subsequently admitted as RX 3. Finally, a set of medical records pertaining to S.G. was marked for identification during the conference as RX ID A, and was subsequently admitted as RX 4.

The final exhibit, RX 4, became a bone of contention between the parties during the pre-hearing conference, and again during the hearing itself. That is so because two prior subpoenas *duces tecum* had been issued to Dr. Aslam and his Got-a-Doc practice for S.G.'s medical charting in December 2016 (SX 1 at Tab 3) and in September 2018 (SX 1 at Tab 4), while an additional set of records purporting to be S.G.'s Got-a-Doc charting was not produced to the State by Dr. Gala until approximately 19 days prior to the hearing. I am reviewing here the discussion of the creation and production of the contents of RX ID A (later admitted as RX 4) because sworn testimony on the documents was taken during the conference, and because the authenticity of those documents became a central issue in this case.

In explaining the late production of RX 4, Mr. Schwartz represented on the record that while Dr. Gala had given the documents constituting RX 4 to Mr. Schwartz in October 2018, Mr. Schwartz did not produce them to the Department of Justice until February 14, 2019. Mr. Schwartz stated further that the State contends that the recently produced medical records were

not generated by Dr. Gala contemporaneously with the provision of medical care described in the records, but were prepared by him at a much later date after he had received the State's complaint, or after he had received both the complaint and Dr. T[redacted] initial expert witness report.

Mr. Schwartz explained further that at relevant times in this case Dr. Gala was employed by Dr. A[redacted] in certain Got-a-Doc clinics operated by Dr. A[redacted] In the Fall of 2016 Dr. Gala was "locked out" of the Got-a-Doc medical records computer system. Therefore, it was necessary for Dr. Gala to chart S.G.'s care outside of that system. Further, Dr. Gala contends that the medical records in the State's exhibits were in fact created by Dr. A[redacted].

Mr. Schwartz candidly conceded that Dr. Gala's story may be "hard to believe". Dr. Gala is in the process of suing Dr. A[redacted] for back pay from his time as a Got-a-Doc employee. Emails entered into evidence will establish that Dr. A[redacted] had locked Dr. Gala out of the Got-a-Doc computer system and that Dr. Gala attempted to regain entry into the system.

Documents now admitted (RX 2) also demonstrate that at a time after Dr. Gala had left employment with Got-a-Doc, Dr. A[redacted] was sued by a third party for medical malpractice. According to Mr. Schwartz, Dr. A[redacted] claimed falsely that Dr. Gala was the plaintiff's treating physician while at the same time canceling Dr. Gala's medical malpractice "tail" coverage with Positive Physicians Insurance Exchange under the Alpha Health Centers policy. Presumably these matters were described by Mr. Schwartz to demonstrate the contentious relationship between Dr. [redacted] and Dr. Gala.

Ms. Plerhoples then argued that the State objects to the admission of RX 4. There has been a lack of foundation to accept those documents. The initial administrative complaint was filed in this case in December 2016 (SX 1 at Tab 2). The State received S.G.'s complete medical

records in October 2018. On October 9, 2018, Ms. Plerhoples, on behalf of the State, sent a "discovery letter" to Mr. Schwartz. Other documents were then produced.

The documents identified as RX ID A (and later admitted as RX 4) contain no credible reference as to when they were created. There is indicia within RX 4 that the documents were recently fabricated by Dr. Gala. The documents were not kept in the form of Got-a-Doc or other medical records. Ms. Plerhoples asked for leave to question Dr. Gala about the records during the March 5 pre-hearing conference. If Dr. Gala can authenticate RX ID A to the State's satisfaction, then the State will withdraw its objection to the records.

Ms. Plerhoples stated that if the documents were created on Dr. Gala's personal laptop, then a forensic metadata analysis would determine when the contents of RX ID A were created. Mr. Schwartz stated that Dr. Gala's laptop is no longer available. Ms. Plerhoples countered by saying that there was no reason for Dr. Gala to be maintaining S.G.'s medical records on his personal laptop. She added that February 14, 2019 was the first time she saw the documents in RX ID A. Nor had they been produced to any of her colleagues in the Department of Justice in a related criminal case before that date.

Ms. Plerhoples continued. The State forwarded all received medical records concerning S.G. to its expert witness, Dr. T[redacted] who relied on those records as complete when he prepared his report. SX 1 at Tab 6. The late production of RX ID A required that Dr. T[redacted] prepare a supplemental or second expert report on February 21, 2019. SX 14.

In reply, Mr. Schwartz again conceded that Dr. Gala's explanation "looks fishy". He asserted that he had received the contents of RX ID A in October 2018 from Dr. Gala. However, those documents "sat in his office" until February 2019, when he forwarded them to Ms. Plerhoples. Mr. Schwartz further represented that he received the documents in RX ID A before

Dr. Gala had reviewed Dr. T[redacted] initial report. SX 1 at Tab 6. Because of a "criminal case carve out", Dr. Gala now wants to testify regarding RX ID A.

Mr. Schwartz stated further that Dr. Gala was not interviewed at an early date by a Division of Professional Regulation investigator because of the "nature of the allegations" in this case. When a Delaware State Police officer appeared with an arrest warrant for Dr. Gala, he surrendered and was charged with "serious felonies". Dr. Gala was represented by other defense counsel in the criminal case. Mr. Schwartz agreed that the criminal Deputy Attorney General in that case was not provided with RX ID A.

The criminal case against Dr. Gala was dismissed *nolle prosequi* by the State. However, in conjunction with that dismissal, Dr. Gala signed a waiver of his "speedy trial" rights. The criminal matter was dismissed "without prejudice" and may be refiled against him. Mr. Schwartz conceded that evidence produced in the hearing in this case may be used to reopen the criminal case against Dr. Gala.

At this point Mr. Schwartz advised Dr. Gala of his "rights". He informed his client that he had a constitutional right to remain silent and to refuse to answer certain questions. He further informed Dr. Gala that criminal prosecutors may request a copy of the transcript of the hearing in this case. Evidence produced during the hearing may be used to reopen the criminal case. In response, Dr. Gala stated that he wanted to testify in this case on his own behalf. Ms. Plerhoples acknowledged that she knew before hand that Dr. Gala would seek to testify during the pre-hearing conference. She reiterated that if the State is convinced that the contents of RX ID A are authentic, then the State's objection to the admission of those documents would be withdrawn.

Mr. Schwartz stated that the present issue is whether there is a valid evidentiary basis on which to admit RX ID A. If those documents are admitted, then the hearing officer must determine whether medical records produced earlier by Dr. Aslam are in fact authentic.

At this point Dr. Gala was duly sworn and was questioned by Ms. Plerhoples. At relevant times he was an employee of Got-a-Doc Walk-in Medical Center. At the time that medical practice was owned wholly or partially by Dr. A[redacted]. Dr. Gala worked there until December 2016, when he "transferred out". At Got-a-Doc Dr. Gala saw pain management patients, including S.G.

Dr. Gala identified certain emails between himself and Dr. Aslam. RX ID B (admitted as RX 3). In the first of those emails on October 3, 2016, Dr. Gala informed Dr. A[redacted] that he could not log into "eClinical" (the Got-a-Doc medical software). Dr. Gala does not recall whether that was the first time he had informed Dr. [redacted] of the problem.

Ms. Plerhoples then asked Dr. Gala how the documents in RX ID A (later RX 4) were created. He testified that he prepared those records in Word documents on his personal laptop computer. Dr. Gala does not know where that laptop is at present. He last saw it in India in December 2017. He stated that the laptop also contained medical records of patients other than S.G.

Ms. Plerhoples asked why Dr. Gala had stored Got-a-Doc patient records on his personal laptop. Dr. Gala stated that he had treated S.G., but that she was no longer his patient. He agreed that the medical information on patients in his laptop was protected patient information. He added that his personal laptop has been destroyed. The screen on the device had been fractured. He had taken it to India to have the data on the device "extrapolated". He does not

have a copy of a request to or a receipt from the person in India who performed the extrapolation.

Dr. Gala testified that S.G.'s patient file was encrypted. In January 2018 he received the encrypted file. He does not recall whether the encrypted data contained the records of patients other than S.G. He sought to retrieve S.G.'s chart because of the complaint in this case and because of the criminal proceedings.

The device was his personal laptop. It contained the records of multiple patients. The laptop was kept in a locked cabinet in his office in Fall 2016. Dr. Gala and Dr. A[redacted] had access to that cabinet. He placed paper copies of S.G.'s charting in the cabinet. After Dr. Gala was no longer an employee of Got-a-Doc, he did have access to S.G.'s electronic records, but not her paper records. The documents constituting RX ID A were not placed in S.G.'s paper chart contained in a manila folder. They were not given to Dr. A[redacted] but were stored in a cabinet in the Dover Got-a-Doc office. Dr. Gala identified other employees who worked in that office.

A "discharge note" concerning S.G. and written by Dr. Gala is found at RX 4 at 23. He stated that that note was supposed to be in S.G.'s chart. He added that such filings did not always occur at Got-a-Doc. Others in the practice would be informed if a patient were discharged. S.G.'s office notes were kept in the locked cabinet, along with notes on other patients.

Dr. Gala admitted that he did not see S.G. on November 9, 2016. A script for S.G. for Oxycodone (SX 11) was written by him on November 6, 2016. Office notes typed by Dr. Gala on his personal laptop were not provided to anyone except Dr. Aslam. They were written by Dr. Gala in the evening at his home.

Dr. Gala was then examined by Mr. Schwartz. He testified that RX ID A was created within 24 hours of the provision of medical services, and usually the night of the day on which S.G. was seen by him. After Dr. Gala left Got-a-Doc employment, he retained an electronic version of RX ID A on his laptop. Dr. Aslam had locked Dr. Gala out of the Got-a-Doc computer system. Dr. Gala knew that he had to maintain charting for patients. He reiterated that he kept patient notes on his personal computer.

Dr. Gala testified that he provided the contents of RX ID A to Mr. Schwartz in October 2018. He denied waiting to receive the State's initial expert report (SX 7) before he created the records. He did not provide a copy of RX ID A to State criminal prosecutors because he did not believe he was required to do so. Dr. Gala is aware that S.G. alleges that he provided her with some controlled substances at his home. Dr. Gala did not discuss the "extrapolation" of patient records in India with his attorneys. Dr. Gala also stated that he had informed S.G. that he was maintaining her confidential medical records on his personal laptop.

At the conclusion of Dr. Gala's testimony during the pre-hearing conference, Ms. Plerhoples reiterated the State's objection to the admissibility of RX ID A. Dr. Gala then called E[redacted]. He is currently an employee of Dr. Gala at his new practice, Alpha Health. He was formerly an employee of Dr. Aslam at Got-a-Doc, starting there in 2014..

In Fall 2016 M[redacted] was employed at Got-a-Doc. He served there as a medical assistant and imaging technician. He was asked how Dr. Gala maintained or prepared medical records. M[redacted] stated that Dr. Gala would keep records in a paper chart or folder, and would scan them into the Got-a-Doc system. He has observed Dr. Gala entering medical information into his personal laptop. Certain front desk personnel at Got-a-Doc would place paper medical records in a cabinet in the office.

In response to Ms. Plerhoples, M[redacted] testified that he discussed some of these matters with investigators. He told them that Dr. Gala would prepare patient notes on his laptop and then print them for the paper charting and scan them into the system. In response to the hearing officer, M[redacted] stated that he did not ask Dr. Gala why he had been locked out of the Got-a-Doc eClinical system while the two were employed there and after Dr. Gala told him that that had occurred. In further response to Mr. Schwartz, M[redacted] testified that in Fall 2016 he was employed in both the [redacted] and [redacted] DE Got-a-Doc offices. Both he and Dr. Gala had computer terminals in the offices.

At the conclusion of the testimony, counsel argued regarding the admissibility of RX ID A. Ms. Plerhoples contended that the documents in the exhibit are not what they purport to be. Dr. Gala's explanation for the records is not credible. Dr. Gala has testified that he had sent or taken his personal laptop to India for "extrapolation" of S.G.'s records. He has presented no evidence that he did so. He has not identified the individual in India who was supposed to perform that task. If Dr. Gala had maintained notes on S.G. while at Got-a-Doc, he would have given them to Got-a-Doc staff. She reiterated that Dr. Gala's explanation is not credible.

Mr. Schwartz argued that Dr. Gala has now authenticated the contents of RX ID A. He has testified regarding his contemporaneous preparation of the records. There is insufficient evidence in the record to find that the documents are not authentic. On the other hand, Dr. [redacted] charting for S.G. is questionable. One witness in the case will testify that the medical charting for S.G. which is in SX 4 was not prepared by Dr. Gala. A decision on the admissibility of RX ID A should await the full hearing in this case. At this point Dr. Gala need only authenticate those records.

After considering the arguments of counsel, it was decided that a decision on the admissibility of the documents would be deferred until more evidence on them is offered during the hearing. Hence, late-produced charting for S.G. was marked for identification as RX ID A.

Before the conference adjourned Ms. Plerhoples noted that the late production of RX ID A caused the State to expend additional funds in securing the supplemental expert report of Dr. T[redacted] SX 14. At the time when Dr. T[redacted] issued his initial opinion (SX 6), the State had been informed that all of the charting for S.G. which had been previously produced was complete and that there were no more records for the State's expert to review. Ms. Plerhoples was skeptical that RX ID A would help Dr. Gala. The State was considering amending its complaint against Dr. Gala to add a new claim concerning the late production of RX ID A.

At the close of the conference it was agreed that certain "paper charting" referred to by Mr. [redacted] had been produced by Got-a-Doc and was included in SX 1 at Tab 4. Finally, it was agreed by the parties that witnesses would be sequestered during the hearing.

The Administrative Hearing

The hearing in this case commenced at 10 a.m. on March 11, 2019 in the offices of the Division of Professional Regulation in Dover DE. The hearing was convened on four days during the period March 11-15, 2019. Dr. Gala and his counsel attended the entirety of the hearing. All witnesses testified under oath or affirmation. A registered court reporter was present on each day of the hearing and prepared a stenographic record of the proceedings.

At the beginning of the hearing Ms. Plerhoples made a brief opening statement. She stated that in September 2016 patient S.G. began to treat with Dr. Gala. She was an opiate addict who had undergone Suboxone treatment for an extended period before presenting at Got-a-Doc. At the time of her first office visit with Dr. Gala, he began to prescribe opioids for her.

Ms. Plerhoples stated that the State will prove "more egregious" facts. After two office visits with S.G., Dr. Gala began to engage in a sexual *quid pro quo* relationship with S.G. while continuing to prescribe opioids for S.G. for pain. Dr. Gala thereby placed S.G., a "high risk" patient, in danger. The record in this case does not provide justification for such prescribing.

Ms. Plerhoples continued. In December 2016 S.G. informed Dr. Gala's employer that she wanted to return to a Suboxone regimen. S.G. also disclosed the "affair" with Dr. Gala to a Got-a-Doc employee. Thereafter, Dr. Gala made threats to S.G. Based on proof of these facts, in this case the State will ask that the undersigned hearing officer recommend to the Board that Dr. Gala's medical license be permanently revoked.

Mr. Schwartz then opened. He stated that Dr. Gala will deny any inappropriate sexual relationship between himself and S.G. Dr. Gala will prove that his medical treatment of S.G. was reasonable. Dr. Gala believes that another physician prepared certain medical records concerning S.G. in an effort to "railroad" him. Mr. Schwartz reiterated that Dr. Gala will show that there was no improper sexual relationship between him and S.G. In this case Dr. Gala has been "falsely accused". Dr. Gala will prove that the charting for S.G. at SX 1 at Tab 4 is not valid and is part of a "conspiracy" against Dr. Gala.

The State first called Dr. [redacted] T[redacted] as an expert witness in this case. Certain aspects of Dr. T[redacted] curriculum vitae (SX 1 at Tab 6 at 1-6) were reviewed with the witness. Dr. T[redacted] has held medical licensure in Pennsylvania since 1992 and is not actively practicing medicine at this time. He has performed post-graduate work at the University of Pennsylvania Medical Center and the Johns Hopkins Hospital. He is certified in the medical subspecialty of pain medicine.

Dr. T[redacted] served four years in the U. S. Air Force at the Wright Patterson Medical Center as head of the Pain Management Service at that facility. He ceased practicing anesthesiology in 1998 and turned his emphasis to pain medicine. He engaged in private practice for four years in pain management, injection treatments, spinal pumps and other forms of therapy. He worked in a multi-disciplinary pain practice which also provided psychiatric services and care for the retention of physical functioning. That clinical practice was closed in 2014.

Dr. T[redacted] is now certified by the American Board of Anesthesiology as a Diplomate with a subspecialty in pain medicine. His certifications, professional memberships, honors and awards and publications are listed at SX 1 at Tab 6 at 3. His lectures are listed at *id.* at 3-6. He has given expert testimony in numerous civil and criminal cases. *Id.* at 6. He has testified in proceedings before the Board of Medical Licensure and Discipline. *Id.*

With regard to the instant case, Dr. T[redacted] has reviewed certain medical records for S.G.. He agreed with Ms. Plerhoples that his opinions in this case will be provided with a reasonable degree of medical certainty. With regard to his opinions on medical standards of care, he has relied, *inter alia,* on the Federation of State Medical Boards' "Model Policy", CDC Guidelines for the prescription of opioids, the Delaware Medical Practice Act, and Bd. Reg. 18.0 *et seq.*

The medical records reviewed by Dr. T[redacted] in preparing his initial expert report in this case are listed at SX 1 at Tab 6 at 7. Those records include documents produced by Governors Family Practice (Dr. A[redacted]), records produced by Got-a-Doc and Dr. Gala, and certain urine drug screens. *Id.* Dr. T[redacted] acknowledged authoring his report at SX 1 at Tab 6 at 7 and dated November 8, 2018.

Dr. T[redacted] testified that, in his opinion, Dr. Gala's care for S.G. did not comport with standard of care pain management. Nor was her care in S.G.'s best interests. Dr. Gala's medical record-keeping was sub-standard under the "Model Policy" and Bd. Reg. 18.0.

Dr. Gala's first office visit with S.G. was on September 23, 2016. According to the record created on that date, her "chief complaint" was "pain management". Dr. T[redacted] testified that "pain management" is not a patient "complaint". Rather, pain management is an "outcome". Dr. Gala's recording of S.G.'s medical history was very brief. Though prior diagnoses of low back pain and arthritis were noted, the record did not describe a standard history of pain complaints such as whether pain radiated. Nor did the note describe the history of prior treatment of S.G.

Dr. Gala examined S.G.'s low back and found her neurological exam normal. Such a result did not indicate dysfunction. She reported normal range of motion. A primary diagnosis of "opioid dependence" was noted. Though S.G. had been treated with Suboxone for an extended period, the note provides little in the way of S.G.'s drug use history. Dr. T[redacted] opined that, in view of this brief history, Dr. Gala should have avoided the prescription of Oxycodone and other opioids.

Dr. T[redacted] explained that Suboxone (buprenorphine + naloxone) may be a useful treatment for drug addicts. The medication binds to receptors and blocks the effects of opioids. The drug also decreases the effects of withdrawal and treats addiction. Dr. T[redacted] conceded that Suboxone may be prescribed for pain but that requires considerable effort. If Suboxone does not adequately manage a patient's pain, options available to the practitioner may include non-opioid medications, non-drug therapies and levels of buprenorphine not to exceed 24mg per day.

In some cases a pain specialist may treat a patient with full agonist opioids if she is experiencing severe acute pain or cancer pain. However, such drugs are problematic in the treatment of chronic low back pain. They are "only slightly better than nothing", according to Dr. T[redacted]

Dr. T[redacted] was asked additional questions regarding Dr. Gala's medical documentation concerning S.G. The subject of the risks and benefits of opioid therapy is only mentioned once in the records. SX 1 at Tab 4 at 76. There is no documentation of the discussion of the subject with S.G. This in light of the fact that S.G. was at enhanced risk because of her documented opioid dependence.

Nor do the documents created at the time of presentation of S.G. to Dr. Gala reflect informed consent to the treatment. Such consent should include documentation of the discussion of patient and physician expectations of what would be considered "success", and what the physician proposed in order to manage risks.

At SX 1 at Tab 6 at 8, Dr. T[redacted] discusses Dr. A[redacted] prior medical care for S.G. Dr. A[redacted] records state that S.G. was discharged because she failed to produce pill bottles for a count. Nonetheless, Dr. Gala failed to request Dr. A[redacted] treatment records. Dr. T[redacted] added that it is not acceptable that patients bring prior treatment records to a new physician because of the possibility of hiding or changing those records.

Dr. T[redacted] testified that in the September 23 charting Dr. Gala failed to mention or prescribe other treatment options for S.G. Rather, he started her on at 28-day supply of Oxycodone 10mg without discussing and documenting other treatment options. SX 1 at Tab 4 at 3. In Dr. T[redacted] opinion, the Oxycodone prescription on that date was not medically justified.

Dr. T[redacted] then testified about S.G.'s office visit with Dr. Gala on October 20, 2016. Her physical exam was normal. S.G. claimed she was not receiving good pain relief. No findings were made with regard to her lower back. In light of this information, Dr.Gala increased her opioid dosing with Oxycodone 10mg and the addition of Fentanyl. Hence, she had been moved to full agonist medications with no reported pain improvement. Dr. T[redacted] testified that the addition of Fentanyl patch "compounded" the problem. In his opinion Dr. Gala was placing excessive reliance on opioid therapy.

A urine screen was positive for benzodiazepines, buprenorphine, Oxycodone and amphetamine. Her result should have been negative for benzos. In light of these results, she should not have been continued on opioids. Dr. T[redacted] stated that the prescribing in October constituted "gross negligence" because increasing opioid dosing was counter to S.G.'s interests and increased the risk of overdose. It was "folly" to simply tell S.G. to "control" her use of the medications.

Dr. T[redacted] then addressed S.G.'s office visit with Dr. Gala on October 28, 2016. She was complaining of 10/10 pain. The opioid regimen was not producing any results. She was non-responsive to the regimen. Her physical exam was negative. Again, Dr. Gala's prescribing was "grossly negligent", in Dr. T[redacted] opinion. Though Dr. Gala prescribed 30 days of Fentanyl on October 20, he discontinued that prescription while leaving her with an excess supply. On October 28 Dr. Gala could have prescribed non-opioid medications, a non-drug therapy, or returned her to the buprenorphine. S.G. had become symptomatically worse.

Dr. T[redacted] noted that on November 6, 2016 Dr. Gala prescribed for S.G. Oxycodone 20mg at 90 tabs and on November 30 Dilaudid. SX 11. However, there is no documentation of that prescribing and his rationale in S.G.'s chart. Dr. T[redacted] therefore concluded that the

scripts had been written for her outside the scope of the physician-patient relationship. He noted that the Oxycodone 20mg script had been written just eight days after her October 28 Oxycontin script. If the latter prescriptions were filled by her, she would have an excess supply for use. If it were not filled, she would be able to access the medications at any time. Dr. T[redacted] testified that, in his opinion, the November 6 scripts were not written for a valid medical purpose. Dr. T[redacted] could not review a PMP report on this prescribing.

Dr. T[redacted] then noted that a script for S.G. was written by Dr. Gala for Dilaudid (hydromorphone) on November 30, 2016. That script was written within 24 days of issuance of the Oxycodone 20mg script. Hence, S.G. still had a six day supply of the Oxycodone. That is essentially another increase in her dosing, and the scripts were written outside the physician-patient relationship. Dr. T[redacted] characterized the prescribing at this point again as "gross negligence" and not performed as part of a legitimate medical practice.

Dr. T[redacted] then addressed the alleged sexual relationship which developed between Dr. Gala and S.G. Such a relationship is improper because of the asymmetric power in the doctor-patient relationship. Prescribing opioids to a patient with a use disorder creates increased debilitation. It is "exceedingly unethical" to prescribe drugs in exchange for sexual favors. Dr. T[redacted] noted that Dr. Gala did not document the sexual relationship in his charting for S.G. Shifting S.G. to full agonist medications threatened her health. Dr. T[redacted] likened the practice to a "fire in the kitchen catching the whole house on fire". S.G. had been placed at risk by him for multiple reasons. He noted that drug overdosing kills 10,000 individuals in the U.S. annually.

Dr. T[redacted] then testified in regard to his second, or supplemental, expert report dated February 21, 2019. SX 14. Mr. Schwartz objected to examination of the witness regarding the

later report on the basis that it relies on RX ID A. Ms. Plerhoples argued that it was fair to have Dr. T[redacted] opine on the late-produced records. Mr. Schwartz argued that the State was "having its cake and eating it too" since RX ID A had not yet been formally admitted. Ms. Plerhoples noted that Mr. Schwartz would be free to cross-examine Dr. T[redacted] on any of his opinions.

Mr. Schwartz stated that Dr. Gala provided him with RX ID A on October 9, 2018. Mr. Schwartz then made an office note to "read them". The October 9 date is important, in Mr. Schwartz' opinion, because he anticipated that Dr. T[redacted] would state that RX ID A was created after Dr. Gala had read Dr. T[redacted] initial opinion (SX 1 at Tab 6). He reiterated that it is not proper to permit a witness to opine on facts not in evidence. It would be unfair if the hearing officer allowed this line of questioning and then decided not to admit the exhibit.

At this point Ms. Plerhoples withdrew the State's objection to RX ID A. She reserved the right to question Dr. Gala again on the preparation of the exhibit. RX ID A was then formally admitted into evidence as RX 4. Ms. Plerhoples continued to argue that the documents in RX 4 were not created contemporaneous with the medical care which they describe.

Mr. Schwartz objected to any opinions by Dr. T[redacted] which had not been disclosed to him prior to the hearing. Ms. Plerhoples responded that RX 4 was produced to the State many months after the State's complaint (SX 1 at Tab 1) was filed and months after Dr. T[redacted] had issued his initial opinion. The late production of RX 4 thereby placed the State at a disadvantage. Mr. Schwartz noted that it would be unfair to expect him to effectively cross-examine Dr. T[redacted] since Dr. Gala is the physician, not his attorney. Ms. Plerhoples added that Dr. Gala may not claim unfair prejudice since it was he who produced RX 4 late.

Mr. Schwartz' objection was overruled. The delay in receipt of RX 4 was not the fault of the State. If Mr. Schwartz believes he is handicapped in questioning Dr. T[redacted] he will be welcome to consult with Dr. Gala before proceeding with the cross-examination.

Ms. Plerhoples resumed her examination of Dr. T[redacted] He stated that the new records (RX 4) do not comport with medical standards of care. They were maintained on Dr. Gala's personal laptop. Hence, an "audit trail" of those records could not be established. The maintenance of the documents on the laptop is not consistent with standard of care patient charting. The documents were to have been maintained in the Got-a-Doc system where they were generated for the benefit of S.G. Maintaining the records on the laptop also constitutes a violation of health records privacy laws. Since RX 4 was transferred to paper records, it is not possible to prove when they were created.

With regard to RX 4, Dr. T[redacted] observed that there was a "quite striking" difference between RX 4 and charting for S.G. which was produced earlier. The earlier records were "sparse". In RX 4 one would not expect to see full transcriptions of labs and xrays.

Dr. Gala did consult the PMP on September 22, October 28 and November 3, 2016. However, in RX 4 suspicious charting mistakes were made by Dr. Gala. For instance, in a note allegedly written in 2016, Dr. Gala oddly stated that the PMP had been reviewed on September 22, 2018.

In RX 4, S.G.'s medical history is much more "complete". Dr. Gala characterizes S.G. as a "former addict". That is an improper label. Dr. Gala notes that S.G. wanted to stop her Suboxone treatments. That should have raised concerns. Nor is there evidence in the prior records (SX 1 at Tab 4) that S.G. had "failed" prior Suboxone treatments. At RX 4 at 8, Dr. Gala

refers to an "opioid risk tool". According to the notes in RX 4, if S.G. in fact scored a 5 (out of 5 questions), that is "disturbing" to Dr. T[redacted] as S.G. is a "high risk" patient.

At RX 4 at 9 Dr. Gala states that he will prescribe Gabapentin, an anti-convulsant, for S.G. Dr. T[redacted] testified that Dr. Gala had not documented the discussion or prescription of that medication in the earlier records. At RX 4 at 12 there is a further mention of Gabapentin. Dr. T[redacted] testified that patients with opioid use disorder typically want more opiates. In this case there was clear evidence that S.G. was engaged in drug-seeking behavior.

At RX 4 at 10 Dr. Gala's note states that he insisted on "strict" compliance by S.G. with his pain management agreement. Dr. T[redacted] noted that in such an agreement the physician has "all the power". The note bound Dr. Gala to strictly enforce it, but apparently did not bind S.G. At RX 4 at 16 Dr. Gala incorrectly states that S.G. could not afford the Fentanyl script. However, the note also states that she had such a script filled and tried the medication.

Dr. T[redacted] testified regarding the "discharge note" at RX 4 at 23. Though S.G. was being discharged, she was provided with an additional script for hydromorphone. Dr. T[redacted] stated that if in fact a pain patient were "out of control", high dosing of opioids for a prolonged period was improper. Graphically, Dr. T[redacted] likened such practice to "having a patient with diarrhea sit on the toilet and not shit."

Dr. T[redacted] addressed the note in RX 4 for November 23, 2018. RX 4 at 18. Seventeen days after he had written S.G. a script for Oxycodone 20mg, he stated that she was overusing the medication. Dr. Gala stated that S.G. was "beginning" to exhibit aberrant behavior. Dr. T[redacted] stated that was false, as such behavior had been evident earlier. S.G. had received addiction therapy as the only proper therapy for "out of control" abuse. In conclusion, Dr. T[redacted] opined that S.G. had opioid use disorder. She was "out of control" concerning drug use

and Dr. Gala was "feeding" her disorder. His prescribing in this case was not consistent with standard of care treatment and was without legitimate medical basis.

Mr. Schwartz then cross-examined Dr. T[redacted] He reiterated that he had found inappropriate prescribing by Dr. Gala in both of his opinions. Mr. Schwartz asked if his opinion were reliable if the first set of Got-a-Doc records (SX 1 at Tab 4) were unreliable. Dr. T[redacted] answered in the affirmative. He added that in this case Dr. Gala's prescribing moved from substandard to grossly negligent. The records do not document appropriate prescribing. S.G. had opioid use disorder and showed aberrant behaviors. The prescribed opioids did not help her.

Mr.Schwartz asked Dr. T[redacted] about the Delaware licensure matter identified in his CV at SX 1 at Tab 6 at 6. Dr. T[redacted] stated that that 2017 case concerned opioid prescribing. The physician in that case was not represented by counsel. The physician was found not to have prescribed opioids consistent with the Model Policy and Bd. Reg. 18.0. Dr. T[redacted] has never had his testimony excluded in any forum. He was asked about the facts of some of the cases listed in his CV. He has most frequently testified on behalf of the State in criminal cases. He has testified for plaintiffs in some medical malpractice cases.

Dr. T[redacted] testified that "appropriate" opioid prescribing standards are now national. In this case he did not consult with Delaware physicians in preparing his opinions. He is unaware of local Delaware practices regarding the prescribing of Suboxone for pain.

Dr. T[redacted] was referred to S.G.'s PMP profile at SX 9. He is not aware of the circumstances of the prescription of Suboxone for S.G. prior to her presentation at Got-a-Doc and can not opine as to whether such prescribing satisfied standards of care.

Dr. T[redacted] was asked to refer to the "pain management contract" in S.G.'s chart at SX 1 at Tab 4 at 76. He agreed that there was no reference in the document to opiates for Suboxone

patients. Nor is there a discussion in the contract of treatment methods to minimize risks for the patient. Dr. T[redacted] added that the FSMB Model Policy requires that patients give informed consent for opioid treatment. Dr. T[redacted] read from the Model Policy. Patients must be informed of the risks and limited help provided by opioids, and that their use can increase risk for some patients. Agreements must also address the goals, risks and benefits of such treatments.

Dr. T[redacted] testified that S.G. was a patient at increased risk. Hence, documentation of all of these subjects should be in her chart. If they are not covered in an agreement, they should be documented elsewhere in the chart.

Dr. T[redacted] asked where was the direction to collect prior medical records. Dr. T[redacted] agreed that there is no such specific requirement in the Model Policy. Nonetheless, it is "best practice" to do so.

Dr. T[redacted] was asked what is "non-specific" back pain. He testified that it is pain with no specific etiology. Dr. T[redacted] agreed that an MRI disclosed degenerative disc disease in S.G. Nonetheless, that is a "common" finding which may be present in 40% of asymptomatic patients. It is not "non-specific" pain if spine pain is accompanied by leg pain. Specific spine complaints can create pain. "Degenerative disc disease" is non-specific pain, according to Dr. T[redacted]

Ms. Plerhoples then asked additional questions. She referred to S.G.'s PMP report at SX 1 at Tab 9. Increases in Suboxone prescribing is consistent with increased pain. With regard to S.G.'s MRI (SX 1 at Tab 4 at 3), there is no record that Dr. Gala reviewed it. Had he done so, a chart entry should have been made. It is "best practice" to obtain prior medical records for a pain patient in order to assess the thinking of prior treating practitioners. Dr. T[redacted] has been a physician for 35 years. He admitted that laws and medical regulations do not "cover all

scenarios". However, if a particular rule is non-specific, the physician should apply his knowledge and skills to act in a patient's best interests.

In response to a question from the hearing officer, Dr. T[redacted] stated that 49 states have now adopted the FSMB Model Policy. Dr. T[redacted] does not believe that any of those states have deviated significantly from the Model Policy. If there is local deviation, typically a state will fall on the "tougher" side.

The State next called patient S.G. She was Dr. Gala's patient at Got-a-Doc. She had a sexual relationship with Dr. Gala and "hung out" with him at his house. At the time when she started treating with Dr. Gala, she had been on Suboxone treatments for addiction. Since leaving Dr. Gala's care, she has returned to those treatments and is "doing well". Her addiction began approximately six years prior to 2016. Prior to presenting at Got-a-Doc, she had been on Suboxone treatments for a year with Dr. A[redacted]

At the time she presented to Dr. Gala in September 2016, she was experiencing pain, but the Suboxone was effective. Dr. A[redacted] had discharged her because there was nothing he could do for her. The discharge was "mutual" between them. She went to Dr. Gala for "pain relief in the lumbar spine". She had experienced a herniated disc and a cyst on the sciatic nerve.

Prior to treating with Dr. Gala, she had been a patient in 2015 at Cedar Tree Medical as well as Thresholds, where she treated with Dr. Centers. Thresholds also offered counseling and an alcohol abuse program. Before presenting at Got-a-Doc, S.G.'s condition had been helped with physical thereapy and a TENS unit, but not with water therapy.

At the time of her first visit with Dr. Gala, she was experiencing much pain. She was employed as a baker, and that was "hard work". On her first visit she waited a long time with

other patients and filled out certain paperwork. She provided a urine sample. She demonstrated spinal flexibility through bending. Her spine was examined and her vitals taken.

When S.G. got in to see Dr. Gala, she sat in his office and provided more information. She was asked the location of her pain. He asked her for her personal cell phone number in case there was a "problem with prescriptions". Dr. Gala did not perform a physical exam. He was aware of her prior Suboxone treatments. She asked him twice about the Suboxone treatments. She had been prescribed two strips per day. Dr. Gala stated that insurance coverage only allowed one strip.

At the time of the first visit, Dr. Gala prescribed Percocet 10mg. The two did not discuss the risks and benefits of opioid therapy. S.G. stated that she already knew them. S.G. agreed that she signed the pain management contract. SX 1 at Tab 4 at 76. They did not discuss the contents of the agreement. Nor did they discuss her drug addiction, counseling, or other pain treatment options. S.G. asked him about an "orthopedic chair". Dr. Gala stated that he would not prescribe one as they are too expensive. They did not discuss other paperwork in her chart which was filled out at the time of presentation. At SX 1 at Tab 4 at 80 there is reference to S.G. desiring a TENS unit. Dr. Gala did not discuss that request. S.G. stated that she does not recall a discussion of Gabapentin. She stated that the drug gives her "panic attacks".

In addition, at the time of the first visit there was no discussion regarding disposal of unused medications. He instructed her to keep her Fentanyl patches. Dr. Gala did mention urine drug screening and pill counts. They did not discuss side effects of opioids. Dr. Gala provided her with initial prescriptions. Medicaid subsequently would not authorize payments as her records showed the recent prescription for her of Suboxone. Dr. Gala told her he would contact the pharmacy. Because of the Medicaid block, S.G. paid cash to have prescriptions filled.

The two talked over the weekend "a few times". Dr. Gala did call her pharmacy. In September 2016 Dr. Gala invited S.G. to "hang out" with him. He was not "rude" or "indecent" at the time. The two made no plans. S.G. was "okay" hanging out with Dr. Gala.

The night before S.G.'s second office visit with Dr. Gala, he had called her and had offered "special care". He called to tell her that he could prescribe increased dosages of Percocet for her. S.G. believed that if she refused to "hang out" with Dr. Gala, that he would stop prescribing for her, and that she may lose her job. At this point in time she did not fear Dr. Gala. She thought he was "nice" and "cute", and was "not a bad guy".

During her second office visit with Dr. Gala, he was pleasant. She asked him why he wanted her to "hang out" with him. He told her she was "cute". At the time she did not believe she looked that good, but thanked him. He told her that the two could watch a movie. He then wrote a script for her, perhaps Fentanyl patch. She had been taking the Percocet. She started using the patches. Initially they gave her "double vision".

S.G. called Dr. Gala and asked if he could change her medications. He told her to keep using the Fentanyl. She found she could not use it. She used small amounts, and then "got rid of the rest". At the time she was "stuck" working two jobs. The medications helped her continue working.

One day she and Dr. Gala agreed to meet at Killens Pond State Park. However, she could not afford to park her car in the facility parking lot. Dr. Gala then suggested that the two meet in the parking lot of a Royal Farms convenience store. They met at that location and she got into his car. Dr. Gala was driving. While doing so, he asked S.G. if she would give him oral sex. She unbuckled her seat belt while Dr. Gala pulled out his penis. She performed fellatio on Dr. Gala while he drove. He ejaculated. He then returned S.G. to Royal Farms and dropped her off.

Later S.G. could not locate her cellphone. She emailed Dr. Gala, and he told her he had her phone at the Lewes Got-a-Doc. She picked the phone up from him at that location.

The next time she saw Dr. Gala was at his condominium in Lewes or Rehoboth. When she arrived Dr. Gala kissed her. The two went upstairs. He had been watching pornography on his laptop, according to S.G. Dr. Gala pulled out a pipe "to smoke crack". He blew the smoke in her face. He was wearing only a robe. She does not use crack and told him she was going to leave. He apologized to her. He gave her certain pills. Over time she had gone to his home a lot, and he would provide her with Vicodin, Oxycodone, morphine and Percocet. Dr. Gala was not disrespectful toward her. She had treated with him for chronic pain.

Dr. Gala and S.G. engaged in sex in his home while continuing her office visits at Got-a-Doc. During one office visit Dr. Gala kissed her.

Ms. Plerhoples asked S.G. about certain emails found at SX 1 at Tab 8. S.G. had forwarded the emails to State Police Det. Archer. S.G. at this point had gone to the police. Dr. Gala had instructed her to erase certain emails and texts to her from him. In an email dated November 24, 2016, S.G. asked Dr. Gala if he was trying "to kill me". She stated that she was allergic to Tramadol, and that the "Nycenta" (Nucynta) he had prescribed for her is "big boy tramadol". She asked Dr. Gala if he "hates" her. *Id.*

Six days later, on November 30, S.G. informed Dr. Gala that the pharmacist stated that Nucynta will have the same adverse effects as Tramadol. She asked to be returned to Percocet. She also informed him that she had quit her night job "so I won't hurt as bad. I don't want anything else." Later on November 30, 2016, Dr. Gala responds, "R u free right now." *Id.*

At some point Dr. Gala prescribed Dilaudid for S.G. while at his house. According to S.G., at that time he also told her that he could no longer be her physician. S.G. was "scared".

SX 1 at Tab 11 is a Walgreens record of a script or S.G. for Oxycodone 20MG IR written on November 6, 2016. S.G. testified that she does not recall receiving that script. (The script was filled on November 9, 2016.) *Id.*

S.G. also described another incident at Dr. Gala's home. When she arrived another woman was present. "I[redacted] was "pretty". Initially S.G. refused to engage in a sexual encounter with the other two, but later consented. "F[redacted] stated that she was "just there to make money". Before S.G. left his home on that date, he gave her some pills from a bottle. During the encounter the two women performed fellatio on Dr. Gala. The following day "F[redacted] accompanied S.G. to an ATM to secure cash as an Oxycodone script was very expensive ("in the hundreds"). Dr. Gala had agreed to pay for the medication.

On November 16, 2016 Dr. Gala wrote a personal check to S.G. in the amount of $440. SX 1 at Tab 8. The note on the check indicates it was for "house keeping". S.G. denied ever performing any house work for Dr. Gala.

S.G. testified that sex with Dr. Gala normally lasted "a couple of minutes." She was still his patient at the time when these acts occurred. With regard to the in-car fellatio, Dr. Gala told her that he "can't get in trouble". She did not believe that statement was threatening. At the time the two were "very friendly". Dr. Gala knew she is an addict. At one point she told him that she was afflicted with Hepatitis C. She said he knew that "from the computer".

S.G. knew that Dr. Gala was using steroids. She knew that caused heart problems. Dr. Gala said he used the substances to get in shape or to stay in shape. S.G. testified that she acquired a venereal disease "in the middle of it all".

S.G. testified that she was informed by another individual of another source of Suboxone. She decided she was "done" with her drug regimen. She asked him to put her back on

Suboxone. Dr. Gala told her that "he doesn't treat addicts". At this point S.G. "felt disgusting." S.G. went to the Got-a-Doc in [redacted] DE. She asked if she could be placed on Suboxone treatments. They refused to do so because of the opiate prescribing. She "cried and went home." She feared losing everything. She wanted Suboxone but was "stuck on opioids".

S.G. stated that she "wound up okay". Dr. Gala wrote her a final Percocet script. Got-a-Doc arranged for her to return to Suboxone treatments. She spoke with [redacted] at Got-a-Doc and told them she wanted to return to Suboxone. Soon thereafter Dr. Gala called her from a blocked cell phone number. He asked her if she had reported him. He then threatened her and hung up. He told her that if she reported him, it would be "big trouble for you". At this point S.G. feared for her children's safety.

Apparently Dr. Gala hired a private investigator, whose business card is found at SX 1 t Tab 8. That investigator [redacted]) appeared at S.G.'s home at night. He had secured her home address from the Division of Motor Vehicles. S.G. learned that he was working for Dr. Gala. One of her children let Mr. M[redacted] in the house. S.G. and M[redacted] "discussed the whole story". S.G. then reported Dr. Gala to police. She assisted them in the criminal prosecution of Dr. Gala.

S.G. reiterated that she has returned to Suboxone treatments, which are helpful. She hopes to end those treatments. She is "ready to step up" to therapy. S.G. testified that no one has paid her to testify in this case. The "hardest part" of this case is her fear. She will never return to pain management again. "It just gets worse." She does not want any more pain medications.

Ms. Plerhoples asked additional questions about the sexual encounters with Dr. Gala. She stated that they involved oral sex, anal sex and regular sex. At one point Dr. Gala urinated

in her mouth. Dr. Gala could not "do it" in the shower. The sex was always at his request. At one point S.G. acquired a "penis vibrator" and other items for him.

After a recess, Mr. Schwartz questioned S.G. Around the time when she fellated Dr. Gala in his car, she had dyed her hair green to "look pretty". At the time when Dr. Gala told her that he would provide her with "special care", she was with J[redacted] and put the call on speaker phone. She added that she did not know "what to do", and that she did not want to refuse Dr. Gala and lose a physician. S.G. does not recall telling a State Police officer that Dr. Gala made her "feel special". At times S.G. has used the pseudonym "[redacted] (her maiden name). She has used other names as well. She did not go to court to change her name because there was a warrant out for her arrest at the time. Nor does she have the funds to pay legal costs for a formal name change.

S.G. is now age 40. She has four children ranging in ages from 16 to 24, and two grandchildren. She has earned her GED diploma. At present she is employed in a [redacted] store. She listed three places where she was employed in late 2016. She had to work 18 hours per day to support the children. In the past she has been homeless and has abused alcohol. At one point she had to split up her children.

S.G. testified that Dr. A[redacted] stopped her Suboxone treatment and referred her to Dr. Gala. At that time she was running out of Suboxone. At one point in 2018 she was interviewed by K[redacted] a private investigator. Ms. [redacted] suggested or "hinted" that S.G. could sue Dr. Gala and receive a cash award.

S.G. reviewed her recorded weight at various times while she was in Dr. A[redacted] care (SX 5) and while in Dr. G[redacted] care (SX 4). She admitted that she had told Ms. [redacted] she had dropped to 103 lbs (down from a range of 112-115 lbs). That was measured on her scale.

S.G. admitted that she was on the social network Facebook. Mr. Schwartz showed S.G. a screenshot of her Facebook page which he had found on the internet. RX 5. S.G. admitted her picture is on the page, but the photo may be old. She denied that she would state on Facebook that she was sleeping in her car. A second Facebook page was admitted as RX 6.

S.G. testified that after Fall 2016 she acquired a new apartment and bought a car. She is now cured of Hep C since February 2019. She learned she had that diagnosis in 2010 or 2011. She was diagnosed with trichinosis in December 2016. She informed Dr. Gala of that diagnosis. She treated for the condition with pills and antibiotics.

Mr. Schwartz asked certain questions concerning S.G.'s allegations of sexual activities with Dr. Gala. She has seen him disrobed. Dr. Gala is not circumcised. He has no piercings or tattoos. On one occasion she confronted Dr. Gala at his home regarding a sexually transmitted disease. He stood in the doorway and spoke to her in a loud voice. He denied that he was the source of the disease. He threatened to call police if she did not leave. He called her an addict. She recorded the confrontation on her cell phone and gave the recording to police.

Mr. Schwartz gave S.G. a copy of a Superior Court docket sheet. The sheet was admitted as RX 7. S.G. acknowledged that her name and birth date were on the form. S.G. did not know why she was not using her correct name at the time. The docket sheet indicates that S.G. in January 2004 entered a guilty plea to a charge of Burglary Third Degree. At the time she was with three males and her car was used in committing the offense.

Mr. Schwartz asked if it is correct in Got-a-Doc charting that she weighed 125 lbs in October 2016. SX 1 at Tab 3 at 5. S.G. denied that that was her correct weight. Dr. Gala never examined her genitalia at Got-a-Doc. She has never been diagnosed with schizophrenia or multiple personality disorder. Nor has she suffered from hallucinations.

S.G. was asked about Dr. Gala's alleged threats. He asked her, "did you tell?" He then said that if she had done so, "there will be big trouble for you." S.G. stated that she has been a "victim" many times in her life. She was fearful. Dr. Gala did not explain what would be the "big trouble". She told a detective that she may have evidence of Dr. Gala's DNA. The officer told her to discard the item.

S.G. engaged in vaginal, oral and anal sex with Dr. Gala. As to the latter, Dr. Gala did not penetrate her. He did urinate in her mouth, and she urinated in his. At one point she placed her mouth on his anus. S.G. does not recall whether she informed Ms. [redacted] of all of these events. At the time she was "jacked up on pills". The [redacted] interview lasted seven hours. At the time she was treating with Suboxone.

Ms. Plerhoples then questioned S.G. further. Ms. [redacted] was working for Dr. Gala. The interview was recorded. Ms. [redacted] suggested that she sue Dr. Gala. Ms. [redacted] appeared to care for S.G. She wanted to give S.G. a chance to tell her side of the story.

S.G.'s last Suboxone script provided by Dr. A[redacted] was on September 15, 2016. Her first visit with Dr. Gala was eight days later. In Fall 2016 S.G. was under stress as her sister had cancer, her children left with her husband, and then she became homeless because she and her son had no place to live. She believes that she informed Dr. Gala of her housing problems.

At the beginning of the second day of the hearing, the State called [redacted] a medical assistant at Got-a-Doc. In that capacity she performed triage, took vitals and prepared electronic templates for the physicians. She attended the [redacted] School of Business for one year. She is now a stay-at-home mother.

Ms. B[redacted] was employed at Got-a-Doc from 2015 until August 2018, when she resigned to care for her child. She worked in the [redacted] and other office locations. While at Got-a-

Doc she assisted in Suboxone treatments for opiate addictions. She also assisted in pain management at the [redacted] office.

Ms. B[redacted] is familiar with the eClinical computer program at Got-a-Doc. She agreed that the charting at SX 1 at Tab 4 at 3 is "typical". It shows the regular amount of information. A treating physician would pull up the progress note for a patient. She added that the pain management practice was "not template." Rather, charting was done on paper and inserted in manila folders. Medical assistants entered vitals. Though some had "issues" logging into eClinical, Ms. B[redacted] is not familiar with such problems in Fall 2016.

Ms. B[redacted] worked with Dr. Gala in pain management briefly. The two did not "hang out" together. In the [redacted] office patients would be checked in and vitals taken. Urine samples were secured. Folders would be pulled and the relevant information would be forwarded to Dr. Gala, who had access to eClinical. She saw Dr. Gala using that system. He accessed it during the months prior to his termination. She did not observe Dr. Gala entering notes. Dr. Gala never gave her paper documents for pain patient charts.

Just before he was terminated from Got-a-Doc, Dr. Gala did have an access issue to the system. Ms. B[redacted] testified that there is no separate place in the office for paper records. Dr. Gala never mentioned such a place. When Dr. Gala gave her patient notes, she would insert them in the patient's chart. Got-a-Doc employees were not permitted to remove patient charts. Ms. B[redacted] recalls patient S.G. She does not recall seeing S.G.'s chart.

Ms. B[redacted] met with Megan Miller, a Division of Professional Regulation investigator. She reviewed RX 4 with Ms. Miller. She had never seen Dr. Gala create patient notes in the fashion of RX 4. RX 4 is "very detailed and long". The only time a detailed patient note was prepared was when insurance authorization for medications was being requested. The detail,

however, was never as great as in RX 4. No one ever asked Ms. B to prepare documents over Dr. Gala's name.

Ms. Plerhoples asked questions regarding S.G. Ms. B is aware of the allegations in this case. She is also aware that S.G. disclosed allegations against Dr. Gala to T Ms. S then called Ms. B over and S.G. repeated her disclosures. Ms. B understands that S.G. performed sex acts with Dr. Gala in exchange for drugs. An objection as to S.G.'s demeanor at the time of the disclosures was overruled. S.G. was upset, angry, shaking and nervous. About two weeks prior to S.G.'s report, Dr. Gala had stated that he hired two prostitutes at his house, and that was why he was late to work. Ms. B 'brushed it off", though Dr. Gala's statement was not normal.

Ms. S was a counselor at Got-a-Doc, as was A Ms. S worked under Mr. Harris. Counselors were permitted by Mr. Harris to use his log-in and to chart information for Got-a-Doc patients over his name. Ms. B had been offered no inducement to testify during this hearing. She has no intention to "destroy" Dr. Gala. She has not discussed this matter with Dr. Gala.

Mr. Schwartz cross-examined. Ms. B has discussed this case with Ms. Miller within the past 2-3 weeks. She is now aware when the complaint was filed against Dr. Gala. Ms. Miller was the first time she had disclosed Dr. Gala's comment about prostitutes. It is not Ms. B place to "spread information".

Pain management at Got-a-Doc did not use templates. There were templates for Suboxone treatment. SX 1 at Tab 4 at 3 (the note charting S.G.'s September 23, 2016 office visit) is not a template. It is a pain management progress note. For pain management, eClinical creates a SOAP note. Vitals are entered. All other information (HPI, plans, etc.) for pain

management is entered in a manila folder. Ms. B did not create pain management notes other than vitals. Detailed notes were only created in pain management when authorization is sought for certain scripts. Ms. B does not recall whether that was done for S.G.

Ms. B was questioned about the emails contained in RX 3. On November 22, 2016 Dr. Gala states to Dr. A that his eClinical access had been discontinued since Dr. Gala had informed Dr. A that he intended to open his own clinic. Therefore, he had been keeping his own notes and inserting them in patient folders. Copies of the notes will be placed in a filing cabinet to which Dr. A has access. He requests that his access be reinstated. Ms. B testified that an employee needed a VPN for access. Access could be gained remotely from a personal laptop. Ms. B has done so in the past.

In response to Ms. Plerhoples, Ms. B stated that she was only interviewed by Ms. Miller. Dr. Gala never informed her that he did not have eClinical access. The documents at SX 1 at Tab 4 at 76 *et seq* were filled out by pain management patients. Progress notes were entered in eClinical.

The State next called D She has been a medical assistant for three years. She attended Harris School of Business. She now works with Dr. M Her duties at Got-a-Doc as an MA were to work at the front desk, triage patients and take vitals and other tasks. She started work at Got-a-Doc in Fall 2016 in the office. She worked in Suboxone treatment and pain management in

Ms. B identified the office note for S.G. at SX 1 at Tab 4 at 3. It is an eClinical document. Pain management at Got-a-Doc recorded vitals, medications and pain agreements and other documents in paper files. Ms. B had access to all of those files. She is not aware if all physicians had eClinical access. She testified that Dr. Gala prepared SX 1 at Tab 4 at 3. He

typed the information into eClinical. Patients were electronically checked in on arrival by a medical assistant. Ms. B had a professional relationship with Dr. Gala, not a social one.

Dr. Gala did have eClinical access. Ms. E did not observe Dr. Gala using that system. His handwritten patient notes were put in paper folders. The notes came out to the front desk with the patient. Documents were filed in folders for Dr. Gala. Dr. Gala never mentioned problems with access to eClinical. Ms. E was not aware that Dr. Gala was writing or storing other notes.

Ms. B had not seen RX 4 until Ms. Miller showed it to her. Ms. E briefly reviewed the contents of the exhibit. She has not seen that level of detail from Dr. Gala. She has never removed patient records from the office. She has never logged in as Dr. Gala, nor destroyed any notes prepared by him. She knows S.G. from Suboxone clinics in DE and . She has been offered no inducements to testify here.

Mr. Schwartz examined Ms. B She has seen some of Dr. Gala's handwritten notes. They would be scanned into eClinical. She had her own eClinical access. She could access the system from other offices. She did use remote access in the Dover office. In response to the hearing officer, Ms. E stated that she was unaware whether someone could remotely access eClinical from a laptop.

The State then called Ms. T She is a Marriage & Family Therapist and is now in business management. She has a degree from Walden University. She served an internship at Got-a-Doc under Mr. Harris and accumulated hours there for her license. Mr. Harris was an LPC and was her supervisor. At the Dover office she counseled married couples. She then worked with marriage and Suboxone patients in Dover. She also worked at four other

Got-a-Doc offices under Dr. A[redacted]. She is now engaged in business management for [redacted] and no longer performs counseling.

Ms. S[redacted] began her employment at Got-a-Doc in March 2014. She is familiar with the eClinical system, as it was used for all counseling patients. She received her own log-in toward the end of her employment there. Otherwise she logged in under Mr. Harris' name in 2016 and 2017. She did not work in pain management at Got-a-Doc. She worked with Dr. Gala in Suboxone treatment in late 2016. She and Dr. Gala were friends. They did not "hang out" together.

In Fall 2016 Dr. Gala did have eClinical access. She observed him typing in the system in the presence of patients. He was "very casual". Patients would sit near him while they talked. He would then write scripts. At the end of December 2016 Dr. Gala was upset because he could not get into eClinical. He was locked out and did not know why. He was locked out by [redacted] Ms. W[redacted] was a Licensed Clinical Social Worker who supervised Ms. S[redacted] Ms. Woods was also the Suboxone coordinator. If an employee could not get access to eClinical, he was to contact someone or log in under another's name.

In December 2016 Ms. S[redacted] was asked to locate S.G.'s file. When they found it, it contained only 2-3 documents. Ms. S[redacted] met with Ms. Miller of the Division in 2019. She has not been interviewed by any other State official. She reiterated that she did not find a copy of RX 4 in S.G.'s chart. Under HIPAA employees were not to remove patient information from the office.

On one occasion S.G. asked for a Suboxone script but she was denied because she had been prescribed opioids recently. Ms. S[redacted] typed some information about disclosures from S.G. into her file. Ms. W[redacted] asked her to delete it so that Dr. Gala would not see it. However,

she had saved it on her laptop first. She was concerned with the legality of deleting a patient note. She was "very torn" and concerned with repercussions. She had never been asked to delete a patient document, nor alter a record created by Dr. Gala.

Ms. S[redacted] note regarding S.G.'s disclosures on December 19, 2016 was marked for identification as SX ID A. That is the document which Ms. W[redacted] instructed her to delete. It was made contemporaneous with S.G.'s disclosures. Ms. W[redacted] was on a speaker phone with Ms. S[redacted] and S.G. During that conversation Ms. S[redacted] was instructed to document all of S.G.'s disclosures. Ms. Plerhoples then offered SX ID A as a formal exhibit. Ms. S[redacted] identified certain handwriting on the exhibit as Ms. W[redacted] The exhibit was admitted as SX 16.

Ms. S[redacted] stated that she had not met S.G. previously. She could not issue her a Suboxone script. S.G. was upset and was brought into the office. She was concerned that Dr. Gala would "block her" from the "program". S.G. stated that Dr. Gala treated her "like an addict". S. G. reported that Dr. Gala himself smoked crack. She would go to Dr. Gala's house and perform sex acts in exchange for medications and scripts. Ms. S[redacted] was "blown away".

S.G. showed Ms. S[redacted] certain messages on her cell phone. At this point Ms. S[redacted] began to believe S.G. because Dr. Gala had learned that a prostitute had Hep C and failed to disclose that fact to him. Ms. S[redacted] reminded Dr. Gala that prostitution was illegal. Subsequently Dr. Gala said he was not worried. At this point things "clicked" and Ms. S[redacted] realized that S.G. was being truthful. Dr. Gala said that two prostitutes had been at his home who had sex with each other and with him. Again, things "clicked" because S.G. had said she had been at Dr. Gala's house with another woman. S.G. had described an incident in which she and another woman were at his house and the three engaged in sex acts.

Ms. S[redacted] testified that S.G. was scared and upset. She cried "the whole time". S.G. "overwhelmed" Ms. S[redacted] Ms. S[redacted] went outside and sat in her car. She liked Dr. Gala and hearing the disclosures was difficult for her. Dr. Gala had never been inappropriate with Ms. S[redacted] She would tell him not to be with prostitutes. Ms. S[redacted] is older than Dr. Gala and tried to be an adult voice. At times he would lie down on her desk. Ms. S[redacted] added that she was concerned and "staggered" by the disclosures.

Ms. S[redacted] thought that perhaps Dr. Gala was living "too much the party life". However, he had never disclosed substance abuse to her. After Dr. Gala had disclosed that he had been with prostitutes, Ms. S[redacted] reminded him of Hep C and sexually transmitted diseases. He tested himself for diseases.

When S.G. ended her disclosures, the two went to Ms. S[redacted] office and Ms. S[redacted] called Ms. W[redacted] at the [redacted] office. Dr. Sokoloff (who later married Ms. W[redacted]) was apparently in Ms. W[redacted] office and told Ms. S[redacted] to document all of the disclosures. Ms. S[redacted] asked Ms. W[redacted] for her advice in light of the serious allegations. S.G. was upset during the call. Ms. S[redacted] told Ms. W[redacted] that she found S.G. credible. Ms. S[redacted] did not query PMP at the time for S.G.'s drug profile.

After the phone call to Ms. W[redacted] Ms. S[redacted] printed out SX 16. Thereafter the exhibit was deleted from eClinical within 30 minutes. S.G. left the office. Ms. S[redacted] went to her car to think. Ms. S[redacted] called Ms. W[redacted] again and told her that S.G. was credible. At this point other calls were coming in on Ms. S[redacted] cell phone. S.G. was calling her from the office parking lot. She was upset and claimed that she had been betrayed. She said that someone had called Dr. Gala and told him about S.G.'s disclosures. Ms. S[redacted] therefore called Ms. W[redacted] again and told her that Dr. Gala had contacted S.G. about the disclosures.

I asked Ms. S to restate a portion of her answer. She stated that S.G. had called her and reported that someone had betrayed her by reporting her disclosures to Dr. Gala. Thereafter Ms. W reported to Ms. S that Dr. Gala had called S.G.. S.G. stated that he knew that S.G. had provided the information concerning "sex for drugs". Ms. W admitted that she was the person who had alerted Dr. Gala.

Ms. S spoke further with S.G. Ms. W told S.G. on a speaker phone that she had informed Dr. Gala of the disclosures. She did not intend to betray S.G. Subsequently S.G. was out of a Suboxone program until January 2017, when her prior opioid script had been consumed.

Ms. S was referred to the December 20, 2016 script for S.G. by Dr. Gala for Oxycodone 15mg. Ms. S was concerned. The script was written so that S.G. was covered until she started a Suboxone program. Ms. S was requested to take the script to S.G. Ms. S did not know if Dr. Gala was aware that Ms. S knew of the disclosures. Dr. Gala stated that S.G. was causing him "many problems". He asked Ms. S to meet with S.G. and convince her to stop causing trouble.

Ms. S took the script to S.G. at the office. She then reported to Dr. Gala that she had not spoken with S.G. Ms. Wood advised that Ms. S not tell Dr. Gala that the two had spoken about the matter.

In 2017 Ms. S recommended a therapist for Dr. Gala's practice. She recommended Mr. Harris and was paid a finder's fee. The cash was helpful as Ms. S was involved in a divorce. At the time Ms. S informed Dr. Gala that she did not intend to testify against him. At that time, no one had asked her to do so.

Ms. S[redacted] was shown S.G.'s pain management agreement. SX 1 at Tab 4 at 76. She had not seen it before, though typically such documents are inserted in patient files. She did recognize a form at SX 1 at Tab 4 at 87. It was filled out by a medical assistant at the time of S.G.'s first office visit. An office note prepared by Ms. S[redacted] on January 2, 2017 reflects S.G.'s admission into a Suboxone treatment program at Got-a-Doc. SX 1 at Tab 4 at 11. Ms. S[redacted] entered the note over Mr. Harris' name. S.G. was compliant in the Suboxone program. She was "struggling" and had pain. Ms. S[redacted] stated it is difficult to transition from pain medications to Suboxone. Ms. S[redacted] provided counseling for S.G. for 1-2 months.

Ms. S[redacted] has not been offered any payment or other inducement to testify in this case. She has "no personal or professional issues" with Dr. Gala. She has never altered or destroyed Dr. Gala's records. When S.G.'s file was located in the [redacted] office, it contained only 2-3 documents.

Mr. Schwartz cross-examined Ms. S[redacted] Mr. Harris was no longer employed at Got-a-Doc in September 2018. After S.G.'s disclosures concerning Dr. Gala, Ms. W[redacted] had already told her that she had called Dr. Gala at the time that S.G. was "blowing up" on her phone. The disclosures were made the day before Dr. Gala stated that he had been blocked from eClinical. At the time the rest of the staff at Got-a-Doc were told to say, if asked, that they had all been blocked because the system was down.

The day after S.G.'s disclosures on December 19, 2016 (SX 16), Dr.Gala wrote a script for S.G. Also on December 20 Dr. Gala was blocked from eClinical. "[redacted]" is a company for which Ms. S[redacted] does business consulting. She wanted to "step back" from counseling. Though she does not know the ownership details, [redacted] was part of Got-a-Doc. At this point Dr. A[redacted] does not own any part of [redacted]

Dr. Aslam hired Ms. S as an intern. She then became a counselor. Ms. S did not inform Dr. Aslam of Dr. Gala's issues, including STD's, staggering and sleeping.

Ms. Plerhoples examined Ms. S further. Ms. S was told by another employee that Dr. Gala had been blocked from eClinical. Ms. S did not report Dr. Gala's staggering or sleeping to anyone. She liked Dr. Gala. She had a "motherly" relationship with him in that she would help him calm down.

In response to Mr. Schwartz, Ms. S stated that her daughter is A Her daughter took a short video on her phone of Dr. Gala staggering. Ms. S now has the video on her phone. The video was then played for counsel and the hearing officer. It depicts Dr. Gala outside the clinic staggering backward in the parking lot. In response to the hearing officer, Ms. S testified that Ms. Wood is the person who blocked Dr. Gala from the eClinical system at Got-a-Doc.

After a lunch break it was agreed that, in order to accommodate a witness, he would be called "out of order" by Dr. Gala during the State's case. Dr. Gala then called He lives in married, and has five children. He is a nursing coordinator at . He earned an associate's degree at Delaware Technical and Community College.

Mr. M and his sons met Dr. Gala at a Gamestop store. They are now close friends. Mr. M goes to restaurants and smokes cigars with Dr. Gala. He has visited Dr. Gala's home perhaps 100 times with his sons. Dr. Gala has come to Mr. M home.

Mr. M never saw any evidence of illegal or improper behaviors by Dr. Gala, including inappropriate sexual activity or the use of drugs. Nor has Dr. Gala ever discussed such activities. Both he and Dr. Gala oppose the illegal use of drugs. Mr. M would not be Dr.

Gala's friend were he to engage prostitutes. He has never observed Dr. Gala seeking drugs, manipulating "fake" ailments, appearing disheveled, or with needle marks.

Ms. Plerhoples cross-examined. Mr. M is close to Dr. Gala. Dr. Gala knows that Mr. M is a law-abiding person. Mr. M has gone to Dr. Gala's home unannounced. He has never searched Dr. Gala's home. Mr. M acknowledged that some addicts lie. They hide their addiction. Opioids are a serious problem. Mr. M has worked with opiate addicts as a psychiatric nurse. Individuals in rehab programs should not be provided with opioids. Suboxone patients should not be given such drugs. In response to the hearing officer, Mr. M stated that he did not discuss with Dr. Gala the circumstances of his termination by Got-a-Doc.

The hearing returned to the State's case. Ms. Plerhoples called She is a social worker and drug and alcohol counselor. She is licensed in Maryland. She earned a bachelor's degree in counseling at Salisbury University. She worked at Got-a-Doc and Alpha Health Center, which were both owned by Dr. Aslam. She worked at all Got-a-Doc locations. Starting in 2014 she was a counselor in the Suboxone program. She organized the program and oversaw counselors.

Ms. W is familiar with the eClinical system at Got-a-Doc. Only Got-a-Doc Human Resources could revoke access to the system. An administrator and Dr. A controlled access to the system. Ms. W had access to Suboxone charting. Records could be amended unless they had been "signed and locked".

Ms. W is not familiar with the pain management agreement in S.G.'s chart. SX 1 at Tab 4 at 3. It appears to be the standard form. She did not work in pain management at Got-a-Doc. She did not recognize S.G.'s charting at SX 1 at Tab 3. She did print out clinic records when the subpoena *duces tecum* was received.

Ms. W reiterated that she never altered any of S.G.'s records. She did destroy a document which recorded S.G.'s disclosures, but first printed a copy. She did not delete any other records pertaining to S.G. Physicians at Got-a-Doc had access to the eClinical system through a user name and password. At times some employees had difficulty logging into the system.

Ms. W relationship with Dr. Gala was professional. They had no workplace disputes. She disagreed with some things that he did. They would discuss Suboxone treatments. Dr. Gala was blocked from eClinical access in December 2016. That occurred because Dr. Gala had stated his intention to open his own medical practice. The Suboxone staff was aware that Dr. Gala had been blocked. She discussed the blocking of Dr. Gala from eClinical with Dr. and another individual with the first name Ms. W told others of the blocking.

Ms. W created the note at SX 16 at 1 which records S.G.'s disclosures concerning Dr. Gala. SX 16 at 2 is also a note of the disclosures. She removed the latter note because Ms. S did "not want to be involved". Ms. W wanted to restrict access to the information. On December 19, 2016 Dr. Gala could not access the note. Dr. Gala wrote a note relating to S.G.'s pain management.

Ms. W had not seen the contents of RX 4 prior to the hearing. She added that RX 4 looks different from other notes written by Dr. Gala. It contains much more detail. A copy of RX 4 should have been placed in S.G.'s paper file in a manila folder and then placed in the cabinet. S.G.'s paper chart at the office had few documents in it.

Ms. W acknowledged that she filed an administrative complaint against Dr.Gala. SX 2. The complaint was filed on December 19, 2016, three days after Dr. Gala was blocked from

the eClinical system. Ms. W denied S.G. access to the Suboxone program because Dr. Gala had recently written her a script for opioids.

Shortly thereafter S.G. "broke down" and made the disclosures about Dr. Gala. S.G.. told Ms. S and Ms. W (who listened on a speaker phone) about her desire to restart Suboxone treatments. She described encounters with Dr. Gala at Royal Farms and at his home. She described the sexual favors Dr. Gala requested, and explained that other women would be at Dr. Gala's home. Dr. Gala gave S.G. a check so that she could purchase drugs. S.G. explained that Dr. Gala had drugs in his home, and would watch pornography on the TV. S.G. was asked to bring other women to his home. S.G. stated that Dr. Gala would hold scripts for opioids "over her head" in exchange for sexual favors.

Ms. W stated that she was "shocked". She called Dr. Gala to ask him about S.G. Dr. Gala acknowledged that he knew S.G. but had not seen her "in months". Ms. W provided Dr. Gala with some of the details in the disclosures. Dr. Gala denied any knowledge of such acts.

S.G.'s PMP profile is at SX 1 at Tab 9. At page 3 of that document, the November 30, 2016 script for hydromorphone was the reason why S.G. could not start the Suboxone treatments when she requested to do so. Ms. W pointed that out to S.G.

After Ms. W reported the disclosures to Dr. Gala, S.G. was in the office talking with Ms. S S.G. then went outside and paced. She then asked Ms. S why someone had reported her disclosures to Dr. Gala. She feared harm to herself and her family "because Dr. Gala has money". Ms. W then called Dr. Gala again. Ms. W was "overwhelmed". S.G. returned to the and was in withdrawal.

Ms. W[redacted] identified Dr. Gala's December 20, 2016 script for S.G. for Oxycodone 15mg. SX 1 at Tab 11 at 5. Ms. W[redacted] directed that the script be written to bridge S.G. to the Suboxone treatment. Ms. S[redacted] talked with Dr. Gala and they agreed that S.G. should not come to the office. Ms.. S[redacted] agreed to take S.G.'s discharge letter to her as well as the script at the Camden office.

Dr. Gala worked for Got-a-Doc until December 19, 2016. Ms. W[redacted] does not know why he was terminated by Dr. A[redacted] in conjunction with HR. there were "rumors" of his behaviors in urgent care. Ms. W[redacted] had a close working relationship with Dr. A[redacted].

Ms. W[redacted] was excused while counsel argued about the scope of her questioning. Ms. Plerhoples stated that there are certain suggestions in the case that Dr. A[redacted], Dr. S[redacted] and Ms. W[redacted] "schemed" to "invent" the claims of sexual misbehavior. Mr. Schwartz would not object to Dr. A[redacted] statements heard by Ms. W[redacted] concerning his intentions. It was ruled that Ms. W[redacted] could be asked questions about whether a "scheme" had been agreed upon.

Ms. W[redacted] returned. She stated that early in December 2016 Dr. Gala was not performing Suboxone treatments. The conversation with Dr. A[redacted] did not cover the discharge of S.G. Nor did they discuss a plan to accuse Dr. Gala of sexual misconduct. S.G. was not paid or otherwise induced to make her claims. Nor were inducements offered to Ms. W[redacted] to testify here. Ms. W[redacted] is now married to [redacted] who was then an employee of Got-a-Doc. Ms. W[redacted] did not hear Dr. A[redacted] and Dr. S[redacted] plan to harm Dr. Gala. Dr. A[redacted] did not pay S.G. to make her disclosures. Nor did Dr. A[redacted] admit doing so.

Ms. W[redacted] did tell Dr. A[redacted] about S.G.'s disclosures concerning Dr. Gala. The claims concerned a Got-a-Doc employee. Dr. A[redacted] instructed Ms. W[redacted] to "do what's right". The

matter was urgent, in Ms. W[redacted] opinion. She discussed the situation with Dr. A[redacted] on the same date that she filed her administrative complaint.

At this point it was agreed that a second witness could be called by Dr. Gala "out of order". Mr. Schwartz called [redacted]. She is presently a supervisor in a Delaware disability program. She is a medical assistant with criminal justice and behavioral science degrees.

Ms. P[redacted] worked with Dr. Gala in the Long Neck DE Got-a-Doc office for a year. She was there when Dr. Gala left. She worked under Dr. Gala's supervision. He was "like a teacher" for her. She then moved to Cedar Tree.

Ms. P[redacted] knows S.G. At one point S.G. threatened Ms. P[redacted] when S.G. attempted to secure refill scripts too early. At one time at Got-a-Doc everyone was locked out of the eClinical system. At another time everyone had access but Dr. Gala. Written documents were provided to him. At Got-a-Doc typically a patient would sign in and identify herself. Vitals were taken in a triage room. The data was entered into eClinical. The patient was then taken to the physician for treatment. Triage work was done on a laptop. After an office visit the physician entered notes electronically in drop-down format. The staff could see the charting.

For scheduled pain management visits, the patient was triaged in a separate room and then taken to Dr. Gala. If Dr. Gala did not have eClinical access, he would wait for paper records to be brought to him. As to the return of unused medications, they were counted and labels were removed from bottles. The patient, Ms. P[redacted] and Dr. Gala would sign a form. Pills were then crushed and flushed down the toilet. Ms. P[redacted] never saw Dr. Gala remove medications from clinics.

Ms. P[redacted] visited Dr. Gala at his home perhaps three times. She would "house-sit" for him during repairs. There was no evidence in his home of drug use, syringes, or sexual activity. She never saw Dr. Gala impaired, though at times he was sleepy. On one occasion he looked disheveled. He did not discuss illegal activity or patronizing prostitutes in her presence. Dr. Gala was a "health nut". He is professional and cares for patients. Ms. P[redacted] does not like "nonsense", and never corrected Dr. Gala.

Ms. Plerhoples cross-examined. Ms. P[redacted] worked at Long Neck and Dover in pain management. During an average day Dr. Gala would see a "full sheet" of pain and Suboxone patients. Ms. P[redacted] saw S.G. more than once. She testified that Dr. Gala did not keep a separate file for S.G. In January 2019 [redacted] called her to discuss Dr. Gala.

Ms. P[redacted] did not make any unannounced visits to Dr. Gala's home. She did not "search" his house. At the Long Neck Got-a-Doc there were laptops in treatment rooms. She does not know if Dr. Gala used his personal laptop.

At the time of log-in, staff was alerted that a patient was in the building. A note would be made if a patient showed up unannounced and demanded drugs. When S. G. appeared and demanded to see Dr. Gala, Ms. P[redacted] alerted him. On one occasion S.G. was told she needed prior authorization to receive a certain medication. S.G. was mad that she was not provided with a script. Chart notes were made if a patient were a no-show or called to complain. In some cases documents could be faxed to pharmacies.

Dr. Gala was permitted to call another witness "out of turn". Mr. Schwartz called T[redacted] He is presently employed at Limestone Open MRI. He is a technician and a "marketer". He knew Dr. Gala when he was employed in HR with Alpha Health Center from

October 2012-June 2017. He was not involved in the termination of Dr. Gala. While at Alpha he worked with [redacted] and with Dr. Aslam.

Mr. A[redacted] did hear a conversation in which there was certain "scheming" against Dr. Gala. Dr. Aslam would discuss such matters without respecting employee privacy. On the date in question, Dr. A[redacted] was in his office with Ms. W[redacted] and Dr. Sokoloff. Dr. Aslam stated that Dr. Gala was "not pulling his weight". Dr. Sokoloff then "chimed in". Mr. A[redacted] believed that they were "piecing something together" against Dr. Gala. Mr. A[redacted] later told Dr. Gala to "watch his back". Dr. A[redacted] referred to a girl as a "bitch". He then stated that "we can use her".

Mr. A[redacted] talked with Mr. K[redacted]. He reported that Dr. A[redacted] stated, "get the bitch to say...." Dr. Sokoloff became irate. He urged that Dr. Gala's license be taken. The conversation was "totally negative". Terminating Dr. Gala was not the subject of the discussion. Those present talked about "smearing" Dr. Gala. They did not discuss blocking Dr. Gala's computer access. Dr. A[redacted] was "vindictive". Mr. A[redacted] was not instructed to do anything. Dr. A[redacted] referred to Dr. Gala as a "motherfucker". Mr. A[redacted] does not know why.

Mr. A[redacted] stated that he was on Dr. A[redacted] "bad side". Therefore, he warned Dr. Gala. Mr. A[redacted] testified that certain complaints against Dr. Gala were not legitimate, or they would have been passed on to him. When asked the date of this conversation, Mr. A[redacted] stated that the weather was cold. It was probably in 2015 or early in 2016.

Ms. Plerhoples cross-examined. In 2016 Mr. A[redacted] respected Dr. A[redacted] as his boss and employer. The two got along. Mr. A[redacted] had no relationship with Ms. Wood. Mr. A[redacted] "never trusted" Dr. A[redacted]

Returning to the "conversation", Mr. A[redacted] stated that no specific patient was mentioned. He reiterated that Dr. A[redacted] said, "get the bitch to say something", and that he would have

known about a patient's complaints. He was not aware of such complaints in December 2016. He did not see a "write-up" on a patient complaint. He was not aware of the filing of any medical malpractice claims against Dr. Gala. That was "above me". Nor would he be aware of any complaints filed with the Board. He would be surprised to know that a patient had complained in 2016, and then testified in this hearing. He stated that the conversation had the "appearances of conspiracy". It preceded Dr. Gala's firing. He does not recall if the conversation took place near the holidays.

Calling a patient a "bitch" stands out in Mr. A mind. Dr. was "irate", and stated that the physician should lose his license. Ms. W was "picking a person". She knew that Mr. A was present. The "conspiracy" was against Dr. Gala. He did not report the conversation. He told Dr. Gala about it in either 2016 or 2017. Mr. A was "fed up" with the lies, deceit and "crazy behavior" of Dr. A. He was not aware of the sexual allegations against Dr. Gala.

Mr. Schwartz then examined Mr. A further. Neither he nor Mary wrote anything down during the conversation. In response to this hearing officer, Mr. A stated that the discussion concerned a female patient. Dr. Aslam had summoned Mr. A to his office. Mr. A did not give any input. He first learned of S.G.'s disclosures when he left Alpha in June 2017.

In response to Ms. Plerhoples, Mr. A stated that he learned of S.G.'s claims when Mr. Kempski called him. The first "outright" statement he heard about S.G.'s complaint was on the date of his testimony. In response to Mr. Schwartz, Mr. A stated that he has not been to his law firm. He reiterated that he told Dr. Gala to "watch his back". Dr. Gala responded by saying "good looking out". During the "conversation", Ms. W was "normal, not frazzled or anxious". Dr. was "irate" and he paced around. Dr. A was "cool as a cucumber.

Without objection, Dr. Gala called another witness "out of turn". He called [redacted], a self-employed person who provides cleaning services. She has cleaned Dr. Gala's home in 2016, perhaps once or twice a week. She described the cleaning she did. She had a key to the house, and cleaned it on an agreed schedule. At times Dr. Gala's parents would come and go. His mother would bring him food. There was no evidence of criminal activity or drugs in the house. Dr. Gala never discussed using prostitutes with Ms. L[redacted]. She never saw Dr. Gala impaired.

Reference was made to SX 16 (the summary of S.G.'s disclosures). Ms. I[redacted] discussed the matter with Mr. [redacted] She did receive a call from someone with S.G.'s first name. She stated that she used to clean Dr. Gala's house. Ms. L[redacted] then hung up. She thought that was strange. Prior house cleaners usually do not make such calls. She does not recall the date of that call.

Ms. Plerhoples cross-examined. Ms. L[redacted] has never been a patient of Dr. Gala. She met him because her son was his patient. She has no social relationship with Dr. Gala. She never went to his home uninvited. She did not look in Dr. Gala's medicine cabinet, nor in a "locked box". She did not search his home. As to the phone call, she does not know if the caller was S.G. Ms. I[redacted] is not interested in drugs or prostitution.

At the beginning of the third day of the hearing, counsel engaged in a discussion of certain related matters. Mr. Schwartz argued that certain claims against Dr. Gala were made after Dr. Gala had sued Dr. [redacted] for unpaid wages. Ms. Plerhoples argued that three complaints referenced by Mr. A[redacted] had been filed against Dr. Gala before the Board in late December 2016. One of those concerned S.G. None were the subject of Mr. A[redacted]s testimony. Mr. Schwartz represented that if he were to question Ms. Plerhoples about other claims against

Dr. Gala, he would ask about the timing of those claims vis a vis the filing of Dr. Gala's suit against Dr. A[redacted]. It would be stipulated that the "other" complaints were filed within months after the filing of Dr. Gala's wage claim suit.

Mr. Schwartz continued. Dr. Gala acknowledges that he has the right to remain silent as to certain questions. He has been arrested and indicted in a criminal case which has been dismissed without prejudice, and which may therefore be resurrected by the State. Dr. Gala's sworn testimony in this administrative hearing can therefore be used against him by the State if the criminal case is reopened. Mr. Schwartz has explained Dr. Gala's constitutional right against self-incrimination. Dr. Gala does not know why the criminal matter was dismissed. It may have been dismissed for lack of evidence, or perhaps because of the pendency of this licensure case. Dr. Gala understands his constitutional rights, and wants to testify in this hearing.

Ms. Plerhoples responded that she was not the prosecutor who handled the criminal case. The instant case is not a "stalking horse" for the criminal matter. Dr. Gala has formally waived his right to a speedy trial in the criminal case. This licensure case was filed before the criminal case. The State has an independent interest in this case with respect to the safety of the public. Mr. Schwartz conceded that Dr. Gala does not believe he had the right to stay the hearing of this licensure matter.

The State then called Dr. Gala, who was duly sworn. Before his testimony began, this hearing officer independently asked Dr. Gala if he understands his rights and the potential implications of testifying here. Dr. Gala confirmed that he does understand his rights, and wants to proceeed.

Dr. Gala was referred to S.G.'s PMP profile. He confirmed that he wrote the prescriptions at SX 1 at Tab 9 at 3. He also confirmed that he wrote the scripts for S.G. which

are found in SX 11. His last script for S.G. for Oxycodone 15mg was written by him on December 20, 2016. SX 11 at 5. He was "told" to write it. He conceded that he did not have an office visit with S.G. on that date.

SX 1 at Tab 4 at 3 is an office note for S.G. on September 23, 2016. Dr. Gala does not know if the form is a Got-a-Doc template. He confirmed that he used the EMR system at Got-a-Doc for both Suboxone care and pain management. In the September 23 note the "chief complaint" of "pain management" was entered by a medical assistant and not by him. Dr. Gala did write the "HPI" note on that date. He took S.G.'s medical history. He also wrote the "general examination" note on that date, as well as the "assessment" note. He agreed that it was up to the provider to write the "plan" note for pain management patients.

Dr. Gala testified that he does resort to the "Model Policy". He keeps it on his phone. Mr. Schwartz noted that Dr. Gala was "anxious", and stated that the questioning referred to Bd. Reg. 18.0 *et seq.* Ms. Plerhoples argued that licensees should be aware of what a "medical record" should contain. She was not asking Dr. Gala for a "perfect recitation" under that Board rule.

Dr. Gala stated his understanding of what is required under the FSMB Model Policy and Bd. Reg. 18.0. The two authorities require the taking of a medical history, evaluation, etiology of pain, diagnosis, physical exam, discussion of risks and benefits of controlled substance therapy, informed consent, treatment plan, and periodic reviews in order to revisit the plan, evaluate progress toward goals, evaluate modifications and to update the risk/benefit analysis.

Ms. Plerhoples asked if there is a standard format for a discharge note. Dr. Gala stated that the patient should be informed that the physician-patient relationship was being discontinued, the reason for same, the method to be used to transition the patient to the "next

documents regarding S.G. to Dr. A[redacted] to put them in her chart, but not to others. Only the two physicians had access to the cabinet. He does not now recall whether all of RX 4 was placed in the cabinet.

Ms. Plerhoples asked how Dr. Gala defined the term "continuity of care". He said that the term means the continuation and transition of care of a patient from one level to another. He added that it is important to document a patient's care as well as her medications and the results of physical exams.

Dr. Gala reiterated that he did not give RX 4 to other staff at Got-a-Doc. He kept the notes on his personal laptop. He does not recall whether S.G. knew that he was keeping her personal medical information on the laptop.

Dr. Gala disagreed with Dr. T[redacted] that RX 4 is not an authentic part of S.G.'s medical records. RX 4 is protected by HIPPA. He does not know if RX 4 was in the possession of Got-a-Doc. The documents became the property of Got-a-Doc when he inserted them in a patient's chart. Dr. A[redacted] told Dr. Gala that the contents of the locked cabinet would be uploaded to the patient's charting.

Dr. Gala acknowledged that he wrote the November 22, 2016 email to Dr. A[redacted] which is located at RX 3 at 3. Dr. Gala testified that he would "put notes in the chart". Paper charts for pain some patients were in the locked cabinet. Some of the copies for his use were prepared on his personal laptop.

RX 4 at 1 is a copy of Dr. Gala's extensive office note regarding S.G. dated September 23, 2016. Ms. Plerhoples asked Dr. Gala what he was reviewing in order to prepare the note on his laptop. Dr. Gala did not recall. He was not referring to Dr. Centers' records. Nor does he recall referring to Dr. A[redacted] records.

Ms. Plerhoples asked Dr. Gala who made the decision to prescribe opioids for S.G. Dr. Gala stated the decision was made by multiple individuals. It was a "team decision". Dr. Gala was on that "team". Dr. Gala continues to believe that S.G.'s treatment with opioids was medically appropriate. The note at RX 4 at 1 quotes Dr. A[redacted] as stating that S.G. "kept failing Suboxone treatment." Ms. Plerhoples asked what that statement means. Dr. Gala stated that S.G. was afflicted with chronic pain. Though she could work, her quality of life had been compromised. Non-compliance with her Suboxone treatments would constitute "failing". Dr. Gala does not currently recall whether S.G. had been non-compliant with that care.

Further on in his September 23 note at RX 4 at 9, Dr. Gala noted that S.G. had "shown consistency in her previous treatment with Suboxone…." Ms. Plerhoples asked Dr. Gala if that statement by him shows that S.G. had been "compliant" with Suboxone treatment previously. He agreed that she had been compliant, according to his note. He also added that one can be "failing" and "compliant" at the same time. "Failing" may mean that chronic pain was interfering with employment and quality of life. He agreed that "failing" may not have been the "best way to describe S.G."

Dr. Gala admitted that S.G.'s behaviors were consistent with addiction. He stated that he did not know why she had been given Suboxone treatments. The medication is prescribed for opioid dependence. Such a person may not be an addict. He admitted that S.G. stated the Suboxone gave her some pain relief. Dr. Gala testified that he could not prescribe Suboxone for S.G.'s chronic pain. He disagreed with Dr. T[redacted] that he could have considered increasing S.G's Suboxone dosing. He reiterated that Suboxone does not have an on-label approved use for chronic pain. He added that he does not presently know whether he could have increased her dosing with Suboxone.

Dr. Gala agreed with Ms. Plerhoples that RX 4 contains more detail than SX 1 at Tab 4. He gave RX 4 to his attorney on October 18, 2018. He agreed that the State had filed its complaint in this case on October 4, 2018.

Dr. Gala testified that he did review Dr. A[redacted] medical records for S.G. RX 4 at 8. He prescribed Gabapentin for S.G. as a non-opioid adjuvant medication to decrease pain. Dr. Gala could not state that the prescription was "necessary". He expected S.G. to follow her treatment plan. In his lengthy September 23, 2016 note at RX 4 at 10, he states that he "will refer (S.G.) for mental health counseling." He agreed that he did not write a prescription for that modality. He may have given S.G. a list of recommended providers, but did not document that.

Dr. Gala also writes that he will "strictly" enforce her pain contract. *Id.* He will use urine toxicology to ensure her compliance. *Id.* At Got-a-Doc, urine samples were sent possibly to a lab owned or operated by Dr. Aslam. Results were then uploaded to the eClinical system. If Dr. Gala were locked out of that system, he could have asked staff to provide him with the results. He admitted that he did not have UDS results from a prior month's sample at the time when he wrote prescriptions for S.G. on October 20, 2016.

Results of toxicology on an October 2016 UDS for S.G. are found at SX 1 at Tab 4 at 88. Dr. Gala does not recall whether he had reviewed those results. Nor does he recall ever reviewing UDS results from S.G. If he had those results at hand, he would have dictated that fact. It is possible that he reviewed her toxicology results but did not document them.

Reference was made to S.G.'s pain management contract. SX 1 at Tab 4 at 76. One provision in the agreement states that refill prescriptions will not be issued during evenings or on weekends. Dr. Gala reiterated that he did not have notes pertaining to the November 6 prescriptions written on a Sunday. Ms. Plerhoples asked him if he had complied with his

agreement with S.G. Dr. Gala stated that the agreement was primarily for the patient. He added that pain agreements are "more equal" now. The agreements state expectations for the patient.

Dr. Gala admitted that he did not document discussing with S.G. the fact that she had not filled her Gabapentin script. The extensive October 20, 2016 office note at RX 4 at 14 states that S.G. "must utilize all alternative forms of treatment prior to engaging in opioid therapy." Ms. Plerhoples asked Dr. Gala what alternative forms had been discussed or prescribed for S.G. Dr. Gala did not prescribe any other forms. He admitted that he had not prescribed a TENS unit or physical therapy for her. He admitted that he had not documented the fact in RX 4 that S.G. had exhausted physical therapy. Dr. Gala pointed out that at RX 4 at 8 he had documented the fact that PT was not an option for her. In Dr. Gala's view, S.G. had exhausted all non-opioid alternatives.

Dr. Gala could not recall whether he had written RX 4 at 14 before being aware of S.G's September 2016 UDS result. He agreed that he added Fentanyl to her drug regimen on October 20, 2016. Ms. Plerhoples asked Dr. Gala whether he would have concerns if an addict wanted opioids and not other medications. He stated that was not how S.G. presented. She stated that she was experiencing debilitating pain. She was concerned about using Gabapentin. Dr. Gala was still trying to determine if her opioid trial was effective.

Ms. Plerhoples referred to a note at RX 4 at 13 in which Dr. Gala relates that S.G. was asking for a "higher strength of oxycodone." Dr. Gala stated that she was in fact asking for increased dosing. At the time he was trying to find the lowest effective dose. He could not answer a question as to whether she was asking for stronger Oxycodone. Dr. Gala denied the question, and stated that he was not concerned with the request. The same page in RX 4 references non-opioid therapies. Dr. Gala agreed that he did not explain that reference in the

older note for the same date in SX 4. He also conceded that he agreed to increase her Oxycodone dosing.

With regard to a reference to Fentanyl at RX 4 at 16, Dr. Gala does not recall S.G. mentioning that she had eaten some of the patches. Dr. Gala agreed that he had not documented a review of S.G.'s UDS results at the time of the October 28, 2016 office visit. That visit was not scheduled. He does not recall the physician who discharged her after providing her with Suboxone treatments. He then stated that Dr. Aye had referred S.G. to Got-a-Doc. He agreed that he had not documented a discussion with S.G. about Gabapentin.

RX 4 at 18 documents a phone discussion on November 23, 2016 with S.G. The note in SX 1 at Tab 4 for the same date was blank. Dr. Gala did not see S.G. on November 23. He testified that though he had noted aberrant behavior by S.G. on that date, he wrote her another opioid script when she said that she was "almost out" of a prior script. He agreed that seven days after S.G. had said she was overusing her medications, he wrote S.G. a script for 120 tabs of Dilaudid 4mg. Since S.G. had failed her opioid trial, risks to her then outweighed benefits. Dr. Gala did not know if he could taper her down at that point.

The November 23, 2016 note in RX 4 states that he had reported S.G.'s behaviors to Dr. A[redacted] verbally. That is the only place in her charting where such a report was documented. As of November 23, S.G. was showing signs of drug-seeking. Dr. Gala admitted those signs had begun earlier. He reiterated that his notes in RX 4 were placed in the locked cabinet. Only Dr. A[redacted] and Dr. Gala had keys to the cabinet. He does not know what would be done if both physicians were absent from the office. Dr. Gala again stated that Dr. A[redacted] was supposed to upload the contents of the cabinet. Dr. Gala does not know if the Got-a-Doc staff was aware of the contents of the cabinet.

At this point the relationship between Dr. A[redacted] and Dr. Gala was "okay". Dr. Gala testified that in November 2016 he did not know if he trusted Dr. A[redacted] He reiterated that he did not give the contents of RX 4 to staff to scan into the system because of "poor HIPPA practices". It would be incorrect that staff believed Dr. Gala had eClinical access at the time.

Ms. Plerhoples returned to the "discharge note" dated November 30, 2016. RX 4 at 23. S.G. did not come to Got-a-Doc on that date. Dr. Gala agreed there was no such note in her chart. He agreed that he had prescribed for her on November 30. Though the discharge note refers to an unscheduled office visit with S.G on November 9, 2016, there are no other notes describing such a visit. Dr. Gala does not recall prescribing Nucynta for S.G.

SX 1 at Tab 8 contains the November emails between Dr. Gala and S.G. They refer to Nucynta. Though Dr. Gala prescribed Dilaudid for S.G., that was not done at her request. Dr. Gala does not recall whether he discharged S.G. in person. He believes he had reviewed S.G.'s UDS results. He does not recall whether pill counts were performed with S.G. No pill counts were documented by medical assistants at SX 1 at Tab 4 at 2-4. At the time of S.G.'s discharge, Dr. Gala did not know whether another Got-a-Doc provider would continue to write scripts for her. At the time of the discharge, risks to S.G. were greater than benefits, according to Dr. Gala. In late November 2016 she was a "high risk" patient. Though it was important that others in the practice were aware of the discharge, Dr. Gala could not recall whether he informed others of his decision.

SX 1 at Tab 8 at 4 is a check signed by Dr. Gala for $440 and made payable to S.G. Dr. Gala acknowledged that he signed the draft. SX 15 contains a check signed by Dr. Gala and made payable to [redacted] for $150. Both checks were written for house cleaning. Dr. Gala denied that it was his routine to have patients clean his home. He could not recall if he had

hired other patients to do so. SX 15 also contains a check signed by Dr. Gala and made payable to [redacted] for $300. She cleaned his home a "couple of times" per week.

On the date when she made her disclosures about him, Dr. Gala called S.G. to learn what information she was providing. He thought that it "would be bad", and that Dr. A[redacted] would fire him. He does not doubt that Ms.Stafford fairly reported the disclosures. Dr. Gala got along with Ms. Stafford.

On the advice of counsel, Dr. Gala hired Gary Marshall, Jr., a private investigator, to speak with S.G. Mr. Marshall and Ms. J[redacted] were to interview her. Dr. Gala stated that S.G. has not filed suit against him. Dr. Gala had started his new practice before he left Got-a-Doc. The practice is called Alpha Care Medical. Dr. I[redacted] practice traded under Alpha Health Centers.

Dr. Gala kept patient notes on his personal laptop. He does not recall if he stored patient notes on the laptop concerning Dr. [redacted] patients. Dr. Gala acknowledged that he has filed suit against Dr. [redacted] for wages due. The relationship between the two had "gone downhill". He does not know if Dr. [redacted] is "stealing" his patients. Dr. [redacted] has said to him, "I'm gonna get you motherfucker". Dr. Gala is unaware of any relationship between [redacted] and S.G.

After a lunch break, Mr. Schwartz examined his client. Dr. Gala denied dispensing any medications to S.G. He denied any sexual relationship. He denied several sorts of sexual activities with S.G. which she had disclosed. He has never patronized a prostitute. He has not used crack cocaine with S.G. or at any other time. He denied that he and S.G. urinated in each other's mouths. S.G. has never been in his car. In 2016 he owned a Subaru with a manual gear shifter between the front seats. S.G. has never left her cell phone in his car.

Dr. Gala continued. He did not watch pornography with S.G. He does not inject steroids. None were stored in his kitchen. He did not write any scripts for S.G. in his home. He did not disrobe in S.G.'s presence. In response to a question from his attorney, Dr. Gala stated that he is not circumcised.

In 2016 Dr. Gala had a tattoo on the inside of his right tricep. The tattoo is script writing of the statement, "I stand for the betterment of mankind." Dr. Gala also has two large keloid scars on the back of his neck. At this point in the hearing Dr. Gala removed his shirt and displayed both the tattoo and the scars. The dimensions of the tattoo are approximately 2" x 6.5".

With regard to the $440 personal check payable to S.G. (SX 1 at Tab 8 at 4), Dr. Gala stated that he could have paid S.G. in cash. The check was for her cleaning services, including mopping, washing dishes, laundry, and the like. Mr. Schwartz asked why Dr. Gala had written two checks to Ms. [redacted] and one to S.G. in the same time frame, Dr. Gala stated that at the time he had sufficient funds in his account to do so. On some occasions Got-a-Doc paychecks were late.

During the period 2015-2017 Dr. Gala had no personal concerns regarding hepatitis. He had tested for the disease in 2014 in conjunction with a pre-employment work-up. Nor was he concerned regarding trichomonyasis during the same period. He was not tested for the latter.

Dr. Gala is presently spiritually married to [redacted] He has dated her since 2016, and the two have a three-month old daughter. His parents reside in New Jersey, and visit with him two weeks out of the month. In 2016 his mother would bring him food twice weekly. He said that is "typical of an Indian mother".

With regard to S.G., Dr. Gala does not recall whether she had been on Suboxone treatments in September 2016. Dr. Gala has never threatened her. At the time of her disclosures, S.G. had threatened to call police and to report Dr. Gala to the Board. She was "unstable, erratic, paranoid." Dr. Gala knew that Dr. [redacted] would learn of the disclosures. Dr. Gala feared Dr. [redacted] When Ms. W[redacted] relayed S.G.'s disclosures to Dr. Gala, he said he did not know what she was talking about. He denied saying that he had not seen S.G. "in months". Dr. Gala called S.G. He did not tell her things would be bad for her. Dr. Gala was "horrified" about S.G.'s disclosures. They would be used to "destroy me and my reputation" and would "devastate" his parents.

Initially Dr. Gala discussed S.G. with Dr. A[redacted] Dr. A[redacted] directed Dr. Gala to see her. Though she was on Suboxone treatments, Dr. A[redacted] stated that she needed pain management. Dr. Gala was aware of the referral from Dr. [redacted] Consequently, since two more "senior" physicians were saying that S.G. needed pain management, and since they practiced a "team approach", Dr. Gala agreed to do so. Dr. Gala added that he would have independently concluded that S.G. needed pain management.

It is true that on the occasion when S.G. appeared at Dr. Gala's home unannounced, he threatened to call police. That was before the date on which Dr. Gala learned of S.G.'s disclosures.

With regard to the blank office note dated November 23, 2016 at SX 1 at Tab 4 at 6, the document is "fraudulent". Dr. Gala did not create it because, at the time, he did not have eClinical access. It bears the wrong date of signature. Dr. Gala has seen Dr. A[redacted] do "this" to others. It contains no text. The document shows it was signed by "zzzNiharzzzzGala". The "zzz" lettering indicates that it was signed by a provider who had left the practice.

With regard to the October 20, 2016 note at SX 1 at Tab 3 at 5, Dr. Gala could not have signed the note on December 21, 2016 because he had been blocked from eClinical on December 19. He knew that other Got-a-Doc staff were told to tell Dr. Gala that the entire system was down. During a meeting the Friday before, Ms. W[redacted] had directed that Dr. Gala be locked out of eClinical.

Mr. Schwartz asked Dr. Gala why a locked filing cabinet was in use. He stated that the cabinet contained protected health information. Dr. Gala prefers to store documents in that fashion. He did not trust the staff to secure the documents.

With regard to medications prescribed for S.G., Mr. Schwartz asked Dr. Gala why he decided to start with opioids in September 2016. Dr. Gala stated that she had an etiology of chronic pain. She had adverse reactions to and had exhausted other modalities. The pain affected her job and quality of life. She feared losing her job, and had to feed her children. Dr. Gala testified that he discussed interventional pain management with S.G. She had a fear of needles.

Dr. Gala then testified about RX 4. He created that record at night after he had left the office on his personal laptop. He created Word files using dictation software. He now charts with customized EMR software. EClinical had not been customized or him. The system he was using on his laptop in 2016 corrected grammar, spelling and typos.

Dr. Gala testified earlier that he wrote RX 4 more or less contemporaneously with the medical care he provided to S.G. At one point in RX 4 a note refers to his checking with the PMP about S.G. in 2018. Dr. Gala stated that he said "2016" at the time of his dictation. It is possible that his software may have caused the problem.

RX 4 contains certain xray reports. Dr. Gala stated that at the time when he charted the information in RX 4, he copied and pasted the reports from their sources. He pulled up the documents from Delaware Information Network, selected portions of them, and then pasted them into his charting in RX 4.

Mr. Schwartz questioned his client about claims that he had discussed with staff his patronizing of prostitutes. He denied engaging in such discussions. He did not mention such activity to Ms.Stafford, nor did he tell her he may have hepatitis and needed to report the condition.

Dr. Gala denied ever requiring or suggesting to S.G. that she delete any emails. With regard to the video on Ms. Stafford's phone which shows him "staggering", Dr. Gala acknowledged that he was depicted on the video. However, he had been dared to spin around ten times and then to stand straight. He did so, and became dizzy. He was not impaired at the time. He was holding mouthwash in his hand at the time because he had to see more patients and did not want them to know that he smoked. In addition, Dr. Gala denied ever sleeping on an exam table at Got-a-Doc.

Dr. Gala stated that Empire was the entity owned by Dr. Aslam which acquired other entities named in a health care fraud case. Empire now owns the Got-a-Doc assets.

With regard to being blocked from eClinical, Dr. Gala was referred to the emails found at RX 3. Hasan is identified in one of the emails. [redacted] was Dr. A[redacted] nephew and his "IT person". Dr. Gala first learned that he had been locked out of eClinical in early October 2016. On November 22, 2016 he learned that he could no longer remotely access the system. His password had been revoked. He was locked out of the system two months prior to his November

22, 2016 email. Dr. A[redacted] knew of Dr. Gala's plan to open his own practice. RX 3 at 3. Dr. Gala notified Dr. A[redacted] of his intentions as a professional courtesy.

Mr. Schwartz asked Dr. Gala why he decided to leave Dr. A[redacted]. Dr. Gala stated that Dr. A[redacted] was involving him in fraudulent practices at the Got-a-Doc locations. Dr. Gala did not want to commit fraud. Examples of such conduct were "kickbacks", violations of the "Stark law", signing charts for Dr. A[redacted] manipulating charts and notes, upcoding visits, billing management visits as if they were codeable work. ("Stark" laws are federal legislation barring a physician from referring a Medicaid or Medicare patient to an entity in which the referring physician has a financial interest.)

Dr. Gala also testified that some of his paychecks from Got-a-Doc were deficient by amounts in excess of $1,000. Dr. Gala therefore filed suit against Dr. A[redacted] for back wages. Subsequently, Dr. A[redacted] asked him to drop the suit. Dr. A[redacted] defaulted in the suit. Negotiations to settle it were not successful.

RX 2 is a letter from Mr. Schwartz to Dr. A[redacted] medical malpractice insurance carrier, with exhibits. The letter demanded that the company provide a defense for Dr. Gala in a filed malpractice case. Dr. A[redacted] had attempted to cancel Dr. Gala's "tail" malpractice coverage. In that case the plaintiff had never treated with Dr. Gala. The case apparently involved prescribing the wrong medications for an elderly patient. Dr. A[redacted] had tried to cancel Dr. Gala's coverage after he had received the suit papers. Eventually the insurance carrier decided to provide Dr. Gala with a defense, but not until he had incurred expenses in hiring his own attorney. The case was eventually resolved.

With regard to his care for S.G., Dr. Gala testified that he followed the FSMB Model Policy and had attempted to justify his prescribing. He was restricted because S.G.'s was an

"atypical" case. He was unable to document his care properly in eClinical. Under duress, he tried to gather as much information as possible. He knew he would have to defend himself. He can not ensure that S.G.'s medical records are complete concerning his decisions and compliance with the Model Policy and Board regulations.

Ms. Plerhoples then questioned Dr. Gala further. S.G. cleaned his home more than once. Dr. Gala thought it "weird" when S.G. appeared at his home unannounced. He did mention calling police. He does not recall when he formed the opinion that S.G. was "paranoid" and "unstable. The dates on SX 1 at Tab 3 at 4 are the same as the date on a fax. Dr. Gala agreed that the incorrect dates on some of the charting show the date on which a document was printed for this case, and not the date of service.

With regard to the filing cabinet, Dr. Gala preferred to give his notes to Got-a-Doc by putting them in the cabinet. He kept S.G.'s records on his laptop. They were encrypted and password-protected. In his current practice, Dr. Gala prescribes controlled substances for chronic pain and provides Suboxone treatments.

With regard to the incorrect reference in a 2016 note to the year 2018 as in RX 4, 2018 was the year he gave the documents to Mr. Schwartz. He did type or dictate S.G.'s notes in RX 4. He does not recall the date on which he was first blocked from eClinical. Nor does he recall informing staff on that date.

Dr. Gala first informed Dr. A[redacted] of his plans to open his own practice one week before November 22, 2016. Dr. A[redacted] then locked him out without providing a reason. When Dr. Gala determined that Dr. A[redacted] was committing fraud in his practice, Ms. Plerhoples asked whether he reported that conduct to the Board. Dr. Gala stated that he "preferred not to answer" the question. He then refused to do so.

When Dr. Gala stated that his care for S.G. was "restricted", he meant that he was unable to complete her documentation in eClinical. He was, however, able to dictate her charting on his own laptop. Dr. Gala stated he is responsible for his prescribing in this case.

Mr. Schwartz questioned Dr. Gala further. In Fall 2016 Dr. Gala was a student in a Temple University MBA program. He had enrolled in that program in Fall 2015, and was taking four courses per year. He will receive his degree in 2019. In Fall 2016 he was enrolled in Statistics and Global Leadership. He studied 12-16 hours per week while working 40-60 hours per week for Got-a-Doc. With regard to his refusal to state why he did not report Dr. A[redacted] fraudulent conduct to the Board, Dr. Gala stated that he is fearful of Dr. A[redacted] Dr. A[redacted] is a "sociopath" who "wants to destroy me". In response to Ms. Plerhoples, Dr. Gala stated that he has reported misconduct by others to the Board.

This hearing officer asked Dr. Gala why S.G. would lie about him repeatedly under oath in this case. Dr. Gala stated that Dr. A[redacted] had paid her to do so, and was giving her Suboxone treatments. I asked if Dr. Gala had any proof of those allegations, and he stated that he did not. I also asked Dr. Gala how he was able to remember such extensive details about a patient he had seen when he charted that care at home and without access to eClinical. He stated that he would record information on 3x5" note cards and refer to them. He kept the cards to chart pain management at home on his laptop. At this point Dr. Gala rested.

In rebuttal, the State called [redacted], Ms. S[redacted] 16-year old daughter. She testified by telephone. Her mother did not object to her testifying. Before permitting her to do so, I made an inquiry and was satisfied that, though a child, she understood the meaning of truthfulness and the importance of being truthful in this proceeding.

Ms. S[redacted] testified that on occasion she would visit her mother at Got-a-Doc. She knows Dr. Gala, who worked with her mother. She took the video on her cell phone (and forwarded it to her mother), which depicts Dr. Gala. She said the three of them were outside in a parking lot behind the clinic.

Ms. S[redacted] decided to take the video when she observed Dr. Gala "swaying back and forth". He stumbled backwards. Ms. S[redacted] thought it was funny. She then took the video. Her mother later instructed her that it was "not good" to do so, and that the video should be deleted from her phone. Ms. S[redacted] kept it on her phone, and later forwarded it to Ms. S[redacted].

Before he started to sway or stumble, no one asked him to do anything, such as spinning around. At the time she was age 14-15. The video was made on July 26, 2015. Ms. S[redacted] repeated that she would visit her mother often at work, and had met Dr. Gala multiple times.

In this case no one has told Ms. S[redacted] what to say. Her mother had told her to tell the truth. The only time Dr. Gala's case was discussed with her was when her mother had asked for the video "for court".

On cross-examination by Mr. Schwartz, Ms.S[redacted] stated that she took the video at mid-day or in the afternoon. It was uploaded to Snap. She did not know what Dr. Gala was holding in his hand, nor what he had in his mouth. Dr. Gala was "funny" that day because he was "out of it" and "loopy". Ms. S[redacted] can not judge Dr. Gala's character. Dr. Gala is well-spoken and is "average". At times he appears tired and "run down". She reiterated that she does not remember Dr. Gala "spinning around". She found that question funny.

At this point both parties had rested their cases. The hearing would reconvene on March 15, 2019 for closing arguments of counsel. Ms. Plehoples argued first. She argued that this is a

"difficult" case, but the allegations against Dr. Gala are egregious and appalling. The case includes alleged violations of Bd. Reg. 18.0 and other professional misconduct. The State contends that Dr. Gala's medical care for S.G. was inappropriate, grossly negligent, and exhibits a pattern of negligence.

The State continues to maintain that the records in RX 4 constitute a fabrication. Those records do not support Dr. Gala's prescribing in this case, nor his treatments for S.G., and were not maintained in the normal course of business. If it is determined that the records were fabricated long after the care which they describe, then Dr. Gala's credibility is undermined. Ms. Plerhoples argued that S.G. was a credible witness and that her testimony has been corroborated.

Dr. T[redacted] has testified with regard to Dr. Gala's gross negligence. His opinions were credible, and are consistent with the FSMB Model Policy and Bd. Reg. 18.0. He testified that any prescriptions written by Dr. Gala during his sexual relationship with S.G. are suspect. His prescribing was outside the scope of proper care. His records were deficient. He demonstrated negligence when he began to prescribe for S.G. on September 23, 2016, and then gross negligence thereafter. S.G. was a high risk patient. In addition, his scripts for S.G. on November 6 and 30, 2016 were not written after office visits. When Dr. Gala removed S.G. from Suboxone care on September 23 and placed her on full agonist medications on September 23, that constituted a threat to her life.

The State contends that the medical records in SX 4 constitute Dr. Gala's actual charting for S.G. He did see S.G. on the initial three dates of care. Dr. Gala repeatedly testified that Dr. A[redacted] has committed fraud in this case. Dr. A[redacted] was not on trial here. Nor is he responsible for Dr. Gala's prescribing for S.G.

The medical records for S.G. in SX 4 are deficient. There is no documentation of discussion of the risks and benefits of opioid treatment in the charting. Nor did Dr. Gala secure her informed consent. While S.G. requested a TENS unit, Dr. Gala did not discuss that modality. S.G. also indicated that physical therapy had provided some relief.

Witnesses noted that SX 4 resembled standard charting by Dr. Gala at Got-a-Doc. In addition, there was testimony that the detail in RX 4 did not resemble his regular charting. Though Dr. Gala testified that reference should be made to Bd. Reg. 18.0 *et seq* to ascertain the proper contents of pain management records, nonetheless his charting did not comply with that rule. The contents of RX 4 were never placed in S.G.'s chart. Consequently, neither S.G. nor other providers had access to those documents.

Dr. Gala testified that after he placed RX 4 in a locked cabinet, he expected Dr. A[redacted] to withdraw those notes and scan them to S.G.'s chart. Dr. A[redacted] was not called as a witness. Even though S.G. was an addict, refused to fill a script, and requested increased dosing of opioids, there is no record of urine screening in S.G.'s chart. Nor were any pill counts documented.

With regard to RX 4, Dr. Gala first contended that those documents were consistent with Bd. Reg. 18.0, and then changed and stated that in some respects they were not consistent. No attempt was made to refer S.G. to other modalities, nor to prescribe them for her. Dr. Gala testified that he prescribed for S.G. on November 9, but gave no explanation for his prescribing for S.G. on November 6, 2016.

Dr. T[redacted] noted that RX 4 (if authentic) refers to S.G.'s refusal to fill a Gabapentin script. Dr. Gala began to prescribe opioids from the outset while S.G. was a known addict and had been on extensive Suboxone treatments during the period just prior to her arrival at Got-a-

Doc. Dr. Gala provided no explanation for considering or prescribing Nucynta for S.G. The State contends that the "discharge note" in RX 4 is not credible. Though S.G. had been in extended Suboxone treatment, Dr. Gala prescribed Dilaudid for her and expected tapering.

On October 28, 2016 S.G. did not return unused Fentanyl patches to Dr. Gala, though his practice had a protocol for destruction of unused controlled substances. Dr. Gala told S.G. to keep the unused medications. As an addict, she orally consumed some of the medication. An Oxycodone ER script for S.G. was never filled by her. Rather, Dr. Gala prescribed Oxycodone at 90 tabs which constituted more pills at a higher dose.

Ms. Plerhoples argued that Dr. A[redacted] records demonstrate that Dr. Gala was negligent in his care for S.G. She had been compliant with her prior Suboxone treatments, as shown in keeping appointments and urine screens. S.G. returned to Suboxone treatment after she was discharged by Dr. Gala. Ms. S[redacted] confirmed S.G.'s compliance. Dr. Gala admitted his responsibility for all of his prescribing for S.G.

With regard to RX 4, those documents were provided to the State more than two years after a complaint had been filed against Dr. Gala. According to Mr. Schwartz, RX 4 was provided to him by Dr. Gala four days after the administrative complaint had been filed. The delay in producing RX 4 is suspect. Witnesses testified that Dr. Gala's charting was typically brief. None said that RX 4 resembles his normal charting of pain management visits. Though Dr. Gala terstified that he wrote the details later incorporated in RX 4 on note cards, he failed to produce those cards in this case. The copying and pasting of extraneous materials in RX 4 was not normally done by Dr. Gala.

The State contends that RX 4 was an attempt by Dr. Gala to put his case in the best light. Dr. Gala blamed Dr. A[redacted] for his prescribing. He stated that Dr. A[redacted] directed him to

conduct pain management with S.G, and told him to prescribe opioids. RX 4 was prepared long after S.G. was Dr. Gala's patient. Around the time of S.G.'s discharge, Dr. Gala wrote her a script on November 6, a Sunday. There was no documented office visit with her on that date.

RX 4 contains two date references which, the State argues, show that RX 4 was created long after 2016. In a section of the note in RX 4 for the initial September 23, 2016 office visit with S.G., Dr. Gala states that he had reviewed PMP reports for S.G. dated September 2018. RX 4 at 4. The State contends that is evidence that RX 4 was created long after 2016. During that initial visit, S.G. stated that the two did not discuss "risks and benefits" or other non-opioid pain modalities.

With regard to RX 4, Ms. Plerhoples argued that the documents in the exhibit are not consistent with Dr. Gala's normal pain patient charting. There is no meta data evidence regarding creation of the exhibit. The Got-a-Doc staff did not have access to RX 4. Though Dr. Gala testified that he placed RX 4 in a locked cabinet, he did not tell others who may need access to the documents that he had done so. There was no reason not to place RX 4 in S.G.'s Got-a-Doc chart. It is not credible that Dr. Gala did not place RX 4 in S.G.'s paper chart because of his concerns regarding HIPPA practices of office staff because he created confidential patient records on his own laptop at home. S.G. was unaware of his charting in that fashion. S.G.'s chart belonged to Got-a-Doc. RX 4 should not be part of the record in this case.

Dr. Gala's testimony "defies reason". Dr. Gala has failed to produce other copies of RX 4. Got-a-Doc staff searched for other records regarding S.G. without success. If S.G.'s records were "extrapolated" by someone in India and then forwarded to Dr. Gala in encrypted form, Ms. Plerhoples asked where is a copy of the email or other communication which forwarded the

documents to him. She again argued that only the documents in SX 4 constitute Dr. Gala's contemporaneous charting of S.G.'s care.

Most witnesses stated that Dr. Gala had access to eClinical at Got-a-Doc at the time when he had three office visits with S.G. Ms. B[redacted] was unaware if he was locked out at those times. Ms. B[redacted] had seen Dr. Gala logging into and writing on eClinical. Ms. P[redacted] observed him entering notes in the system. Dr. Gala did not tell most staff of the access problem. Dr. Gala informed Dr. A[redacted] that he was placing patient notes in their charts. RX 3. The charts were not in the "cabinet". Pain charting was placed in manila folders. Ms. W[redacted] testified that on December 16, 2018 Dr. Gala was locked out of the system. That is consistent with the time frame when he informed Dr. A[redacted] that he was leaving the practice.

Ms. Plerhoples turned to S.G.'s allegations. Her claims have been corroborated. She was a vulnerable addict who was manipulated by Dr. Gala. She was likely to lie in order to receive scripts from Dr. Gala.

S.G. should be presumed truthful unless she was impeached. S.G. has told a consistent story for two years to multiple individuals, including police. False reporting to the latter is a crime. Ms. W[redacted] described S.G.'s disclosures to a Division investigator about the exchanges between S.G. and Dr. Gala of drugs and cash. S.G. was emotional and it was difficult for her to testify in this hearing. It is insignificant if there is a dispute as to "who peed on whom", or whether Dr. Gala could maintain an erection while attempting to engage in anal sex. S.G. has admitted prostitution and engaging in degrading acts for drugs.

S.G. described the aborted trip to meet Dr. Gala at Killens Pond and then her meeting with Dr. Gala in detail. Dr. Gala asked for her cell phone number early on. After receiving emails from S.G. questioning his prescribing of medications which caused her problems, Dr.

Gala's response was "R U free?" Dr. Gala tried to convince S.G. to erase certain emails. Dr. Gala paid S.G. $440 for "housekeeping" almost simultaneously with payments to another woman for the same services.

Dr. Gala attempted to impeach S.G. with proof of a 15-year old burglary charge and the fact that she had been homeless. He claimed that S.G. had been off Suboxone treatments when she had in fact continued them up to the time when she presented at Got-a-Doc. Dr. Gala attempted impeachment by noting that S.G. had not noticed a tattoo on his right arm and scars on the back of his neck. S.G. admitted memory issues in her testimony. She denied hallucinating about sexual acts with Dr. Gala.

During the hearing Dr. Gala claimed that others were engaged in a conspiracy to destroy his career and his reputation. No witness claimed, under oath, that he or she had been offered inducements to testify against Dr. Gala. S.G. did not know Dr. A[redacted] or Ms. W[redacted]. S.G. did not intend to harm Dr. Gala. S.G. has been consistent in her recollections. Ms. Plerhoples argued further that during the period prior to presenting at Got-a-Doc, S.G. did not engage in any of these activities in order to continue her Suboxone treatments.

The record supports S.G.'s contention that Dr. Gala would write scripts for her without an office visit. Got-a-Doc employees consistently testified that patients would be logged in when they appeared at the office. There are no notes of patients logging in on November 6 or 9, 2016. Dr. Gala's purported "discharge note" for S.G. was dated November 30, 2016. On that date the only communication with S.G. was Dr. Gala's query: "R u free now". Regardless of his intention to discharge S.G., Ms. Plerhoples argued that that brief note shows that Dr. Gala was still interested in maintaining a relationship with her.

Ms. Plerhoples stated that it was understandable why Dr. Gala did not want to discuss his use of prostitutes with some Got-a-Doc employees. Nonetheless, Ms. S[redacted] testified that Dr. Gala indicated that he had been with prostitutes on multiple occasions. Similarly, they discussed testing for Hep C. Ms. S[redacted] independently found S.G.'s "disclosures" credible about engaging with Dr. Gala with at least one prostitute present because Dr. Gala had made a similar disclosure to her. There is no evidence that Ms. S[redacted] was "conspiring" against Dr. Gala. In fact, she testified that she liked Dr. Gala.

Ms. Plerhoples continued. Mr. [redacted] was the only witness who provided evidence of a "scheme" to harm Dr. Gala. She characterized Mr. A[redacted] testimony as useless and "vague". The context of the meeting which he attended was not provided. Ms. Plerhoples speculated that the meeting may have concerned the disclosures from S.G. Whatever was discussed at that meeting does not disprove S.G.'s claims. Mr. A[redacted] was unaware of her sexual allegations at the time of the meeting. Ms. Plerhoples asked, rhetorically, why Dr. A[redacted] would be invited to a meeting when a conspiracy to harm another physician was being discussed. Ms. Plerhoples speculated that Mr. A[redacted] testimony may have been colored by a poor opinion of Dr. A[redacted].

Ms. W[redacted] was not impeached or effectively cross-examined by Dr. Gala's counsel. She was not fabricating a story when she gave a statement to a Division investigator. Dr. Gala admitted that he called S.G. on the date when she made her disclosures. Ms. Plerhoples asked, again rhetorically, why a licensed physician would engage a known drug addict to clean his home. If S.G. appeared unannounced at Dr. Gala's home to perform cleaning services, then his statement that her visit was "weird" is suspect. Dr. Gala apparently knew that S.G. was making an audio recording of the conversation. In short, to believe that Dr. Gala has been the victim of a long-running "conspiracy" is to disbelieve most of the witnesses in this case.

In this case Dr. Gala has created false records, lied under oath on certain matters, and even lied about the "staggering video". Ms. Plerhoples asked if Dr. Gala also believes that Ms. S[redacted] daughter is part of the "conspiracy". She argued that Dr. Gala controlled access to his home, and that only his mother was permitted to enter unannounced. Dr. Gala is two people. On the one hand he appears to be a compassionate physician. On the other he tells S.G. that things will be "bad" after her disclosures, and sends others to her home. S.G. testified that the latter Dr. Gala has money and power, and exploited her. Ms. Plerhoples stated that S.G. was the "perfect victim" for Dr. Gala.

Ms. Plerhoples then discussed the statutory claims the State has made against Dr. Gala. Under 24 *Del. C.* §1731(b)(1), Dr. Gala's prescribing for S.G. was unethical. He has committed such "substantially related" crimes as drug dealing and intimidation. S.G. received Vicodin and other drugs from Dr. Gala without a prescription and at his home. He engaged in the constructive transfer of drugs to her without valid prescriptions. Dr. Gala has also violated 16 *Del. C.* Sec. 4701(25) in that he was engaged in unlawful prescribing for S.G. Dr. T[redacted] has opined that his prescribing was not for legitimate medical purposes.

Ms. Plerhoples continued. Dr. Gala has attempted to discourage cooperation with police investigators in violation of 11 *Del. C.* Sec. 3532. When notified of S.G.'s disclosures, Dr. Gala told her that "things will be bad for you." He also directed Ms. S[redacted] to tell S.G. to "drop it...leave it alone."

Dr. Gala has also violated 24 *Del. C.* §1731(b)(3). His prescribing, his creation of fraudulent records and his demands for sexual acts in exchange for continued prescribing constitute dishonorable and unethical conduct. Dr. T[redacted], through his testimony and opinions, has testified that Dr. Gala's prescribing of narcotic medications for S.G. was not for proper

therapeutic purposes. Dr. Gala's sexual relationship with S.G. constitutes misconduct, gross negligence and a pattern of negligence in the practice of medicine under 24 *Del. C.* §1731(b)(11). Contrary to Bd. Reg. 17.7.4.2, Dr. Gala prescribed for S.G. in exchange for sex with her.

With regard to violations of the Delaware Uniform Controlled Substances Act, 16 *Del. C.* Ch. 47, Dr. Gala failed to destroy unused medications properly and prescribed opioids for an addict in exchange for sexual gratification.

Ms. Plerhoples then listed the following as aggravating factors under Board regulations which are present in this case: 17.4.3, 17.4.4, 17.14.15, 17.14.6, 17.14.8, 17.14.10, 17.14.11, 17.14.12, 17.14.17, 17.14.19, 17.14.20, 17.14.21 and 17.14.22. In the State's opinion, the only factor in mitigation in this case is that Dr. Gala had not been the subject of prior professional discipline. Dr. Gala continues to prescribe controlled substances in his new practice. This case is "unique" and "troubling". The State requests that this hearing officer recommend to the Board that Dr. Gala's medical license be permanently revoked.

Mr. Schwartz had prepared a 21-page written statement which constitutes his closing argument. Since the statement is not evidence but the contentions of counsel, it was not admitted as an exhibit. However, Mr. Schwartz provided a copy of the statement to the hearing officer for reference in the preparation of this recommendation. For the sake of brevity, I will paraphrase his arguments here, as I have done with the State's closing.

Mr. Schwartz stated that Dr. Gala admits having written all of the prescriptions listed in the relevant PMP report. SX 1 at Tab 9. Dr. Gala also concedes that Board rules require that a visit be documented when scripts such as these are written. Dr. Gala saw S.G. on three recorded occasions, though scripts were also written for her on other dates.

Dr. Gala characterizes the State's case as built on an "extremely unsteady foundation". The records for S.G. produced in SX 1 at Tabs 3 and 4 are not reliable because Dr. Gala believes they were created by Dr. A[redacted] None of those records contain the sort of detail needed for insurers to approve new medications. It is not credible that Dr. A[redacted] would have traveled from Elkton MD to Dover to see S.G. on December 1, 2016 for a "cough and chest tightness" complaint. Mr. Schwartz speculated that "perhaps (Dr. A[redacted]) created the other notes attributed to Dr. Gala as well."

Further, though S.G. stated that she had never received a pelvic exam at Got-a-Doc, a note on October 20, 2016 states that she exhibited "normal genitalia, with no masses or STS on exam." That note is "fraudulent" because it is consistent with Dr. A[redacted] practice as an obstetrician gynecologist. S.G. also testified that the notes recording her weight while treating between Dr. A[redacted] and Dr. H[redacted] were "grossly inaccurate". He suggests that Dr. A[redacted] falsely recorded her weight.

Further evidence of unreliability of the State's charting for S.G. is the fact that Ms. S[redacted] confirmed that counselors would log in notes over the name of Mr. H[redacted]. Dr. Gala contends that this is evidence that SX 1 at Tabs 3 and 4 are therefore unreliable. In addition, a note for S.G. electronically signed by Dr. Gala on December 21, 2016 could not have been created by Dr. Gala because at that point he had been locked out of the eClinical system. The decision to lock him out was made on December 16, 2016. Mr. Schwartz therefore argued that the note is incorrect, or the State's witnesses were incorrect. Finally, some of the notes produced to the State in this case bear September 2018 signature dates. (Those dates were clarified as the dates of reproduction of the records for purposes of providing them to the State in response to

subpoenas.) Mr. Schwartz therefore argued that the records had not been "locked for editing", and that "anyone" at Got-a-Doc could have created them.

Dr. Gala contends that RX 4 is the "most reliable" evidence of S.G.'s treatment. Dr. Gala also concedes that he did not always "document the patient's treatment visit." Mr. Schwartz lists the anticipated arguments of the State challenging the authenticity of RX 4. In response, he argues that Dr. Gala has testified as to the contemporaneous dates and reasons for the charting in RX 4. His testimony regarding doing the charting on his personal laptop is consistent with Dr. Gala being locked out of the eClinical system. Emails submitted by Dr. Gala in RX 3 establish that he had been locked out of the system for "almost two months" prior to November 22, 2016.

Mr. Schwartz argued that if Dr. Gala had been a "sneaky sort", he would have created notes supporting all of his prescribing in this case. For instance, if Dr. Gala had fabricated S.G.'s chart, he would have documented a note for service on November 9, 2016. This hearing officer, and the Board, should rely on the "voluntarily produced" RX 4 and not SX 1 at Tabs 3 and 4.

Dr. Gala admits that at the time S.G. presented at Got-a-Doc in September 2016, she had been receiving Suboxone treatments since December 8, 2015. However, Dr. A[redacted] had referred S.G. for pain management because he "must clearly have felt" that Suboxone was no longer appropriate for her. The decision to switch to pain management was S.G.'s. Mr. Schwartz argued that Dr. A[redacted] had "left the door open" for S.G. to return to his care.

In addition, Dr. Gala evaluated whether a trial of opioid medications was a "reasonable course". S.G. "opted" for that trial, and curtailed her Suboxone use. A recording played during the hearing shows that S.G. stated that she was "already off the Suboxone" when she started treating with Dr. Gala. It was not Dr. Gala's decision to curtail S.G.'s Suboxone treatment. Dr.

Gala did not switch "this poor, hapless patient off suboxone and onto opiates in an attempt to reactivate her addiction so he could then take advantage of her."

Dr. Gala admits that he did not request S.G.'s prior treatment records. .However, that was not gross or wanton negligence. He did have her PMP report. His supervisor (Dr. A[redacted]) and Dr. A[redacted] advised Dr. Gala that S.G. would present for pain management. Dr. Gala therefore felt comfortable in doing so.

With regard to the lack of a noted office visit in conjunction with S.G.'s November 6 Oxycodone 20mg script, Mr. Schwartz suggests that such a note may not have been recovered in India from his personal laptop. He also argued that it is the State's burden to prove its case. It is not Dr. Gala's burden to "prove his innocence". Dr. Gala does not have a defense for his lack of documentation of an office visit with S.G. on November 30, 2016 (the date of his discharge note). However, the absence of such a note does not prove a pattern of behavior, nor a gross deviation from standard of care.

Dr. Gala denied stating that he had not seen S.G. "for months" when he was informed of S.G.'s disclosures of misconduct. He agrees that he called S.G. when he learned of her claims. The statement by S.G. that Dr. Gala told her "this is going to be bad for me" was a reference to things being bad for her and not Dr. Gala. Hence, she was afraid to make the allegations against him.

Mr. Schwartz clarified that he is the person who dispatched private investigator Marshall to interview S.G. He also notes that the record as presently established does not prove that Mr. Marshall threatened S.G. through her parents. Dr. Gala acknowledges that he did threaten S.G. when she showed up at his home unannounced. He threatened to call police. That was not unlawful. Nor was it unlawful for Dr. Gala to call S.G. after she had made her disclosures.

With regard to the State's allegation that Dr. Gala has violated 24 *Del. C.* §1731(b)(1), When Dr. A[redacted] told Dr. Gala in a November 4, 2016 email that "it would be very bad for you if the charts are not complete", that may have been a "portent of things to come". RX 3 at 2. Dr. A[redacted] statement may have been "ringing in Dr. Gala's ears" when he called S.G. after her disclosures. Dr. Gala sued Dr. A[redacted] for back wages on December 1, 2016. Around this time Mr. [redacted] attended the meeting where those present "appeared to be scheming against Dr. Gala". According to the records in evidence, Dr. A[redacted] saw S.G. for complaint of a cough on December 1, 2016. SX 1 at Tab 4 at 7. Dr. Gala argues that it is not credible that Dr. A[redacted] would travel to downstate Delaware to treat the patient of another physician for such a complaint.

Apparently the allegation is that during that visit Dr. A[redacted] furthered his "scheme" against Dr. Gala with patient S.G. Around this time S.G. moved into a new apartment and purchased a car. Similarly, Dr. A[redacted] canceled Dr. Gala's medical malpractice tail coverage and forced Dr. Gala to provide a defense in a malpractice case at his own expense. This is all evidence of a scheme by Dr. A[redacted] to "throw (Dr. Gala) under the bus."

Mr. Schwartz then turned to S.G.'s allegations of sexual misconduct by Dr. Gala. He argued that S. G. should not be believed. She did not mention anal sex with Dr. Gala until the date of the hearing. During her hearing testimony she "forgot" to describe an incident she earlier revealed to Delaware State Police investigators that she fellated Dr. Gala's anus while he masturbated. She may have also forgotten to describe the details of who drank whose urine during one of the encounters.

Mr. Schwartz further argued that S.G. did not record any of the sexual activities between her and Dr. Gala. She claimed that Dr. Gala "made her" delete text messages and emails. If that

is so, and if S.G. complied, then Mr. Schwartz noted that no explanation was provided as to why S.G. could not "make a back-up of that material". In addition, and given Dr. Gala's description of the interior of his Subaru, it is "doubtful that S.G. (wearing a "hoodie") could have contorted her body across the stick shift to fellate Dr. Gala.

S.G. claimed that on one occasion Dr. Gala was watching pornography. However, she did not testify as to whether the images were on a television, a laptop or on his iPhone. Nor did S.G. provide dates and times which could have been refuted by Dr. Gala by establishing that he was elsewhere, or that his parents were in the home at the time. If. S.G. made a recording of her unannounced confrontation with Dr. Gala at his home, Mr. Schwartz asked, "who does that to someone who can report them for trading sex for drugs?"

Mr. Schwartz stated that S.G.'s observation that Dr. Gala is not circumcised was a lucky guess. He also recalled S.G.'s testimony that she did not recall any tattoos or scars on Dr. Gala's body. Mr. Schwartz added that such marks would have been clear to a person "performing oral copulation" on a naked person. Nor is it likely that Dr. Gala engaged in smoking crack cocaine at the end of the day after seeing patients and after studying for his MBA degree.

S.G. did not identify the prostitute who, on one occasion, engaged in a ménage a trois with Dr. Gala and herself. Nor did the State subpoena such a person. In addition, if Dr. Gala asked S.G. to "hang out" while on a speaker phone with a third person present, Mr. Schwartz asks why that person did not testify to corroborate S.G.'s claim. If S.G. claims that she contracted trichomoniasis during her involvement with Dr. Gala, Mr. Schwartz asks why the State did not subpoena medical records documenting her treatment for the disease.

Mr. Schwartz then argues that S.G. "is an unlikely sexual partner for this young doctor." In Mr. Schwartz's opinion, S.G. looks "rough" in her Facebook photos. RX 5. She was a

mother of five children and was older than Dr. Gala. Mr. Schwartz asks one to "(i)magine how rough she would look with her neck tat and green hair." Though Dr. Gala told S.G. that she was "cute", she thought that she "looked like crap" at the time. If S.G. told Dr. Gala that she was afflicted with Hep C at the time, sexual relations were unlikely because Dr. Gala was characterized during the hearing by one witness as a "health nut".

Mr. Schwartz then argues that it is more likely that S.G. went to Dr. Gala's home to clean it. In early December 2016 she had stated her intentions on Facebook that she was considering forming a cleaning business. A memo on a check written to her by Dr. Gala states that it was for "house keeping". Dr. Gala argues that if he were engaged in a "sex for drugs" plan, he would not have written a personal check to S.G. but would have paid her in cash "to avoid a paper trail."

Mr. Schwartz continued. Dr. Gala contends that S.G. is not a credible witness. She failed to report her homelessness on her Facebook page. She is a convicted burglar. She has used an alias in the past. An investigating officer told her to discard a "sex toy" which she claimed had Dr. Gala's DNA on it. That is evidence that police did not believe her, according to Mr. Schwartz. Further, when a criminal prosecution was dismissed, that was evidence that a prosecutor did not believe her either.

S.G. failed to provide dates and places where Dr. Gala dispensed drugs to S.G. All of Dr. Gala's prescribing was for pain relief and not in exchange for sex acts. "Discrepancies" in the treatment of and documentation for S.G. do not constitute misconduct, incompetence, gross negligence, or a pattern of negligence.

With regard to the testimony of State's expert witness Dr. T[redacted] Dr. Gala argues that he did not point to concrete allegations of violations of the FSMB Model Policy or Bd. Reg. 18.0

*et seq.* When asked if alleged violations constituted failures to abide by standards of care, he testified that the violations were not consistent with "best practices". He testified that standards of care are now national, and that there is "no room" for local application of those national rules. Most, if not all, of his testimony was provided on behalf of governments and against pain physicians. Though Dr. T[redacted] testified that S.G. presented with "non-specific" back pain, her chart contains an MRI revealing prominent L5-S1 disc bulge and bilateral synovial cysts with indentation of the thecal sac.

In summary, Mr. Schwartz's statement on behalf of Dr. Gala argues that the State has failed to carry its burden of proof in this case with respect to both sexual misconduct and the prescribing of opioids outside a legitimate patient-physician relationship in exchange for sexual favors. A "significant discrepancy" in this case is the fact that when S.G. asked to be returned to Suboxone treatments she was told that she would have to wait until insurance approval of that modality. Consequently, and according to the testimony, Ms. W[redacted] (who is not a physician) "instructed" Dr. Gala to prescribe additional Oxycodone for S.G. which would sustain her until that insurance approval. That constitutes a non-physician case manager directing a physician to write narcotics for a patient who had accused Dr. Gala of "felony criminal conduct". The prescription written on December 20, 2016 was not accompanied by a documented evaluation or history, and no documentation of the rationale for that script or follow-up plan.

Dr. Gala believes that, at the time, he was being "set up" by Dr. A[redacted] Dr. Gala has no disciplinary history. If in fact this hearing officer finds that Dr. Gala wrongfully failed to properly assess S.G. to determine the reasonableness of his prescribing, then he should only be found liable for failing to adequately document care. Dr. Gala asks that I recommend to the Board that his medical license be placed on probation, and that he be permitted to continue to

practice under the guidance of a practice monitor so that he may "grow as a clinician". In addition, Dr. Gala asks that this hearing officer recommend to the Board that it order certain continuing medical education hours which will "assist him to be confident that he is strictly following the FSMB model policies." Revocation of license should not be ordered "on the basis of the unreliable evidence in this case."

As the State bears the burden of proof in this case, Ms. Plerhoples was provided an opportunity to rebut the arguments of Dr. Gala. With regard to prior medical records, they were secured by the State in this case and not by Dr. Gala. Dr. [redacted] did review Dr. [redacted] chart. His opinions are supported by the evidence in this case.

With regard to Dr. Gala's credibility, those who heard S.G.'s disclosures about Dr. Gala's conduct did believe her and were not a part of a conspiracy against him. The decision to terminate Dr. Gala's employment at Got-a-Doc was made in conjunction with HR and not with Ms. W[redacted] The "scheme" discussion described by Mr. M[redacted] occurred at another meeting.

SX 1 at Tab 7 at M-8 does make reference to S.G.'s report of the "urinating" activity. She was consistent in her hearing testimony with her report to State Police. The State concedes that S.G. did not mention all acts in her testimony which she had earlier reported.

Since Mr. Marshall (Dr. Gala's private investigator) did not testify during the hearing, Ms. Plerhoples asked that counsel's remarks about his investigation be disregarded. With regard to Dr. Gala's threat toward S.G., when Dr. Gala stated that things "would be bad for me", S.G. was referring to negative consequences for herself.

Ms. Plerhoples argued that pain management is more than mere opioids. When a patient asks for pain management, she is not simply asking for such drugs. When Dr. Gala offered to prescribe opioids for S.G., it was like "dangling water before a man in the desert."

Ms. Plerhoples reiterated that RX 4 was produced by Dr. Gala in anticipation of litigation. Dr. Gala contradicted his statement that he would be placing RX 4 in S.G.'s chart. He did not do so.

When Mr. Harris permitted other counselors to write notes in charts over his name, that was not evidence of fraud in this case. Dr. A[redacted] did at times travel to the [redacted] Got-a-Doc office. He may have performed a pelvic examination of S.G. at any of his offices. Dr. Gala failed to physically examine S.G. His documentation is consistent with "cutting and pasting" documentation from other sources.

As to the final script written by him in 2016, his charting does not even provide an explanation as to why he was prescribing at that time. The State argues that S.G. needed the prescription because Dr. Gala had been prescribing opioids for her. In fact, S.G. would not have needed the last opioid script had S.G. been treated with Suboxone during her care by Dr. Gala.

In this case the State's witnesses were credible, while Dr. Gala was not. Ms. Plerhoples noted that the criminal case against Dr. Gala had been dismissed "without prejudice". A criminal Deputy Attorney General initially filed those charges against him. There is no evidence in this record that that Deputy did not believe the evidence against Dr. Gala.

**Findings of Fact**

The following facts have been proven in this case by a "preponderance of the evidence". Under that legal standard, a fact may be found if the admitted evidence shows that "something is more likely than not." *Reynolds v. Reynolds*, Del. Supr., 237 A.2d 708, 711 (1967). The phrase "preponderance of the evidence" means that certain evidence, when compared with the evidence opposed to it, has the more convincing force. In making a "preponderance" finding, the

testimony of all witnesses may be considered regardless of which party called them, and all exhibits received into evidence regardless of who produced them.

Nihar Bavesh Gala, M.D., is a licensed medical doctor in Delaware. His initial Delaware medical license was issued in 2015, and is currently active. Dr. Gala also holds an active Controlled Substance Registration. At times relevant to this case, Dr. Gala was employed by and practiced medicine in various "Got-a-Doc" walk in medical centers at various locations in Delaware. Those centers were wholly owned and/or controlled by Dr. Zahid Aslam. At the present time, Dr. Gala is no longer employed in the Got-a-Doc offices. He currently operates a medical practice trading as Alpha Care Medical in Millsboro DE. At that location he practices pain management and also provides addiction treatment.

During the course of this hearing, two overarching factual issues were zealously litigated. The first of those issues is whether, during the course of his treatment of patient S.G. in late 2016, Dr. Gala distributed or issued prescriptions to S.G. for dangerous or narcotic drugs other than for therapeutic or diagnostic purposes and inconsistent with the Federation of State Medical Boards *Model Policy* and its Delaware iteration, Bd. Reg. 18.0 *et seq.* The second of the two issues is whether Dr. Gala engaged in illegal or inappropriate sexual misconduct with S.G. in exchange for sexual favors or for other improper reasons.

At this point early in these findings, it is necessary to make certain findings with regard to S.G.'s medical records while she was the patient of Dr. Gala at Got-a-Doc. That is so because, typically, medical records and their review by a licensee and experts called in a case such as this one are the sole or primary evidence by which a provider's pain management practice may be fairly evaluated.

The State's initial professional licensure complaint in this case was filed before the Board on October 4, 2018. SX 1 at Tab 1. The filing of the complaint followed an investigation of Dr. Gala which was apparently prompted by an administrative complaint filed by a Got-a-Doc employee with the Division of Professional Regulation on December 19, 2016. SX 1 at Tab 2. During the investigation the Division of Professional Regulation caused to issue two subpoenas *duces tecum* directed to Dr. Gala or the custodian of records at Got-a-Doc. SX 1 at Tab 3 at 1, SX 1 at Tab 4 at 1. The former was issued on December 21, 2016. The latter on September 24, 2018. Each subpoena sought a non-exhaustive list of all medical records maintained by Got-a-Doc and/or Dr. Gala with respect to S.G. The records returned in response to the two subpoenas are found at SX 1 at Tabs 3 and 4.

The State assumed that the production of records from Dr. Gala and Got-a-Doc was complete after reviewing the returns of the two subpenas. The State engaged an expert witness experienced in pain management issues and provided him with the contents of SX 1 at Tabs 3 and 4 as well as other documents. The expert, Dr. Stephen M. Thomas, thereafter issued his expert report on November 8, 2018. SX 1 at Tab 6 at 7.

However, the returns on the two subpoenas *duces tecum* were not the end of the production of S.G.'s Got-a-Doc records to the State. According to Dr. Gala's testimony during and prior to the hearing, and according to a factual explanation by his counsel, Dr. Gala produced another, far more detailed set of records concerning S.G.'s care in October 2018 to Mr. Schwartz. This set of records was eventually admitted into the record without objection as RX 4. According to Mr. Schwartz' explanation, that other set of S.G.'s medical records sat in his, Mr. Schwartz', office for approximately four months until February 2019, the month before this hearing. At that time the contents of RX 4 were produced to Ms. Plerhoples.

The late production of RX 4 prompted the State to ask that its expert review the new documents and prepare a supplemental report. Dr. Thomas did so, and his second or supplemental report in this case was issued on February 21, 2019. SX 14.

Prior to and during this hearing, the State argued that RX 4 is not an authentic set of S.G.'s medical records prepared concurrently with the care by Dr. Gala which they describe in late 2016. On the other hand, Dr. Gala contends that the documents in RX 4 are authentic and were prepared by him at the time of the office visits which they summarize. In addition, Dr. Gala argues that SX 1 at Tabs 3 and 4 were fraudulently prepared by Dr. A[redacted] and were part of a "scheme" to destroy Dr. Gala's career and reputation.

Based on the record in this case and fair inferences which may be drawn therefrom, it is now my responsibility to make findings about the two competing sets of records. As I understand Dr. Gala's position, at some point in Fall 2016 the relationship between Dr. Gala and Dr. A[redacted] deteriorated substantially. During the hearing the triggering event for that deterioration was not articulated with clarity. The key event may have been when Dr. Gala informed Dr. A[redacted] of his intention to leave employment at Got-a-Doc and to establish his own pain management and addiction treatment practice in Sussex County.

Dr. Gala characterized Dr. A[redacted] as a vindictive person who he feared would attempt to ruin his career and reputation in the community. Perhaps the first evidence of his vindictiveness occurred when Dr. A[redacted] made the decision, or participated in the decision, to deny Dr. Gala's access to eClinical, the Got-a-Doc EMR system. So as not to alert Dr. Gala that he had been singled out for the blockage, others employed at Got-a-Doc were instructed to tell Dr. Gala that they had all been locked out. There is evidence that Dr. Gala may have been locked out of eClinical as early as the first week of October 2016.

When Dr. Gala's access to the system was not restored by Dr. A[redacted], and because he was still seeing a full slate of patients, Dr. Gala states that he began to chart pain patient care on his own personal laptop at home, typically during the evening of the same day that he had attended office visits with patients. When asked how he could remember all of the details he recorded in RX 4 for a group of patients, he stated that he would jot down certain facts on note cards and use them to prepare the office notes which eventually became part of RX 4.

At some point Dr. Gala made the decision to take his laptop to India so that an unnamed person in that country could "extrapolate" his charting. When the extrapolation had been completed, the notes were sent back to Dr. Gala in encrypted form. The whereabounts of his laptop, which may have had a broken screen, are now unknown. The device could therefore not be forensically examined by the State in conjunction with these proceedings. At some point Dr. Gala printed out the encrypted charting for S.G., and perhaps others, and placed the documents in a locked cabinet at Got-a-Doc.

The papers were not placed in S.G.'s chart, which was maintained in paper form in a manila folder as she was a pain management patient. Only he and Dr. A[redacted] had access to that cabinet. Dr. Gala testified that it was agreed or understood that Dr. A[redacted] would upload or scan the paper records regarding S.G. into the eClinical system. As the patient notes in RX 4 did not end up in SX 1 at Tabs 3 or 4, Dr. A[redacted] apparently did not do so. Eventually Dr. Gala delivered RX 4 to Mr. Schwartz on October 9, 2018. Mr. Schwartz made a note to "read them". Dr. Gala contends that the charting for S.G. which is contained in SX 1 at Tab 4 is "fraudulent", in that the notes were prepared by Dr. A[redacted] at an unknown time and inserted in S.G.'s chart by him or by someone at his direction. This was apparently part of Dr. A[redacted] plan to harm Dr. Gala. As an aside, it strains credulity to believe that Dr. A[redacted] would delete charting by Dr.

Gala for S.G. in 2016 and replace it with alternate charting for her which may, two years hence, cause a State's expert in a licensure hearing to find fault in that "fraudulent" charting under the FSMB Model Policy and Board regulations.

The documents in RX 4 sat in Mr. Schwartz' office for approximately four months, until he forwarded copies of them to Ms. Plerhoples in February 2019. Though I have likely missed certain facts in setting forth this narrative, it is my understanding of the gist of Dr. Gala's explanation in summary form.

I will now review certain portions of the evidence in this case which may have a bearing on the credibility of Dr. Gala's version of events, which his counsel conceded during the pre-hearing conference may look "fishy".

In support of its contention that RX 4 constitutes a recent fabrication by Dr. Gala, the State points out that since Dr. Gala's personal laptop has gone missing, been destroyed, or lost, there is no way to forensically ascertain the date or dates when RX 4 was created by metadata analysis. Though the initial administrative complaint in this case against Dr. Gala was filed in December 2016, and though Got-a-Doc medical records pertaining to S.G. had been subpoenaed by the State on two occasions (the earliest of the two having been served on Dr. Gala or a Got-a-Doc records custodian), Dr. Gala did not think to place these records in the hands of his attorney until October 2018. Nor had the contents of RX 4 been provided to Department of Justice prosecutors in the related criminal matter.

Dr. Gala admitted that he had created medical records for some of his pain patients, including S.G., on his personal laptop. He would do this at night, usually the evening of the day during which the care was provided. I note that while Dr. Gala was creating the extensive and detailed charting of multiple pain patients on his laptop at night, he was also studying 12-16

hours per week for his MBA degree and practicing 40-60 hours per week at Got-a-Doc. He agreed that he had entered confidential patient information on the laptop. Dr. Gala did not refute Dr. T[redacted] opinion that maintaining health records on his personal laptop was a violation of health records privacy laws.

After its journey to India, Dr. Gala's personal laptop was "destroyed". Dr. Gala was unable to produce any emails or other communications between him and the individual in India charted with "extrapolating" patient notes from the device. Dr. Gala retrieved S.G.'s charting from the extrapolated data because of the instant proceedings and the related criminal case. (Dr. Gala did not provide the charting to criminal prosecutors because he did not believe he was required to do so. Nor did he provide the charting to his own attorneys until late in 2018.) The notes in RX 4 were supposed to be placed in S.G.'s chart, but that apparently did not occur. Dr. Gala's witness, [redacted] testified that he knew that Dr. Gala had prepared certain patient notes on his personal laptop and then print them for filing and/or scanning. He did not explain why Dr. Gala did not follow this procedure with S.G.'s charting.

Dr. T[redacted] and multiple Got-a-Doc employees testified that the form and content of RX 4 did not resemble Dr. Gala's normal patient charting at the clinic. Dr. T[redacted] also stated that it is not normal to cut and paste or to include full transcriptions of labs or xrays when charting a regular (and likely brief) office visit. Ms. B[redacted] observed that the charting at SX 1 at Tab 4 is "typical" of charting in her office. She informed a Division investigator that she had never observed Dr. Gala create patient notes in the fashion of RX 4. She agreed with Dr. Gala that text in notes became longer only when Dr. Gala was writing to support a request to an insurer that a patient be authorized to receive a new medication. In fact, Ms. B[redacted] confirmed that Dr. Gala had performed the charting for S.G. which is found in SX 1 at Tab 4. Nor had Ms. B[redacted] ever

observed Dr. Gala create the level of detail found in RX 4. Ms. W[redacted] agreed. None of these present or former Got-a-Doc employees was offered inducements to testify, nor to be untruthful in their testimony. None described any animus which she harbored toward Dr. Gala.

The State has pointed out an error in RX 4 which may be circumstantial evidence of the late creation of the charting in that exhibit. In an office note ostensibly written by Dr. Gala on September 23, *2016*, he refers to the fact that he had conducted a review of S.G.'s PMP report on September 22, *2018*. RX 4 at 4. During the hearing Dr. Gala attributed that error to the voice-to-text transcribing equipment he was using at the time. He apparently contends that the software "heard" 2016, but mistakenly entered 2018. Though I am unaware of the technology behind voice-to-text, it appears to me that the sound of the number "six" would not normally be mistaken for "eight".

Dr. Gala testified at one point that he did not give a copy of RX 4 to Got-a-Doc employees for insertion in S.G.'s paper pain management chart (and perhaps for entry into eClinical). He did not do so because of his concerns with regard to staff HIPPA practices. Candidly, that explanation rings somewhat hollow in that he claims he routinely took "file cards" home with confidential patient information recorded on them so that he could create patient charting in his home on his personal laptop, and then the laptop was shipped to India where its whereabouts are now unknown.

To repeat, the State has the burden in this case of proving its contentions by a "preponderance of the evidence". That is to say that the State must prove that a proposition that it seeks to advance is "more likely than not". The State argues that RX 4 was not created in 2016 on or near the dates which Dr. Gala has charted in that exhibit. Rather, the State contends that what purports to be S.G.'s charting by Dr. Gala of office visits in late 2016 was created long

"after the fact". The State maintains that RX 4 does not constitute Dr. Gala's charting of his care for S.G. during the final quarter of 2016. Rather, the State contends that either the documents in RX 4 were created after Dr. Gala had received the State's professional licensure complaint in this case (on or about October 20, 2018), or after Dr. Gala had received Dr. [redacted] initial expert opinion report (on or about November 8, 2018). The State further argues that RX 4 is a fraudulent document in that it does not contain contemporaneous charting of S.G. care from Dr. Gala, but was created "in anticipation of litigation."

Based on careful consideration of all of the evidence pertaining to and surrounding RX 4, I find by a preponderance of the evidence that RX 4 was not prepared by Dr. Gala simultaneous with the medical care which it purports to document. I further find that RX 4 was more likely than not created by Dr. Gala after he had had an opportunity to review the particulars in Dr. [redacted] initial expert report found at SX 1 at Tab 6.

When Got-a-Doc employees with no apparent axe to grind reviewed RX 4, those who made a comparison between SX 1 at Tab 4 and RX 4 testified that the charting in the latter bears little resemblance to the charting in the former. Quoting Dr. [redacted] the difference between the two exhibits is "quite striking". As an example, Dr. Gala's charting of S.G.'s initial office visit on September 23, 2016 at SX 1 at Tab 4 at 3 is contained on a single page. That was the "norm" for Dr. Gala. On the other hand, his charting at RX 4 at 1-11 covers 11 pages, with at least six pages of single-spaced text.

Putting aside the inconsistent and perhaps unprecedented format and length of the September 23 note in RX 4, it is not credible that Dr. Gala entered the sort of detail on a 3 x 5" note card while in S.G.'s presence which was then contained in RX 4. Got-a-Doc employees confirmed that it was not Dr. Gala's practice to "cut and paste" into a chart note xray and

ultrasound transcriptions which are found in RX 4. If on a given date (September 23, for example) Dr. Gala had seen a normal patient load, had practiced for 8-12 hours, had then gone home to study for perhaps three hours for his MBA degree, then it is not credible that he would have generated the extensive charting for S.G. (and other patients) which is found in RX 4.

Other facts proven in this case lead me to find that RX 4 was not created contemporaneous with S.G.'s care, but was created later when Dr. Gala had become aware that the State would make claims about his prescribing for her in its complaint, and that Dr. [redacted] would provide a detailed expert report critiquing her care. At RX 4 at 4 Dr. Gala notes, purportedly in 2016, that he had reviewed S.G.'s PMP report on September 22, 2018 (and not September 22, 2016). Based on my assessment of all of the evidence surrounding the creation of RX 4, I find it is more likely so than not so that this was a slip-up he made in either 2018 or 2019. I do not credit his testimony that his dictation software must have been the cause for the error in dates. Rather, I find that when Dr. Gala created RX 4, he simply forgot that he was intending to chart S.G.'s care two years after the fact while attempting to make it appear to the reader that the note was being created in September 2016.

If it is assumed for the sake of argument that Dr. Gala had sent or taken his laptop to India for extrapolation of the charting for S.G. and other patients, he offered no "paper trail" to document the travel of the device, nor the identity of the person in India whom he had asked to assist him. While the laptop would, after forensic examination, have documented the date or dates on which the documents in RX 4 were actually prepared, the laptop is no longer to be found.

I find that the loss of the laptop is more than an unfortunate convenience in this case. It may be equally true that the laptop was never sent or taken to India, but was disposed of by Dr.

Gala in the United States. In other words, there is no proof in the form of receipts or emails or discs or thumb drives that the alleged extrapolation was performed in India. Nor did Dr. Gala produce or seek to subpoena the charting of any other Got-a-Doc pain management patient which had gone through such a circuitous route. The fact that the laptop is no longer available for examination supports my factual finding that Dr. Gala has determined to hide from the Board the date when RX 4 was actually prepared.

Since I have found that it is more likely so than not so that RX 4 does not constitute S.G.'s actual medical records, for the above reasons I find it more likely than not that SX 1 at Tabs 3 and 4 do constitute her records as prepared by Dr. Gala. In addition, I find it more likely so than not that Dr. Gala prepared RX 4 after he had received Dr. [redacted] initial expert report. For reasons which will be stated below, RX 4 appears to be an attempt by Dr. Gala to anticipate the prosecution of this case by the State at least in part based on reference to Board regulations related to the prescription of controlled substances for the treatment of chronic non-cancer pain, and to address most, if not all, of the charting and treatment deficiencies which Dr. [redacted] listed in his initial report after reviewing Dr. Gala's charting.

Based on the explanations of Got-a-Doc recording practices, I make an additional finding with regard to the dates of preparation of the notes pertaining to S.G.'s three scheduled office visits on September 23, October 20 and October 28, 2016. At the bottom of each of those notes, Dr. Gala is identified as the "provider", and S.G.'s name, date of birth and date of service are all noted. Below that identifying information is this notation: "Electronically signed by zzzNihar zzzGala on 09/26/2018...." Testimony was provided as to the meaning of that final notation. Based on this record, I find that the 9/26/18 refers to the date on which the record was printed or copied for production in this case. The date is not that on which Dr. Gala provided

the medical services. Further, the notation "zzz" before Dr. Gala's first name and surname indicates that in September 2018 he was no longer a Got-a-Doc employee. Hence, on a search his name would "go to the bottom" of the list of present or former providers at the clinic.

In September 2016 S.G. was a 38-year old woman. Prior to her presentation to Dr. Gala, S.G. had engaged in substance abuse and had participated in long-term treatments for drug addiction. According to her PMP report, she had received Suboxone 8mg-2mg SL Film treatments from December 2015 until shortly before her first office visit with Dr. Gala. Those treatments had been provided by [redacted]

According to S.G., Dr. A[redacted] had discharged her because there was nothing more that he could do for her. According to Dr. Gala's September 23, 2016 assessment, she was diagnosed with opioid dependence, chronic pain, arthritis and lumbar back pain. SX 1 at Tab 4 at 3. Her Got-a-Doc intake documents are found at SX 1 at Tab 4 at 76 *et seq.* On one of those treatment records, S.G. entered the following: "Primary–tried Suboxone; he said Sub. Treatment is not for me and referred me here." *Id.* at 81.

At the time Dr. Gala engaged in both pain management and addiction treatments at Got-a-Doc. Dr. Gala testified that he deferred to and agreed with the recommendations of two "senior" physicians (Drs. Aye and Aslam) that S.G. was a candidate for pain management.

The first substantive entry in Dr. Gala's September 23, 2016 note is a "chief complaint" of "pain management." SX 1 at Tab 4 at 3. Dr. T[redacted] opined that "pain management" is not a medical "complaint". The examination of S.G. on September 23 was normal. The office visit on that date was not preceded by a request for and review of any prior medical records. (Records from Dr. Aye at SX 1 at Tab 5 were secured by the State through a subpoena.) Dr. Gala made a primary assessment of "opioid dependence". The only element in

Dr. Gala's treatment plan on that date was a prescription for Oxycodone 10mg (56 tablets), one tab every 12 hours. He did not make a diagnosis, nor physical findings. Dr. Gala did not first opt for treatment with non-opioids. A UDS was consistent with her reported treatments prior to the first visit with Suboxone.

S.G.'s second office visit with Dr. Gala was noted on October 20, 2016. SX 1 at Tab 4 at 4. Dr. Gala renewed her Oxycodone script and wrote an additional script for Fentanyl film 25mcg/hr ER. A second UDS was positive for benzodiazepines, buprenorphine, Oxycodone and amphetamine. On October 20 S.G. reported less pain relief than when she was under Suboxone treatment.

S.G.'s last documented and scheduled visit with Dr. Gala occurred on October 28, 2016. SX 1 at Tab 4 at 5. On that date S.G. was switched from Fentanyl patch to OxyContin 20mg twice daily as well as the Oxycodone. S.G.'s "chief complaint" remained as "pain management."

In addition to the prescribing documented at the time of the above office visits, Dr. Gala also prescribed other medications for S.G. which were not documented as having been provided to her in conjunction with documented office visits. On November 9, 2016 Dr. Gala prescribed for S.G. 90 tabs of Oxycodone 20mg IR. SX 1 at Tab 11 at 2. On November 30, 2016 he prescribed for her Dilaudid 4mg tabs every six hours for 30 days at 120 tabs. *Id.* 4. Again, there is no documentation in Dr. Gala's charting for S.G. of the medical justifications for the prescriptions, nor documentation of the circumstances of having written those scripts.

Dr. Gala testified that he agreed with the recommendations of Dr. Aye and Dr. Aslam that S.G. should be provided pain management. Since he had secured S.G.'s PMP profile, he knew that she had been undergoing Suboxone treatments for drug addiction for an extended

period. He testified that the medication choices he made for S.G. were part of a trial to determine what was the most effective regimen for her.

I turn now to the allegations which the State has made in the complaint regarding sexual misconduct with S.G. by Dr. Gala. S.G.'s claims are scandalous and potentially libelous if they have been fabricated. They are deeply disturbing if true.

The allegations of sexual and other misconduct and their denials resulted in a stark factual chasm in this case. S.G. testified at length about her claims that Dr. Gala initiated an improper and unethical sexual relationship with her, and then pursued that relationship while continuing to prescribe controlled substances for her both within and allegedly outside their physician-patient relationship. Under oath, Dr. Gala consistently denied all such conduct, and suggested that S.G. was engaged in setting him up by a vindictive Dr. A[redacted].

I will start the analysis with a brief review of S.G.'s reports of Dr. Gala's misconduct given prior to the hearing. The record in this case contains at least two separate summaries of S.G.'s allegations. On December 19, 2016 S.G. made her initial disclosures when she spoke with at least two Got-a-Doc employees, one of whom (Ms. W[redacted]) was connected by speaker telephone. That conversation resulted in the summary of her allegations by Ms. S[redacted] which is admitted at SX 16. I find it credible as a matter of fact that Ms. W[redacted] had instructed Ms. [redacted] to delete that record so that Dr. Gala would not read it. Another iteration of that summary is included in Ms. W[redacted]'s administrative complaint which was filed with the Board by her on December 19, 2016. SX 1 at Tab 2. I am assuming that the Stafford summary was referenced when Ms. W[redacted] filed the administrative complaint. A second summary of S.G.'s disclosures resulted from a separate interview of her by a Delaware State Police officer (Det. Archer) on January 11, 2017. SX 7 at M-7.

The police statement contains more detail regarding S.G.'s allegations against Dr. Gala than the Stafford summary. However, the two statements are generally internally consistent. And neither statement was materially inconsistent with S.G.'s hearing testimony under oath. For instance, the three recitations by S.G. refer to the initial contact at a Royal Farms store, followed by S.G. giving Dr. Gala oral sex while he drove. Each details Dr. Gala dispensing various controlled substances to her in exchange for sexual favors. Each stated that Dr. Gala was smoking crack cocaine while in her presence and the presence of another woman, [redacted] Each stated that Dr. Gala would view pornography while he and S.G., or while he and both women, engaged in various acts of oral and conventional sex. Both the police statement and S.G.'s hearing testimony made mention of urination by one in the mouth of the other.

S.G. was issued a subpoena *ad testificandum* to secure her attendance at the hearing. She was the State's second witness, and testified under oath at considerable length. During her testimony, S.G. became emotional and began to cry on more than one occasion.

Dr. Gala asked her for her cell phone number at the time of her first office visit with him in September 2016 in case there was a "problem with prescriptions". Dr. Gala did not deny that he invited S.G. to "hang out" with him. I credit S.G.'s testimony that she feared losing him as a physician who could prescribe for her if she refused his requests.

After a professional physician-patient relationship had been established between the two, Dr. Gala asked to meet S.G. in a Royal Farms parking lot. She entered Dr. Gala's car. At his request, S.G. performed oral sex on Dr. Gala as he drove. I find that this event has been proven by a preponderance of the evidence. I found S.G.'s testimony on the point credible and her claim is corroborated by the fact that her cell phone was subsequently found in his car. Mr. Schwartz apparently argues that such an act was physically impossible because there was a

manual gear shifter between the front seats of Dr. Gala's Subaru. His contention constitutes argument, and was not proven to be so. S.G. testified that she had to unbuckle her seat belt in order to gain access to Dr. Gala.

At this point I should discuss my conclusions regarding S.G.'s credibility. I found her to be a generally credible witness. With the exception of a few minor details, her story remained consistent from the time of her first disclosures at Got-a-Doc in December 2016 until her hearing testimony in March of this year. I did not find her to be prompted or "put up" to testify against Dr. Gala. Nor did I find her testimony an effort to recall an agenda against Dr. Gala which Dr. A[redacted] had encouraged her to provide. She appeared to me a genuine person who now regrets certain poor decisions she has made in her life.

She had been provided Suboxone treatments prior to her presentation to Dr. Gala for almost a year with [redacted]. Regardless of the reasons for her discharge by Dr. [redacted] there was little or no evidence that she was not compliant with those efforts to deal with a serious drug addiction. Nonetheless, apparently believing that a regimen of opioids was to be her preferred (or only) pain management modality, Dr. Gala began to prescribe them at the time of her first office visit with him in September 2016.

I recount this history because S.G. credibly stated on more than one occasion that she feared that refusing Dr. Gala's advances and requests or demands for sexual favors would result in termination of their relationship and access to his controlled substance scripts. I also found her testimony credible that, while engaged in sexual misconduct at his home, Dr. Gala would give non-prescribed drugs to render her more pliant or to further her dependence on him.

During his closing argument, Mr. Schwartz argued at length that S.G. should not be believed. That S.G. did not record certain sexual activities with Dr. Gala, and that she may have

forgotten one or more of those acts during her lengthy testimony, is not a basis, in my view, to discount all of her testimony. Having to recount in a public hearing all of the degrading conduct which Dr. Gala asked or expected of her renders her lack of total recall *de minimis*. Her failure to recall the script tattoo on the inside of Dr. Gala's right tricep or keloid scars on the back of his neck is not a proper basis on which to ignore the other detail which she provided.

Dr. Gala also argues that S.G. should not be believed because S.G. would have been "an unlikely sexual partner for this young doctor." According to Mr. Schwartz, S.G. is older than Dr. Gala, looks "rough with her neck tattoo", is "skinny", dyed her hair green, "looked like crap" (S.G.'s self-evaluation), and probably only gained access to Dr. Gala's house "as a cleaning lady". Why Dr. Gala decided to target S.G. is presumably known only by him. Perhaps he saw her apparent return to addictive behavior as rendering her an easy mark. But denigrating this clearly vulnerable, high-risk addict does not, in and of itself, cause me to discredit her story. Mr. Schwartz' description of S.G. in a sense victimizes her again.

It is a matter of public record that we have perhaps entered into a "me too era". Unprecedented numbers of victims of sexual harassment and abuse have been empowered to come forward and to make claims against their abusers. In many of those cases the alleged perpetrators have suffered severe personal and professional consequences upon the mere allegations of their alleged victims. Some fault such an environment because accused individuals have not been provided with due process or their "day in court" prior to suffering adverse actions. This is not such a case. S.G.'s allegations of sexual misconduct against her physician have now been aired in a public forum before an independent trier of fact with right of counsel and with witnesses under oath and subject to cross-examination.

The following facts have been proven in this case by a preponderance of the evidence. Based on a thread of emails admitted as SX 1 at Tab 8, when faced with a sharp criticism by S.G. of his prescriptions or medical recommendations, Dr. Gala simply asked her, "R u free right now." At one point Dr. Gala invited S.G. to his home, where another woman (possibly a prostitute) was also present. After initial resistance, S.G. finally agreed to participate with Dr. Gala and '[redacted]' in some form of ménage a trois. When Ms. Stafford learned of the "ménage" story from S.G, things "clicked" in her mind. (S.G. also cried and appeared scared while she made the December 19 disclosures. That is consistent with her behavior during this hearing.) That was corroboration of S.G.'s truthfulness in the disclosures. That is so because at one point Dr. Gala candidly disclosed to Ms. Stafford that he had hosted "two prostitutes" in his home and they all engaged in a "threesome".

The next day Dr. Gala dispatched [redacted] to an ATM to secure cash for S.G., ostensibly so that she could purchase expensive opioids. Though S.G. credibly denied performing house work for Dr. Gala, in mid-November 2016 he wrote a personal check to S.G. in the amount of $440. Mr. Schwartz questioned why Dr. Gala would create a "paper trail" of his payment to S.G. On the check he wrote on the memo line "house keeping".

After Dr. Gala learned of S.G.'s disclosures on December 19 to Stafford and W[redacted] Dr. Gala telephoned S.G. There is a dispute in this case as to whether Dr. Gala told her that her disclosures would cause "big trouble" for Dr. Gala or for S.G. Based on my assessment of S.G.'s testimony and her explanation of the call, I find that this was a threat against S.G.

During their "relationship", S.G. engaged in vaginal, oral and perhaps anal sex with Dr. Gala. Ms. B[redacted] confirmed her understanding that at this time sexual favors were being

exchanged for drugs. While in Dr. Gala's home, he dispensed to S.G. off-script controlled substances.

According to Ms. W[redacted] S.G. was not paid or otherwise induced by anyone to make her claims against Dr. Gala, nor to testify in this hearing. She and Dr. A[redacted] did not discuss a plan or "scheme" to destroy Dr. Gala.

In his sworn testimony, Dr. Gala denied (a) dispensing any medications to S.G, (b) any sexual relationship with S.G., (c) patronizing prostitutes or discussing such activity, (d) using crack cocaine, (e) exchanging urine with S.G., (f) being fellated by S.G. in his car, (g) watching pornography with S.G., (h) writing scripts for S.G. while in his home, (i) disrobing in S.G.'s presence, and all other acts of misconduct with S.G.

Before the examination ended, and over the State's objection, I asked Dr. Gala if he had any thoughts about why S.G. would engage in extensive and at times emotional testimony against him if it were largely false. Dr. Gala stated that the reason is that Dr. A[redacted] had paid her to do so. When I asked Dr. Gala if he had proof of that contention, he stated that he did not.

I will conclude my factual findings on the subject of a "scheme" or conspiracy to harm or destroy Dr. Gala's career and reputation. In my opinion, the evidence is non-existent or so sparse in this case as not to lead to a logical inference that Dr. A[redacted] was leading a crusade to ruin Dr. Gala. [redacted] stated that he once attended a meeting when Dr. A[redacted] was present and voiced animosity or hatred toward Dr. Gala. However, that meeting did not result in a "scheme" to harm Dr. Gala. Dr. A[redacted] was heard to say that Dr. Gala was "not pulling his weight" in the practice. [redacted] was not aware, at the time, of S.G.'s disclosures.

According to the record, no witness in this case (including S.G.) was offered money or any other form of inducement by anyone to testify against Dr. Gala or to falsely testify. In his

testimony Dr. Gala candidly conceded that he is unaware of any relationship between Dr. A[redacted] and S.G. By all accounts, Dr. Gala was liked by many in the Got-a-Doc organization. Most of those individuals were shocked at S.G.'s disclosures.

Dr. Gala also testified that "fraudulent" records in SX 1 at Tab 4 were inserted in S.G.'s chart by Dr. [redacted] to "railroad" him. Since I have found, above, that Dr. Gala did the charting in that exhibit of S.G.'s scheduled office visits, I reject that contention. Though Dr. Gala believes that Dr. A[redacted] is or was involved in certain fraudulent medical practices, he chose not to answer a question as to whether he has brought such charge before the Board.

**Conclusions of Law**

The Board of Medical Licensure and Discipline has been chartered by the legislature to issue licenses to practice medicine, as well as to supervise and regulate the medical profession nd to impose professional discipline upon its licensees when it finds good cause to do so. 24 *Del. C.* §1710(a). In furtherance of those duties, the Board is authorized to promulgate rules and regulations in order to carry out the powers and duties required by the Medical Practice Act. 24 *Del. C.* §1713(a)(12). It may be a basis for professional discipline if a licensee of the Board violates a provision of the Act or a regulation of the Board. 24 *Del. C.* §1731(b)(17). The Board is charged to promulgate a list of those crimes which are substantially related to the practice of medicine. 24 *Del. C.* §1713(e). It may be a basis for professional discipline if a licensee uses, distributes or issues prescriptions for dangerous or narcotic drugs other than for therapeutic or diagnostic purposes. 24 *Del. C.* §1731(b)(6). The Board is vested with the authority to promulgate guidelines for the imposition of disciplinary sanctions upon its licensees. 24 *Del. C.* §1713(f). The Board is also vested with the authority to hold hearings and to impose professional discipline upon its licensees if the Board finds good cause to do so. 24 *Del. C.*

§1713(a)(9), (11). These are all valid means and ends rationally related to the legitimate State purpose of protecting the public health, safety and welfare. 24 *Del. C.* §1701

In its amended complaint the State alleges that Dr. Gala, by his actions in this case, has violated six provisions of the Medical Practice Act and five regulations adopted by the Board. SX 12. I will address those claims in the order in which they have been alleged.

The State first contends that Dr. Gala has violated 24 *Del. C.* §1731(b)(1). That section of the Act deems it "unprofessional conduct" and a basis for discipline if a licensee engages in the use of any *"fraudulent, deceitful, dishonest, or unethical"* practice in connection with the practice of medicine. *Id.* The italicized terms are not otherwise defined in the Medical Practice Act, nor in regulations adopted by the Board. When a word or phrase is not otherwise defined, the interpreter of the Delaware Code is directed to construe the words chosen by the legislature according to the "common and approved usage of the English language." 1 *Del. C.* Sec. 303.

The word "fraudulent" is commonly defined as a thing which is "done by fraud." *Webster's Collegiate Dictionary* (10th ed. 1996) at 464. A "fraud" is an "intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right". *Webster's* at 463-464. In the findings of fact set forth above, I have found as a matter of fact that the medical records contained in RX 4 are not the actual charting of S.G.'s care by Dr. Gala in late 2016. Rather, I have found that he has put forward a set of documents which he created two years after the care he provided for S.G. and has represented that the records in RX 4 were prepared by him contemporaneous with the provision of his care in 2016.

I have concluded as a matter of law that the creation and offering of those records and the giving of false testimony as to the date of their creation constitutes fraudulent conduct. Dr. Gala knew or should have known that his testimony and documentation in this case would eventually

be presented to the Board with the intention of avoiding professional discipline in this case. That "intentional perversion of truth" constitutes a violation of 24 *Del. C.* §1731(b)(1). The same conduct is equally "deceitful" and "dishonest". The evidence is an *ex post facto* effort by Dr. Gala to mask or misrepresent what he did and did not do in conjunction with his medical practice in 2016. A reasonable inference is that Dr. Gala fabricated the documents in RX 4 in order to cause the Board to mitigate any professional discipline which it may determine to impose in this case.

The same section of the Medical Practice Act also deems it "unprofessional conduct" to have employed "unethical practice" in connection with the practice of medicine. In my opinion the State has also proven this second violation of Sec. 1731(b)(1). Again, the term "unethical" is not defined in the Act nor in Board regulations. An act is "unethical" if it is not performed "ethically". The word "ethical" is defined as, *inter alia,* "conforming to accepted professional standards of conduct." *Webster's* at 398.

In my factual findings I have also concluded that the State has proven by a preponderance of the evidence that, while the two had formed a professional physician-patent relationship, Dr. Gala entered into an abusive sexual relationship with S.G., a known drug addict. This at a time when she was at high risk, vulnerable, and dependent on Dr. Gala for an uninterrupted supply of prescribed controlled substances, as well as other controlled substances which he dispensed to her in his home without the formality of a prescription. In his expert testimony Dr. T[redacted] stated that such a relationship was "exceedingly" ethically improper because of the asymmetric power relationship between a doctor and his patient. I note that the power imbalance between Dr. Gala and S.G. was extreme in the context of this case. I therefore conclude that this second violation of 24 *Del. C.* §1731(b)(1) has also been proven by the State.

The State next alleges that Dr. Gala has violated 24 *Del. C.* §1731(b)(2). That section of the Act deems it "unprofessional conduct" and a separate basis for professional discipline if a licensee engages in conduct "that would constitute a crime substantially related to the practice of medicine." *Id.* Specifically, the State alleges that Dr. Gala's conduct would constitute the crimes of Drug Dealing in violation of 16 *Del. C.* Sec. 4754 and victim or witness Intimidation in violation of 11 *Del. C.* Sec. 3532. (The Board has deemed the two listed crimes to be "substantially related to the practice of medicine" at Bd. Regs. 15.7.6 and 15.8.23, respectively.)

In relevant part, the crime of "Aggravated Drug Dealing" in violation of 16 *Del. C.* Sec. 4754 deems it a class D felony if a defendant "(m)anufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance." In this case I have found as a matter of fact that while Dr. Gala and S.G. were involved in unethical sexual activity in his home, he provided S.G. with multiple controlled substances. Those drugs were provided to her while he was not acting as a licensed drug "dispenser", and were provided to her outside the channel of a valid and lawful prescription. I therefore find that the State has proven that such activity "would constitute a crime substantially related to the practice of medicine".

The Board has clarified in prior disciplinary proceedings that the State need not prove an actual pending criminal charge or a certified conviction of a "substantially related crime" under 24 *Del. C.* §1731(b)(2). Rather, the State need only prove facts by a preponderance of the evidence facts which would "constitute" such a crime.

Eleven *Del. C.* Sec. 3532 prohibits Acts of witness or victim intimidation. In relevant part, that section of the Delaware Criminal Code deems it a class D felony if a person "knowingly and with malice attempts to prevent another person who has been the victim of a crime, or a witness to a crime...from: (1) Making any report of such crime to any peace officer,

law-enforcement officer, prosecuting agency...(2) Causing a complaint...to be sought or prosecuted, or from assisting in the prosecution thereof...." *Id.*

The record in this case establishes that on at least one occasion Dr. Gala contacted S.G. by telephone and informed her that if she made disclosures, or continued to make such disclosures (including disclosures regarding the crime of "drug dealing"), that conduct would result in "big trouble" for her. In my opinion those words uttered in the context of the assymetric power relationship between Dr. Gala and S.G., and in the context of his ability to stop prescribing controlled substances for or dispensing drugs to her, "would constitute" the crime of felony witness or victim intimidation. Hence, I have concluded that the State has proven two separate violations of 24 *Del. C.* §1731(b)(2) by a preponderance of the evidence and as a matter of law.

The State next alleges in the amended complaint that Dr. Gala has violated 24 *Del. C.* §1731(b)(3). That section of the Act provides for discipline if a licensee engages in any "dishonorable, unethical, or other conduct likely to deceive, defraud or harm the public." The Board has undertaken to promulgate a non-exhaustive list of those acts or omissions by its licensees which are "dishonorable, or unethical" as the phrase is used in Sec. 1731(b)(3). Bd. Reg. 8.0 *et seq.*

I have concluded that the State has proven multiple violations of 24 *Del. C.* §1731(b)(3) as a matter of law. Bd. Reg. 8.1.2 states that it is "dishonorable or unethical and likely to deceive, defraud, or harm the public" if a licensee engages in "(e)xploitation of the doctor/patient privilege for personal gain or sexual gratification." I have found, above, that S.G. testified credibly with regard to the sexual abuse and degradation which she suffered at the hands of Dr. Gala. This at a time when she was an addict at high risk, a vulnerable woman, and a person

dependent on Dr. Gala for continued access to controlled substances. In my opinion, the State has proven this form of "dishonorable or unethical" conduct intended to sexually gratify Dr. Gala.

In addition, Bd. Reg. 8.1.3 deems it "dishonorable or unethical" to engage in "(s)exual impropriety including, but not limited to, sexually suggestive behavior, gestures, expressions, statements and failure to respect a patient's privacy." I refer to my findings immediately above under Bd. Reg. 8.1.2. Dr. Gala's conduct, beginning with a request that S.G. fellate him in his car, and perhaps ending with one of the gross and degrading sexual events at his home, constitutes egregious sexual impropriety toward S.G. The State has proven this second violation of Sec. 1731(b)(3) by a preponderance of the evidence.

Finally, I have concluded that Dr. Gala has also violated Bd. Reg. 8.1.12. That regulation deems it "dishonorable or unethical" to fail "to comply with the Board's regulations governing the use of controlled substances for the treatment of pain." My discussion of this violation incorporates the next legal conclusion below concerning the State's allegation that Dr. Gala has violated 24 *Del. C.* §1731(b)(6).

The State alleges that Dr. Gala has violated Sec. 1731(b)(6). That section of the Act holds that it is "unprofessional conduct" if a licensee engages in the "use, distribution, or issuance of a prescription for a dangerous or narcotic drugs, other than for therapeutic or diagnostic purposes." The Board largely adopted the tenets of the FSMB Model Policy when it adopted Bd. Reg. 18.0 *et seq* in early 2012. Both the Model Policy and Bd. Reg. 18.0 are designed to, *inter alia*, "minimize practices that deviate from the appropriate standard of care and lead to abuse and diversion." Bd. Reg. 18.0.

In support of the contentions in para. nos. 19 and 20 of the amended complaint, the State called [redacted] an eminently qualified pain management expert. His credentials have been generally summarized above. A review of his curriculum vitae have caused me to accept his opinions as authoritative.

Dr. T[redacted] has issued two opinions in this case. SX 1 at Tab 6 and SX 14. I will focus primarily on his opinions with respect to the charting for S.G. in SX 1 at Tab 4, as I have found the notes on S.G.'s three "regular" office visits in September and October 2016 in those documents to be the actual, contemporaneous charting of her care by Dr. Gala.

After his review of the medical records provided to him, Dr. T[redacted] concluded that Dr. Gala's care for S.G. did not comport with standard of care medicine and that his care for S.G. was not in her best interests. His initial charting for S.G. recorded little about her drug use or abuse history. Importantly, Dr. Gala failed to request Dr. A[redacted] chart on S.G. Based on that history as he understands it, Dr. Gala should not have prescribed opioids for her. Even though Dr. T[redacted] concluded that S.G. was at "enhanced risk", Dr. Gala failed to document any discussion of the risks and benefits of opioid therapy with her.

The documentation in SX 1 at Tab 4 does not include informed consent of S.G. to such therapy, nor what would be considered "success" during her care. Dr. Gala chose to immediately start S.G. on a regimen of Oxycodone 10mg. Dr. T[redacted] opined that that prescription was not medically justified under the circumstances.

With no findings on examination concerning S.G.'s low back, at the time of her second visit with Dr. Gala he refilled her Oxycodone script and added Fentanyl. The Fentanyl addition, according to Dr. T[redacted], was evidence that Dr. Gala was placing excessive reliance on opioids. Dr. Gala characterized the prescribing at the time of the second visit as "gross negligence". A

UDS had revealed a positive for benzos, which should have been negative. Dr. Gala's negligence was "gross' because the addition of Fentanyl was counter to S.G.'s interests and increased the possibility of overdose.

At the time of S.G.'s third visit with Dr. Gala, she was not reporting any improvement. She was non-responsive to the medications, and her physical exam at that time was negative. Continued evidence of "gross negligence" lay in the fact that while Dr. Gala removed S.G. from the Fentanyl, she was left with an excess supply. Dr. Gala did not document the consideration of any alternative modalities at that point. Nor did Dr. Gala document his rationale for the medication choices he was making. In Dr. T[redacted] opinion, the scripts were essentially written "outside the physician patient relationship". An Oxycodone 20mg script was written eight days after she received the Oxycontin. This prescribing pattern was not explained.

Nor were prescriptions written by Dr. Gala on November 30 written for a valid, documented purpose. When Dr. Gala then added Dilaudid on November 30, S.G. had still retained a six day supply of Oxycodone. Hence, he was essentially increasing her dosing again. Again, Dr. T[redacted] characterized the prescribing at this time as "gross negligence". Shifting S.G. to full agonist medications was a threat to her health.

Dr. T[redacted] was "disturbed" at Dr. Gala's failure to characterize S.G. as a "high risk" patient. When Dr. Gala stated that he would prescribe Gabapentin for S.G., he had not documented that choice. Dr. T[redacted] concluded that S.G. was engaged in drug-seeking behaviors, but that did not change or arrest Dr. Gala's prescribing practices. (Dr. T[redacted] was asked his opinion assuming that RX 4 were S.G.'s actual chart notes. Dr. T[redacted] did not change his opinion, as S.G. had an opioid use disorder and her behavior was aberrant. The

prescribed opioids were not helping her. Since she was a "high risk" patient, S.G.'s chart should have contained documentation of discussions of goals, risks and benefits.)

Dr. T[redacted] stated that it is "best practice" to request prior treatment notes from other providers. When a regulation is non-specific, a physician must apply his knowledge and skills and act in a patient's best interests.

S.G.'s testimony sheds some light on additional issues under Bd. Reg. 18.0. She confirmed that Dr. Gala did not conduct a "risks and benefits" discussion with her, nor the side effects of opioids. They did not discuss the contents of her "pain management agreement", nor her addiction. Though she had requested one at presentation, Dr. Gala did not discuss a TENS unit with her. When she would visit his home, Dr. Gala gave her Vicodin, Oxycodone, morphine and Percocet. S.G. finally decided she was "done" with the drug regimen prescribed by Dr. Gala. She was refused a return to Suboxone because of the recency of her opioid scripts. She has now returned to Suboxone treatments, and they are helpful.

Dr. Gala testified that his prescribing for S.G. was an effort to find the lowest and most effective dosing for her. He was asked his understanding of the charting requirements under the Model Policy and Bd. Reg. 18.0. He recited an extensive list of the requirements in those rules. He stated that he did not know how to answer a question as to whether referrals for other treatment modalities should be documented in a patient's chart.

Dr. Gala testified that he had asked other providers for their records on S.G. He received and reviewed them. He knew that S.G. had been receiving Suboxone treatments since December 2015. He evaluated S.G. as being at "moderate risk".

When asked why his records did not document a visit on November 6 or 9, 2016 (when a script for Oxycodone 20mg was written), Dr. Gala testified that he had not contended that his records were complete. Perhaps the record is in the "locked cabinet".

Dr. Gala admitted that S.G.'s behaviors were consistent with addiction. He denied knowing why she had received Suboxone treatments. He knew that S.G. had stated that medication gave her some relief. Though a note in RX 4 stated that he would refer S.G. for mental health counseling, he agreed that he did not prescribe that. He also admitted that at the time of some prescribing, he had not yet reviewed UDS results for a prior month. He may have reviewed toxicology results but not documented his review. He did not document a discussion of the fact that S.G. had not filled a script for Gabapentin. Dr. Gala did not recall discussing or prescribing any alternate modalities.

Though S.G. had exhibited aberrant behavior on November 23, 2016, Dr. Gala prescribed for her. He admitted that he prescribed Dilaudid 120 tabs seven days after S.G. had reported overusing her medications. Dr. Gala conceded that S.G. had failed her opioid trial and that risks then outweighed benefits. He did not know if he could taper her dosing down. He admitted the charting for S.G. does not contain evidence of pill counts. In concluding his testimony, Dr. Gala stated that he had followed the Model Policy, and had attempted to justify his prescribing for S.G.

I have concluded that the State has proven violations by Dr. Gala of Bd. Reg. 18.0 in a number of respects, and has therefore proven violations of 24 *Del. C.* §1731(b)(11). In coming to this legal conclusion, I have focused on the records at SX 1 at Tab 4 because I have found the records at RX 4 to have been fabricated and created after the fact.

I have further found that it is more likely so than not so that RX 4 was generated by Dr. Gala after he had had an opportunity to review Dr. T[redacted] initial report. In fact, Dr. T[redacted] notes in his supplemental report (SX 14) that RX 4 is "beyond striking" and is "incredible". That is so because notes in RX 4 (for the initial office visit of September 23, 2016, for instance) "contained every element that (Dr. [redacted]) had criticized the absence of in my prior report."

Given the Suboxone treatment history that Dr.. Gala had accessed on the date of that initial visit, he chose to immediately start opioid therapy. Even if Dr. A[redacted] and Dr. [redacted] had concluded that S.G. was an appropriate candidate for "pain management", based on the documented history and testimony in this case, the recommendations of those two "senior" physicians did not constitute a mandate that Dr.Gala surrender his independent medical judgment and immediately prescribe opioids. S.G. was a known drug abuser and addict at the time. Yet, as Bd. Reg. 18 requires, Dr. Gala failed or refused to consider or prescribe any modality for her other than opioid analgesics.

I will briefly review Dr. Gala's charting for S.G. from the perspective of Bd. Reg. 18.0. In SX 1 at Tab 4 the treatment notes demonstrate Dr. Gala's refusal to consider other approaches with S.G. In violation of Bd. Reg. 18.0, he failed to document any meaningful discussion with S.G. of the risks and benefits of opioid therapy. Nor do the intake documents S.G. reviewed or signed at presentation reflect her informed consent to be returned to opioids. Though the initial PMP report accessed by Dr. Gala documented extensive Suboxone treatment by two other physicians, Dr. Gala did not request their records. If he testified that he had secured all or some of those records, they were not found in S.G.'s chart. Nor did he discuss them in his charting. Nor did Dr. Gala document any conversation with either [redacted] to learn anything about S.G., her addiction, her compliance with prior treatments, efforts to prescribe or

discuss other treatment modalities, and the like. Even if there is no rigid mandate in Bd. Reg.18 that *all* records from *all* prior providers be secured before beginning a regimen of pain management, Dr. Gala did not refute or argue with Dr. T[redacted] opinion that securing important prior records was medical "best practice". In not requesting Dr. A[redacted] records (at a minimum), Dr. Gala placed S.G. at greater risk.

The "treatment plans" in the notes documenting the visits with S.G. in September and October of 2016 were simply a monotony of opioid prescribing, changes in opioids, and increased dosing. Those plans did not, as Bd. Reg. 18.0 requires, state or discuss goals, objectives, or whether further diagnostic evaluations or treatments were planned, whether other modalities were necessary, and whether S.G.'s pain was associated with physicial or psychosocial impairment. S.G.'s treatment with Dr. Gala lasted from September to late November 2016. Though arguably the three scheduled and noted visits with S.G. in September and October 2016 may not have provided sufficient time to conduct a "periodic review" of the course of treatment Dr. Gala was providing, it is evident that by late November Dr. Gala had not conducted such a review. During the hearing Dr. Gala candidly conceded that his opioid "trial" with S.G. had not been successful. In such case, Bd. Reg. 18.0 requires that the practitioner assess the appropriateness of the treatment plan he had chosen and then "consider the use of other therapeutic modalities." Bd. Reg. 18.5.3.

Bd. Reg. 18.6 *requires* that chronic pain managers "must educate themselves about the current standards of care applicable to (chronic pain) patients." Had he so educated himself, Dr. Gala would have known that S.G.'s chart *must* include the following documents: medical history and physical exam; diagnostic, therapeutic and laboratory results; evaluations and consultations; documentation of etiology; treatment objectives; discussion of risks and benefits;

informed consent; treatments; medications; instructions and agreements; and periodic review. Bd. Reg. 18.7. Though RX 4 may show a more comprehensive effort by Dr. Gala to address the mandates of the Model Policy and Bd. Reg. 18.0, those records were not created until after Dr. Thomas had produced his written opinion and are not the contemporaneous charting of S.G.'s care.

Based on this analysis, I have concluded as a matter of law that Dr. Gala violated Bd. Reg. 18.0 in numerous respects, and thereby violated 24 *Del. C.* §1731(b)(6). I further agree with Dr. Thomas' opinion that Dr. Gala's prescribing for S.G. was not for therapeutic or diagnostic purposes. Though Dr. Gala did not provide the testimony of his own medical expert, as a licensed physician in this State he was certainly permitted to give his own opinions on the care he provided for S.G. However, in my opinion his testimony and the charting in SX 1 at Tabs 3 and 4 did not overcome Dr. T[redacted] fundamental opinion that Dr. Gala's prescribing in this case "was, regardless of the motive, the provision of controlled substances outside of the usual course of professional practice and not for a medically legitimate purpose." SX 1 at Tab 6 at 9.

The State next contends that Dr. Gala has violated 24 *Del. C.* §1731(b)(11). That section of the Act deems it "unprofessional conduct" if a licensee engages in "(m)isconduct, including but not limited to sexual misconduct, incompetence, or gross negligence or pattern of negligence in the practice of medicine...." *Id.*

The State has proven violations of this section as a matter of law and by a preponderance of the evidence. Initially, this section lists "sexual misconduct" as a form of unprofessional conduct *per se*. I incorporate the factual findings and legal conclusions set forth above in finding that Dr. Gala engaged in "sexual misconduct" with S.G.

I further find that, in the context of this case, Dr. Gala has engaged in a "pattern of negligence". Again, the legislature has not defined the words in that phrase. Hence, we must refer to their common usage. "Negligence" has been defined as the "failure to exercise the care that a prudent person usually exercises." *Webster's* at 777.

The term "negligence" has also taken on a not dissimilar meaning in Delaware courts. Civil juries in medical malpractice cases are typically provided with the definition of "medical negligence" found in the Delaware Health-Care Medical Negligence Insurance and Litigation Act. 18 *Del. C.* Ch. 68. That definition, in relevant part, is as follows:

> "The standard of skill and care required of every healthcare provider in rendering professional services or healthcare to a patient shall be that degree of skill and care ordinarily employed, in the same or similar field of medicine as the defendant, and the use of reasonable care and diligence.

18 *Del. C.* Sec. 6801(7). In the parlance of litigation, when a practitioner fails to exercise the required standard of skill and care as defined above, and when that failure results in harm, then the physician may be found "negligent".

In this case the Model Policy and, more locally, Bd. Reg. 18.0 *et seq,* have essentially set forth the "standard of skill and care" required of the pain management physician in Delaware, along with the "use of reasonable care and diligence". Dr.T[redacted] has testified in this case that Dr. Gala failed to exercise the required "standard of skill and care" required of a licensee engaged in the same or similar field of pain management.

As noted above, it is "unprofessional conduct" to engage in a "pattern" of negligence. In my view this case contains proof of two overlapping patterns of negligence. First, I have concluded above that Dr. Gala repeatedly violated or ignored the mandates of Bd. Reg. 18.0 with regard to his care for S.G. Those violations began at (or before) the date of S.G.'s first office

visit with him, and continued until he wrote the final and undocumented scripts for her and discharged her in late November or December 2016. Those violations constituted "negligence" to the extent that they constituted deviations from the standards of care established by the Board in Bd. Reg. 18.0. Further, those violations constituted a "pattern" because Dr. Gala's care for S.G. consistently and on repeated occasions fell below the standards ordinarily applied by diligent pain management practitoners.

The second "pattern of negligence" proven by the State in this case relates to Dr. Gala's sexual misconduct toward or with S.G. As noted above, I have credited the testimony of S.G. in her descriptions of the egregious and unethical sexual misconduct in which Dr. Gala engaged. The conduct is forbidden and is deemed "unprofessional conduct" in the Medical Practice Act and ethical standards in the profession. To have violated those standards with S.G. repeatedly during the time S.G. treated with Dr. Gala is to have engaged in a pattern of failure to render services to her with the degree of skill and care and diligence that the reasonable pain manager would have applied.

Put another way, Dr. Gala knew that his prescribing for S.G. and his undocumented dispensing of controlled substances to her rendered a vulnerable addicted person relatively defenseless to his sexual requests and demands regardless of whether those medications were materially treating her chronic pain. I have therefore concluded as a matter of law that the State has proven both sexual misconduct and patterns of negligence committed by Dr. Gala in violation of 24 *Del. C.* §1731(b)(11). In addition, I find that Dr. Gala's sexual misconduct with and sexual abuse of S.G. constituted "gross negligence". The Delaware Supreme Court has defined "gross negligence" as a "higher level of negligence" which represents an "extreme

departure from the ordinary standard of care." *Browne v. Robb*, 583 A.2d 949, 953 (Del. 1990). Dr. Gala's abuse of S.G. constitutes such a departure.

The State finally alleges violation of five regulations of the Board in violation of 24 *Del. C.* §1731(b)(17). That section of the Act holds that it is "unprofessional conduct" if a licensee, *inter alia*, violates a regulation adopted by the Board related to medical procedures...the violation of which more probably than not will harm or injure the public or an individual." *Id.* As noted earlier the Board has adopted a regulation which sets forth a non-exhaustive list of those acts or omissions by its licensees which constitute "dishonorable or unethical conduct". Bd. Reg. 8.0 *et seq.*

The State first contends that Dr. Gala has violated Bd. Reg. 8.1.2. That rule deems it unprofessional conduct to engage in "(e)xploitation of the doctor/patient privilege for personal gain or sexual gratification." I have found hereinbefore that the State has proven a violation of this regulation in my discussion of violations of 24 *Del. C.* §1731(b)(3). I incorporate by reference my conclusions that the State has proven a violation of this regulation as if fully stated here.

The State next contends that Dr. Gala has violated Bd. Reg. 8.1.3. That is the rule which deems it unprofessional conduct to engage in sexual impropriety. As with Bd. Reg. 8.1.2, I have referred to my conclusion, above, that this regulation was violated in the context of 24 *Del. C.* §1731(b)(3). I incorporate my findings and conclusions that this rule has also been violated by Dr. Gala as if fully restated herein.

The State alleges that Dr. Gala has violated Bd. Reg. 8.1.7. That regulation holds that it is unprofessional conduct for a physician to engage in "(w)illfully failing to treat a prson under the physician's care who requires such treatment." Though I am unaware of the regulatory

history surrounding the adoption of Bd. Reg. 8.1.7. Perhaps a fair reading of the rule indicates that it is directed toward the act of patient abandonment. In my view the State has not proven a violation of this rule. Though I have found violations of laws and regulations pertaining to the form of care provided to S.G. by Dr. Gala, I do not believe that this record supports a conclusion of "abandonment". When Dr. Gala chose to leave his employment at Got-a-Doc, S.G. continued her care there (in the form of Suboxone treatment) with other providers.

The State alleges that Dr. Gala violated Bd. Reg. 8.1.13. That rule deems it unprofessional conduct to fail "to adequately maintain and properly document patient records." In my opinion, under the unique facts of this case, the State has proven a violation of this regulation as a matter of law. Earlier I have highlighted the mandatory contents of the charting of a pain management required in Bd. Reg. 18.7 and the deficiencies in S.G.'s chart. In my opinion this case substantiates an additional finding. Bd. Reg. 8.1.3 requires that a chart be "properly documented". When Dr. Gala offered the *post hoc* created RX 4, he thereby engaged in "improper" documentation of S.G.'s care.

Finally, the State alleges that Dr. Gala has violated Bd. Reg. 8.1.13. Apparently this reference in para. 22(e) of the amended complaint (SX 12) is a typographical error. The State alleges that Dr. Gala, by his actions in this case, has brought "discredit upon the profession." That language is found in Bd. Reg. 8.1.16. I will address the allegation as if the State had correctly cited to that rule. Since the substance of the regulation is referenced in the amended complaint, I do not believe that Dr. Gala may argue "unfair surprise".

The State contends that Dr. Gala's actions "in exchanging sexual favors for controlled substances" has brought discredit upon the profession. I have concluded that the unique and egregious facts of this case have brought such discredit. Dr. Gala's actions have become known

in the community through the conduct of a public hearing and the publicity attendant thereto. That community includes Got-a-Doc staff and others. Dr. Gala's actions in sexually abusing a vulnerable, at-risk female patient while she was dependent on him for a supply of dangerous controlled substances has brought discredit on the profession, and perhaps specially on those who engage in the pain management sub-specialty in a diligent and responsible fashion.

It remains to determine what form of professional discipline may be appropriate in the unique circumstances of this case. Acting pursuant to 24 *Del. C.* §1713(f), the Board has promulgated a matrix which establishes certain "disciplinary guidelines". Bd. Reg. 17.0 *et seq.* The regulation sets certain disciplinary parameters for violations of the Medical Practice Act, as well as mitigating and aggravating circumstances which may cause the Board to diverge from those parameters.

The Board has set the following parameters for the violations proven in this case:

24 *Del. C.* §1731(b)(1): $1,000 fine to six months suspension of license
24 *Del. C.* §1731(b)(2): 90 days probation to suspension with reinstatement after showing of proof of practice improvement
24 *Del. C.* §1731(b)(3): $1,000 fine to six months suspension
24 *Del. C.* §1731(b)(6): Education in pharmacy, letter of reprimand to suspension
Failure to follow Bd. Reg. 18.0 – Pharmacology education, $1,000 fine to revocation
24 *Del. C.* §1731(b)(11): Gross negligence – One year probation to one year suspension with showing of improvement
Pattern of negligence – One year probation to one year Suspension
24 *Del. C.* §1731(b)(17): Six months probation to six months suspension
Sexual relations with patient: Six months suspension to revocation
Sexual impropriety involving current patient: Education, $1,000 fine to $10,000 fine to Suspension

The "aggravating" factors in the Board's disciplinary matrix are found at Bd. Reg. 17.14, *et seq.* After a careful review of those factors, I find that the following are present in this case:

Frequency of acts (17.14.3)
Nature and gravity of allegation (17.14.4)

False evidence, false statements, deception during hearing (17.14.5)
Dishonest or selfish motive (17.14. 6)
Motivation, personal gain (17.14.7)
Different multiple offenses (17.14.8)
Failure to comply with rules (17.14.9)
Refusal to acknowledge wrongful nature of conduct, vulnerability of victim (17.14.10)
Intentional (17.14.11)
Abuse of trust (17.14.12)
No consent of patient/against patient's will (17.14.14)
Vulnerability of patient or victim (17.14.15)
Potential for injury ensuing from act (17.14.17)
Pattern of misconduct (17.14.19)
Illegal conduct (17.14.20)
Heinousness of actions (17.14.21)
Ill repute upon profession (17.14.22)

After a careful review of the "mitigating" factors listed in the Board's matrix, I find the following to be present in this case:

Absence of prior disciplinary record (17.15.1)

There is now left the consideration of a disciplinary recommendation in the context of the facts of this case and the legal conclusions which have flowed from those facts. If this were solely (a) a disciplinary case concerning the pain management practice of (b) a relatively young and, on a comparative basis, relatively inexperienced physician engaging in the demanding sub-specialty of pain management, and if this case (c) concerned certain errors or omissions which that physician committed in conjunction with care for a (d) single patient who (e) did not sustain any proven physical harm, the case may have been one in which a period of probation or relatively brief suspension with continuing education and perhaps monitoring would be appropriate.

Unfortunately, this is not such a case. When Dr. Gala conducted scheduled office visits with S.G. in 2016, he failed to comply with numerous requirements for such practice set in Bd. Reg. 18.0 *et seq.* When other matters brought him to the attention of Division of Professional

Regulation investigators, the State investigated and determined to file a licensure complaint against him. As the case moved toward a hearing, the State retained the services of an expert witness who then issued a report finding numerous failings in Dr. Gala's treatment of S.G.

Dr. Gala then compounded his "Rule 18 problem" by falsifying a set of "alternate" records after he reviewed Dr. T[redacted] report. Those records addressed most, if not all, of the concerns set out in the Thomas report. The records were not created at the time of Dr. Gala's care for S.G. Rather, they were created *post hoc* and were then falsely represented to be the contemporaneous medical records of S.G.'s care. Dr. Gala knew or should have known that those false records would be offered to the Board to counter the State's Rule 18 allegations. By doing so, Dr. Gala engaged in the perpetration of a fraud upon this Board.

Of course the "matters" which caused the initiation of these proceedings were the set of allegations by S.G. of gross, abusive sexual misconduct by Dr. Gala with S.G. while she remained in a physician-patient relationship with him. In considering this entire record, I have come to the conclusion that once S.G. was returned by Dr. Gala to an opioid regimen, she became an unwitting psychological hostage to his repetitive and bizarre and dehumanizing sexual demands.

Because Dr. Gala's actions in this case ignored Board rules, were deceitful to the Board and abusive toward his patient, and because he expressed no remorse in this case for his actions, in my view the only appropriate disposition of this case is license revocation. I do not make my recommendation lightly, but in the belief that Dr. Gala presents a danger to the public health, safety and welfare.

Due process has been afforded in these proceedings.

## Recommendation

Based on due consideration of all relevant evidence in this case and the findings of fact and conclusions of law set forth above, it is recommended that the Board of Medical Licensure and Discipline revoke the medical license of Dr. Nihar Bavesh Gala, effective on the date when a majority of the Board shall determine to impose such discipline.

Roger A. Akin
Chief Hearing Officer

Date: April 12, 2019

**Any party to this proceeding shall have twenty (20) days from the date on which this recommendation was signed by the hearing officer in which to submit in writing to the Board of Medical Licensure and Discipline any exceptions, comments, or arguments concerning the conclusions of law and recommended penalty stated herein. 29 *Del.C.* §8735(v)(1)d.**