

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

VOLUNTARY SURRENDER

I, OSCAR DOMINGO ALMEIDA, JR., M.D., do voluntarily surrender my certificate of qualification and license to practice medicine or osteopathy in the State of Alabama, identified by license number MD.12933, under the provisions of Ala. Code § 34-24-361(g).

I acknowledge that I sign this document willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am of sound mind and under no constraint or undue influence. I understand that this surrender shall have the same effect as a revocation of my license, and I knowingly forfeit and relinquish all right, title, and privilege to practice medicine in the State of Alabama, unless and until such time as my license may be reinstated, in the discretion of the Alabama State Board of Medical Examiners (“the Board”) and the Medical Licensure Commission.

I understand that I have a right to a hearing in this matter, and I hereby freely, knowingly, and voluntarily waive such right to a hearing. I also understand that both the Board and Medical Licensure Commission shall have access to any investigative file in this matter should I request reinstatement of my certificate of qualification and medical license, and that the Board has the right to contest my reinstatement. I understand that the Board may summarily deny any petition for reinstatement of my certificate of qualification for two (2) years from the effective date of this surrender. I further understand that upon applying for reinstatement, it shall be my burden to prove by sufficient evidence that I satisfy the criteria for reinstatement as provided for in the Board’s rules, which include, but are not limited to, demonstrating to the satisfaction of the Board that I am able to practice medicine with reasonable skill and safety to patients.

I acknowledge and understand that, by surrendering my certificate of qualification and licensure under the provisions of Ala. Code § 34-24-361(g), and by signing this document, the Board shall be without jurisdiction to reinstate my certification of qualification if my application for reinstatement is received by the Board more than five (5) years after the effective date of the surrender of my certificate of qualification. I specifically acknowledge that if either my certificate of qualification or license, or both, have not been reinstated within

five (5) years of the effective date of my surrender, the certificate of qualification, license, or both shall be come null and void.

I understand that this surrender shall become effective upon acceptance by the Board. I further acknowledge that this voluntary surrender constitutes a public record of the Board and will be reported by the Board to the National Practitioner Data Bank and to the Federation of State Medical Boards. I understand that this voluntary surrender may be released by the Board to any person or entity requesting information concerning the licensure status in Alabama of the physician named herein.

EXECUTED this 28TH day of February, 2023.

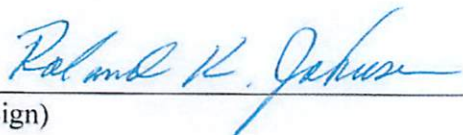


OSCAR DOMINGO ALMEIDA, JR., M.D.

Witnessed by:



(Print)



(Sign)

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

This matter is before the Medical Licensure Commission of Alabama on Respondent's request, submitted via e-mail on January 3, 2023, that the Commission remove all conditions of probation and issue to him a full and unrestricted license to practice medicine.

Our order imposing conditions of probation on Respondent's license was entered on April 21, 2022. Respondent's request was submitted on January 3, 2023, less than two years later. Upon consideration, therefore, Respondent's request is dismissed as prematurely filed, subject to the right of Respondent to re-file his request at a later date. *See Ala. Code § 34-24-361(h)(9).*

DONE on this the 2nd day of February, 2023.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2023-02-02 16:50:01 CST

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

The Medical Licensure Commission of Alabama is informed that Respondent has not made any payments toward the administrative fines and costs imposed by our Findings of Fact and Conclusions of Law dated April 21, 2022, and has not made any payments prescribed in the payment plan authorized by our Order of August 29, 2022. The Medical Licensure Commission of Alabama is further informed that, on or about December 25, 2022, Respondent renewed his license to practice medicine in Alabama, in apparent violation of Ala. Code § 34-24-383 (“The Medical Licensure Commission shall not renew the annual certificate of registration as set forth in Section 34-24-337 of any physician against whom an administrative fine has been assessed by the Board of Medical Examiners or the Medical Licensure Commission until such fine is paid in full. However, if an order of the Medical Licensure Commission or the Board of Medical Examiners allows for the payment of a fine or costs in installments and if the

licensee is current with the installment payment, then the physician shall be permitted to renew his or her license.”).

This matter is set for a hearing as prescribed in Ala. Code § 34-24-360, *et seq.*, and Ala. Admin. Code Chapter 545-X-3, to be held on Thursday, March 23, 2023, at 10:00 a.m., at 848 Washington Avenue, Montgomery, Alabama, 36104. The purposes of this hearing are to determine the relevant facts relating to Respondent’s renewal of his license, and to determine what actions, if any, should be taken with regard to Respondent’s license in light of the relevant facts and the applicable law, which could include revocation, assignment of expired status, or other appropriate actions.

If Respondent makes all delinquent payments for the months of September 2022 through February 2023, in the total amount of \$14,658.00, no later than February 28, 2023, this hearing will be cancelled.

DONE on this the 3rd day of February, 2023.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2023-02-03 13:01:13 CST

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

This matter is before the Medical Licensure Commission of Alabama on Respondent's request for approval of a practice plan, submitted via e-mail on December 17, 2022.

Upon review, the Commission concludes that Respondent's proposed practice plan, while improving on his previous proposals, still fails to contain sufficient information and detail from which the Commission can be satisfied that the conditions set forth in Part V of our Findings of Fact and Conclusions of Law of April 21, 2022, can and will be complied with. Specifically, Respondent proposes to dispense with the chaperone requirement altogether in the context of telemedicine. We find this proposal wholly unacceptable. At a minimum, the Commission will require a chaperone—employed and trained in accordance with our April 21, 2022 Order—to observe all female patient encounters via telemedicine either virtually or in person.

Therefore, approval of Respondent's practice plan is denied.

DONE on this the 27th day of December, 2022.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2022-12-27 21:17:32 CST

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

This matter is before the Medical Licensure Commission of Alabama on Respondent's request for approval of a practice plan, submitted via e-mail on May 22 and supplemented on October 17, 2022. Also before the Commission are the Preliminary Conclusions and Recommendations, dated October 14, 2022, received from Acumen Assessments.

Upon review, the Commission concludes that Respondent's proposed practice plan fails to contain sufficient information and detail from which the Commission can be satisfied that the conditions set forth in Part V of our Findings of Fact and Conclusions of Law of April 21, 2022, can and will be complied with. Therefore, approval of Respondent's practice plan is denied.

DONE on this the 1st day of December, 2022.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2022-12-01 18:30:52 CST

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

In an order dated August 29, 2022, we denied Respondent's request for cancellation of the fines and administrative costs assessed on him in this matter, but established a payment plan by which Respondent could satisfy those obligations over a two-year period. This matter is now before the Medical Licensure Commission of Alabama on Respondent's written request, dated September 25, 2022, to further delay the payments required by the payment plan. Upon consideration, this request is denied.

DONE on this the 5th day of October, 2022.

**THE MEDICAL LICENSURE
COMMISSION OF ALABAMA**

By:

E-SIGNED by Craig Christopher, M.D.
on 2022-10-05 08:25:20 CDT

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

This matter is before the Medical Licensure Commission of Alabama on Respondent's written request, dated July 27, 2022, for cancellation of the administrative fines and costs assessed in this matter. Respondent's request is supported by an updated Affidavit of Substantial Hardship.

Our Findings of Fact and Conclusions of Law, entered on April 21, 2022, originally required Respondent to pay the administrative fines and costs within 60 days, or by June 20, 2022. On June 28, at Respondent's request, we granted an extension of this deadline to August 19, 2022. As of the date of this Order, Respondent has not made any payments toward the administrative fines and costs.

Upon consideration, Respondent's request for cancellation of the administrative fines and costs assessed in this matter is DENIED. However, in an effort to facilitate Respondent's compliance, the Commission establishes the

following payment plan for satisfaction of the administrative fines and costs assessed in this matter: Respondent shall make payments of no less than \$2,443.00 per month starting in September 2022, and shall pay off the full amount owed for administrative fines and costs no later than May 31, 2024. Failure to pay as ordered will result in further action on Respondent's license, including nonrenewal pursuant to Ala. Code § 34-24-383.

DONE on this the 29th day of August, 2022.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2022-08-29 13:07:08 CDT

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

ORDER

This matter is before the Medical Licensure Commission of Alabama on:

(1) the Bill of Costs filed by the Alabama State Board of Medical Examiners on May 17, 2022¹; (2) Respondent's written objections to the Bill of Costs, filed on May 27, 2022; and (3) Respondent's e-mailed request for an extension of time in which to pay the fines and administrative costs assessed in this matter, supported by an Affidavit of Substantial Hardship submitted on May 18, 2022.²

Upon review, it is **ORDERED**:

¹ As referenced in the minutes of the Commission's meeting of May 25, 2022, at that meeting we considered and approved the Board's Bill of Costs, with the proviso that "an order will be issued if no objection is filed within the time period allowed." Respondent did timely file objections. Therefore, we now reconsider the Bill of Costs *de novo* in light of Respondent's written objections.

² Respondent also provided the Commission a copy of a settlement demand from lawyers representing A.S. We assume that Respondent intended that we consider this settlement demand in connection with Respondent's request for additional time in which to pay the fines and administrative costs, and we have done so.

1. That Respondent's written objections to the Bill of Costs are overruled; the Bill of Costs is approved, and, pursuant to Ala. Admin. Code r. 545-X-3-.08(9) and (10), administrative costs in the amount of \$41,301.34 are hereby assessed upon Respondent; and
2. That Respondent's request for an extension of time in which to pay the fines and administrative costs in this matter is granted; the 60-day deadlines in Sections V.4. and V.5. of our Findings of Fact and Conclusions of Law entered on April 21, 2022, are hereby extended to 120 days, resulting in the fines and costs now being due no later than Friday, August 19, 2022.

DONE on this the 28th day of June, 2022.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2022-06-28 11:18:40 CDT

Craig H. Christopher, M.D.
its Chairman

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

v.

**OSCAR DOMINGO ALMEIDA,
M.D.,**

Respondent.

**BEFORE THE MEDICAL
LICENSURE COMMISSION OF
ALABAMA**

CASE NO. 2021-017

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Medical Licensure Commission of Alabama for a contested case hearing held on March 22 and April 7, 2022. After receiving and considering all of the relevant evidence and argument, we find the Respondent, Oscar Domingo Almeida, M.D., guilty of one of the disciplinary charges, not guilty of the others, and impose professional discipline as set forth below.

I. Introduction and Statement of the Case

The respondent in this case is Oscar Domingo Almeida, M.D. (hereinafter "Respondent"). Respondent is a licensee of this Commission who, at the relevant times, was employed in the Huntsville, Alabama area. Respondent was first licensed by the Commission on July 30, 1986, having been issued license no. MD 12933. The disciplinary charges in this case arise out of Respondent's alleged sexual

misconduct toward a patient, A.S., and Respondent's alleged violations of his APHP Behavioral Assistance Agreement and his Voluntary Agreement with the Alabama Board of Medical Examiners.

II. Procedural History

Respondent has a disciplinary history with this Commission. On April 29, 2002, the Commission revoked Respondent's license to practice medicine in Alabama. That decision was based on an extensive factual record, including "testimony from three of Almeida's former patients, who provided explicit details of Almeida's conduct toward them in his office, which included inappropriate physical exams, winking and flirting, fondling and kissing, trying to make dates, and in one case, unbuckling his pants." *Ex parte Medical Licensure Commission of Alabama*, 897 So. 2d 1093, 1095-96 (Ala. 2004). The factual record undergirding the Commission's 2002 decision also included "testimony from a female sales representative who frequently visited Almeida's office about two specific incidents of what she thought was sexually inappropriate conduct by Almeida. The sales representative alleged that Almeida made inappropriate advances toward her and that Almeida insinuated that they have a sexual encounter." *Id.* at 1098. Although the Circuit Court of Montgomery County initially reversed, the Alabama Supreme Court ultimately upheld the revocation of Respondent's license, holding that the

Commission's "unanimous decision to revoke Almeida's medical license was supported by substantial evidence." *Id.* at 1099.

Revocations are rarely forever, and this case is no exception. After the 2002 revocation of his medical license, Respondent submitted to two professional evaluations, one in 2004 and one in 2006, both of which concluded that Respondent was fit to resume the practice of medicine from the perspectives of psychological functioning, emotional well-being, and behavioral risk. Respondent completed significant Continuing Medical Education hours with regard to professional boundaries. Respondent also became licensed in Mississippi and demonstrated compliance with the Mississippi Professional Health Program. On Respondent's application, and after a full hearing, the Commission reinstated Respondent's license to practice medicine in Alabama on December 3, 2007.

The present chapter in this saga began on November 1, 2021, when the Alabama Board of Medical Examiners filed a new Administrative Complaint and Petition for Summary Suspension of License (the "Administrative Complaint"). The Administrative Complaint contains four counts. Count One alleges that Respondent engaged in unprofessional conduct in violation of Ala. Code § 34-24-360(2) and Ala. Admin. Code r. 545-X-4-.06(17), in that he allegedly engaged in sexual misconduct in the practice of medicine as defined in Ala. Admin. Code r. 545-X-4-.07. Count Two alleges that Respondent committed unprofessional conduct in violation of Ala.

Code § 34-24-360(2) in that he failed to comply with the APHP Behavioral Assistance Agreement that he signed on August 22, 2016. Count Three alleges that Respondent engaged in unprofessional conduct in violation of Ala. Code § 34-24-360(2), in that he violated the terms of a Voluntary Agreement between him and the Alabama Board of Medical Examiners, executed on June 12, 2017. Finally, Count Four alleges that, from January 2000 through October 28, 2021, Respondent exhibited his inability to practice medicine with reasonable skill and safety to his patients by repeatedly committing sexual misconduct in the practice of medicine, contrary to Ala. Code § 34-24-360(19)a.

In accordance with Ala. Code § 34-24-361(f) and Ala. Admin. Code r. 545-X-3-.13(1)(a), on November 22, 2021, we entered an order summarily suspending Respondent's license to practice medicine and set this matter for a full evidentiary hearing.

On March 22 and April 7, 2022, we conducted a full evidentiary hearing on these charges as prescribed in Ala. Admin. Code r. 545-X-3. The case supporting the disciplinary charges was presented by the Alabama Board of Medical Examiners through its attorneys Wilson Hunter and Blake Henson. Respondent was represented by attorneys Jim Hoover and Lindsey Phillips. Pursuant to Ala. Admin. Code r. 545-X-3-.08(3), Commission Chairman Craig Christopher presided. Each side was offered the opportunity to present evidence and argument in support of its respective

contentions, and to cross-examine the witnesses presented by the other side. After careful review, we have made our own independent judgments regarding the weight and credibility to be afforded to the evidence, and the fair and reasonable inferences to be drawn from it. Having done so, and as prescribed in Ala. Code § 41-22-16, we enter the following Findings of Fact and Conclusions of Law.

III. Findings of Fact

We find the following facts to be established by the preponderance of the admissible and probative evidence presented at the hearing.

1. Respondent attended medical school at the University of South Alabama, graduating in 1985. He completed a residency in OB/GYN at the University of South Alabama Medical Center (“USA Medical Center”).

2. Respondent practiced obstetrics and gynecology for about 17 years, until his license was revoked in 2002. As mentioned above, in 2007, we reinstated Respondent’s license to practice medicine.

3. In 2016, Respondent’s privileges at USA Medical Center were revoked. The facts and circumstances surrounding the revocation of Respondent’s privileges did not result in professional discipline of Respondent’s medical license. But they did lead to a cascade of professional evaluations, actions, and agreements that rest at the center of this case.

4. The Alabama Physicians Health Program (“APHP”) referred Respondent to Pine Grove Behavioral Health and Addiction Services (“Pine Grove”) in order to undergo a comprehensive psychosexual evaluation. Pine Grove issued its report on August 18, 2016. The Pine Grove report included nine findings and recommendations:

- That Respondent was fit, at that time, to practice medicine with reasonable skill and safety.
- That Respondent should complete, at his earliest opportunity, an in-person course on professional boundaries, approved by APHP.
- That Respondent should enter individual therapy with a therapist who is well-versed in counseling professionals with boundary issues and approved by APHP.
- That Respondent should, at his earliest convenience, undergo a complete neuropsychological assessment, conducted by a neuropsychologist approved by APHP.
- That Respondent should enter into a monitoring agreement with APHP for at least two years.
- That Respondent should have a workplace monitor, again approved by APHP.
- That Respondent should use a chaperone for all “sensitive examinations” of female patients.
- That Respondent should not prescribe medications to himself.
- That, if Respondent continued to have problems related to workplace boundaries, Pine Grove might recommend that Respondent receive a “higher level of care.”

(BME Exhibit 7 at 48-50.)

5. That same day, Respondent was interviewed by the Alabama Board of Medical Examiners about the circumstances that led USA Medical Center to terminate his privileges. (BME Exhibit 8.)

6. In accordance with one of the Pine Grove recommendations, on August 22, 2016, Respondent entered into a Behavioral Health Agreement with APHP. (BME Exhibit 9.) The 2016 APHP Agreement has remained in force ever since. In addition to the standard contract terms and conditions, Respondent's APHP contract required him to:

- "a) Complete a Professional Boundaries Course at Vanderbilt University Center for Professional Health with completion documentation sent to the APHP.
- "b) Enter individual therapy with Ashley Simpson, LPC with Quarterly Reports sent to the APHP.
- "c) Complete a Neuropsychological Assessment with Dr. Thomas Boll with assessment summary sent to the APHP.
- "d) Select [an] appropriate Worksite Monitor to complete Quarterly Reports and send them to the APHP for your file.
- "e) Continue to use a chaperone for all sensitive examinations of female patients.
- "f) Do not prescribe any medications for yourself. Always consult your Primary Care Physician for all healthcare needs.
- "g) Any additional problems related to workplace boundaries would require further evaluation at which point a higher level of care should be considered."

(BME Exhibit 9 at 5.)

7. Next, Respondent underwent a complete neuropsychological evaluation conducted by the Professional Renewal Center in Lawrence, Kansas. The Professional Renewal Center issued its report on April 7, 2017. The Professional Renewal Center found that Respondent was “fit to practice with the following recommendations in place.

“RECOMMENDATIONS

- “1. Continued participation in the Alabama Physician Health Program and follow all recommendations set forth by them.
- “2. Compliance with the recommendations made by Pine Grove. It is our understanding that he has already completed the boundaries course offered at Vanderbilt. We would recommend continued sessions with his therapist Ashle[y] Simpson.
- “3. Continued follow up of his medical conditions with his primary care provider. We would recommend that he provide the results of the neuropsychological testing to his primary care provider and discuss ways on how to better monitor his diabetes over the course of the day. We would recommend that [Respondent] follow all recommendations of his primary care provider.
- “4. As he has health conditions that could impact neurocognitive functioning, we would recommend repeat neuropsychological testing by a neuropsychologist approved by AL PHP and the Board in approximately 12 months unless there are other indicators suggesting the need for earlier evaluation. It would be helpful and recommended for that provider to receive his previous testing results.
- “5. We would also concur with Pine Grove that if he continues to have problems related to workplace boundaries we would suggest further evaluation at which point a higher level of care should be considered.

“6. The PRC team reserves the right to amend the recommendations based on additional data, such as data from collateral sources.”

(BME Exhibit 12 at 21, 22.)

8. On June 12, 2017, Respondent entered into a “Voluntary Agreement” with the Alabama Board of Medical Examiners. (BME Exhibit 13.) The Voluntary Agreement allowed Respondent to avoid disciplinary charges and continue practicing medicine, subject to certain conditions designed to protect the public health and safety. By entering into the Voluntary Agreement, Respondent promised to comply with the following requirements:

- “a. Dr. Almeida shall enter into and maintain a lifetime monitoring contract with the Alabama Physicians’ Health Program (“APHP”);
- “b. Dr. Almeida shall follow all recommendations made by the director of APHP in connection with his monitoring agreement;
- “c. Dr. Almeida shall complete a course on professional boundaries, which the parties agree is satisfied by Dr. Almeida’s October 2016 attendance at Vanderbilt University Medical Center’s “Maintaining Proper Boundaries” course;
- “d. Dr. Almeida shall enter individual therapy with a therapist who is experienced in counseling professionals with boundary issues. Dr. Almeida is currently under the care of Ashley C. Simpson, LPC, ACRPS. Dr. Almeida agrees to permit his therapist to provide all information requested by the director of APHP necessary to monitor Dr. Almeida and to sign any and all releases necessary to effect this sharing of information;
- “e. Dr. Almeida shall engage in individual therapy for a minimum of six (6) months from the date of this agreement, and he shall continue in therapy if directed by the director of APHP;

- “f. Dr. Almeida shall notify the director of APHP within three (3) days if he terminates his individual therapy;
- “g. Dr. Almeida shall arrange for a repeat, complete neuropsychological assessment by a neuropsychologist approved by the director of APHP. This evaluation shall occur twelve (12) months from the date of this agreement unless the director of APHP determines there is cause for an earlier evaluation. Dr. Almeida shall permit the neuropsychologist to provide his or her report to the director of APHP and to his primary care provider, and he agrees to sign any and all releases necessary for the sharing of this information;
- “h. Dr. Almeida shall provide the results of any existing and future neuropsychological testing or evaluation to his primary care provider and shall comply with his primary care provider’s recommendations;
- “i. Dr. Almeida shall permit the director of APHP to approve or appoint a workplace monitor to Dr. Almeida’s workplace. The workplace monitor will report directly to the director of APHP. Dr. Almeida shall permit the appointment of a workplace monitor at each and every location or facility at which he works;
- “j. **Dr. Almeida shall use a chaperone for all examinations of female patients and shall implement any and all procedures and reporting requirements recommended by the director of APHP to ensure compliance with this condition;**
- “k. Dr. Almeida shall not prescribe medication to himself; and
- “l. Dr. Almeida shall obtain Board approval prior to any change in his current practice location.”

(BME Exhibit 13 (emphasis added).)

9. The Voluntary Agreement, by its plain terms, required Respondent to use a chaperone for “all examinations of female patients,” even those that did not involve “sensitive” examinations (*e.g.*, examinations of the breasts, genitals, or

anus). The Voluntary Agreement further provided that “a violation of this agreement by Dr. Almeida may result in the Board taking action against Dr. Almeida’s medical license.”

10. The events immediately giving rise to the Administrative Complaint occurred on January 7, 2021, and they involve Respondent’s interactions with a patient, A.S.

11. A.S. has a history of bipolar disorder, depression, and panic disorders. On January 5, 2021, A.S. received a phone call from a relative, informing her that her biological mother had passed away. Although A.S. had not cut herself in about 30 years, the distress of learning that her mother had passed away led her to cut her left forearm, leaving a wound approximately 3-4 cm in length. For the next 48 hours or so, A.S. cared for the wound herself.

12. On January 7, A.S. went to the Urgent Medicare clinic located on Wall-Triana Road in Huntsville. There, A.S. was assessed by Amy Hunter, a Nurse Practitioner. Hunter determined that A.S.’s wound was outside her scope of practice, and thought that A.S. should go to the emergency room. A Medical Assistant, Tynesha Stewart, also tried to comfort A.S. and encouraged her to go to the emergency room. Stewart then phoned the Urgent Medicare clinic located on Shields Road, where Respondent was working, and spoke to Respondent. Respondent agreed to treat A.S.’s wound. Stewart cleaned and bandaged A.S.’s wound, and gave

her the address for the Shields Road clinic. According to Stewart's affidavit testimony, A.S. had stopped crying at that point.

13. A.S. made the 16-mile drive from the Wall-Triana Road clinic to the Shields Road clinic without any apparent difficulty. When A.S. arrived, she was checked in by Medical Assistant Alexis Similton. Similton escorted A.S. to an exam room. A.S.'s vital signs at that point were inconsistent with a patient in severe psychological distress.

14. After Respondent entered the exam room, A.S. showed him the cut and told him how it happened. Respondent instructed A.S. to lie down on the gurney and said something to the effect of, "We can't have a pretty girl like you cutting yourself." Respondent also commented that A.S. was "very fit for [her] age."¹

15. Similton remained in the exam room with A.S. and Respondent until Respondent began making his first suture. Just as Respondent began suturing the cut in A.S.'s arm, Similton left the room and sat down at the nurse's computer station, behind a standing-height countertop, across the hallway from the exam room. Based on the photographs that were introduced at the hearing, we conclude that Similton was not able to see or hear what was happening in the exam room in

¹ Respondent denies making these statements. However, based on our personal observation of the demeanor of the witnesses, other circumstantial evidence, and each witness's potential self-interest or lack thereof, we find A.S.'s account of these events to be more credible than Respondent's.

any meaningful way.² We find as a factual matter that Similton did not fulfill the role of a chaperone in connection with Respondent's treatment of A.S.³ Nor was A.S. offered a chaperone.

16. Respondent admits that he did not use a chaperone for all examinations of all female patients. By Respondent's own admission, he used chaperones "99 percent of the time" for examinations involving female patients, and all of the time for examinations of female patients involving sensitive areas of the body.

17. As Respondent worked on the sutures, he asked A.S. what she did for a living, and other questions of a personal nature, which made A.S. uncomfortable. Respondent told A.S. that he had been an OB/GYN for 30 years.

18. After Respondent finished the sutures, he took out his mobile phone and took at least one photo of A.S.'s arm. A.S. claims that Respondent also stepped back and took additional photos of her entire body.⁴ It is disputed whether Respondent obtained oral consent from A.S. to take the photos; Respondent claims

² A.S. testified that the exam room door was mostly closed after Similton left the room; Respondent claims that the door was mostly open. We need not resolve this factual discrepancy, because even with the door open, we find that Similton could not meaningfully see or hear what was going on in the exam room from a seated position at the nurse's station across the hall. We also note that leaving an exam room door open during the physician-patient encounter—as Respondent ardently claims he did—is inconsistent with patient privacy.

³ Notably, two witnesses presented by Respondent—Ashley Simpson and Jeanne Turner—testified that a person needed to be in the same room with the doctor and patient in order to serve effectively as a chaperone. We agree.

⁴ Only a photograph of A.S.'s arm was entered into the record. Respondent testified that he deleted the photos he took from his phone.

that he did, and A.S. claims that he did not. It is clear, however, that Respondent did not obtain A.S.'s written consent to take the photographs. After this incident, Urgent Medicare changed its policy to require written consent for photographs. Respondent sent at least one photograph of A.S. by text message to Amy Hunter, and Hunter showed it to Tynesha Stewart.

19. As A.S. rose from the gurney, Respondent "caressed" her hand and "patted" her on the thigh. At that point, A.S. says her "stomach knotted up" and she "froze."

20. As A.S. left the Shields Road clinic, she was shaking and crying. She called her husband and told him "something happened," but she could not articulate it for him. On the way home, A.S. had to stop and call her husband again. A.S. got lost on the way home, even though she was in a part of town that was familiar to her.

21. The following day, January 8, 2021, A.S. wrote an e-mail to Sandi B. Good, who was the Senior Director of Operations at Urgent Medicare covering Alabama. The e-mail said:

I have been a patient at Urgent Care on Wal Triana for several years. I went to that location after calling yesterday to get a few small stitches in a cut that I had on my arm. The nurse practitioner said she did not feel comfortable performing them and they sent me to the location on Shields Road. The CNA at the Wal Triana location put a bandage on the cut and told me that the doctor at the Shields Road location could take care of it. She said that she would call ahead and make sure. She then came back and said no problem they would do it and head over there.

Once in a room I saw Dr. Oscar Almeida. I recall this because he gave me his card from his pocket after he had finish treating me. I knew that some thing was making me feel uncomfortable from the first moment he started the stitches. He asked me a lot of personal questions including my profession and how old I was. Then he commented about my level of fitness. I kept getting more uncomfortable as the door was semi-open but there was no nurse in the room or anywhere outside that could be seen or heard. I did observe upon entering the clinic that the bulk of the nurses and CNA's were in a front room going outside to perform Covid testing.

The doctor kept smiling at me and sort of winking at me. Even with a mask on I could see him smiling and oddly winking several times. When he was done with the stitches he stepped out briefly and came back with a black iPhone. Or it appeared to be an iPhone. He didn't say anything and then took a picture I assume of my arm. I was laying down flat on the bed and I think he also took a picture of my body. I was laying down flat on my back. Then he walked towards the cabinets looking at his phone. I got nervous and asked if those were "stitches for the book"? To which he replied, "something like that". He never asked to photograph me, I never gave permission and I felt incredibly uncomfortable and scared. Then he came over to me put a Band-Aid on my arm and extended his hand to help me sit up. When he grabbed my hand he kept caressing it strangely. Then when I sat up straight and he was directly in front of me he put his hand on my right thigh and kind of patted. He told me that I needed to come back in 10 days because that would be the next time he was in Huntsville. He said I would have to have the stitches removed. I asked if I could remove them myself as I am a medical professional. He said no he needed to see me again. I found that rather strange because I live so close to the other urgent med care and why would I not just go there?

I immediately went to my car and called my husband. I was shaking by the time I got to my car and crying. It was pouring rain and I couldn't even drive for 15 min or so. I had to stop right after I pulled out as I was still shaking. I told him what happened and how I was in disbelief and still shocked and I felt like he had taken advantage of me. This man has access to all of my personal medical information, my name, my address, my phone number. And now he has pictures of me on his personal cell phone. I felt like it was very important for me to let

someone know about this experience. I don't think this man should be employed by urgent care. If this was my experience with him, is he doing this to other female patients? I have never had an experience like this. It has been extremely upsetting, so much so that I may never see a male doctor again.

I feel very violated and I feel as if this doctor took advantage of me when I was in a delicate situation and unable to leave.

If I need to send this to someone else or have the wrong department, please let me know.

(BME Exhibit 15.)

22. A.S. filed a formal complaint with the Alabama Board of Medical Examiners on January 13, 2021. (BME Exhibit 16.)

IV. Conclusions of Law

1. The Medical Licensure Commission of Alabama has jurisdiction over the subject matter of this cause pursuant to Act No. 1981-218, Ala. Code §§ 34-24-310, *et seq.* Under certain conditions, the Commission “shall have the power and duty to suspend, revoke, or restrict any license to practice medicine or osteopathy in the State of Alabama or place on probation or fine any licensee.” Ala. Code § 34-24-360. In addition to all other authorized penalties and remedies, the Commission may impose a fine of up to \$10,000 per violation, and may require the payment of administrative expenses incurred in connection with the disciplinary proceeding. Ala. Code § 34-24-381(a), (b).

2. Respondent was properly notified of the time, date and place of the administrative hearing and of the charges against him in compliance with Ala. Code §§ 34-24-361(e) and 41-22-12(b)(1), and Ala. Admin. Code r. 545-X-3-.03(3), (4). At all relevant times, Respondent was a licensee of this Commission and was and is subject to the Commission's jurisdiction.

3. In 1997, we adopted Sexual Misconduct In The Practice of Medicine: A Joint Statement Of Policy and Guidelines By The State Board of Medical Examiners And The Medical Licensure Commission. As amended, the Joint Statement of Policy provides in relevant part:

(16) Sexual Misconduct. Sexual contact with a patient is sexual misconduct and is unprofessional conduct within the meaning of Code of Ala. 1975, § 34-24-360(2).

(17) Sexual Contact Defined. For purposes of § 34-24-360(2), sexual contact between a physician and a patient includes, but is not limited to:

(a) Sexual behavior or involvement with a patient including verbal or physical behavior which:

1. may reasonably be interpreted as romantic involvement with a patient regardless whether such involvement occurs in the professional setting or outside of it;

2. may reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or both; or

3. may reasonably be interpreted by the patient as being sexual.

Ala. Admin. Code r. 545-X-4-.07(16), (17).

4. Although we find A.S.'s account of the events of January 7, 2021 to be credible, based on the totality of the evidence, we cannot conclude that the actions of Respondent "may reasonably be interpreted as romantic involvement with a patient," "may reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or both," or "may reasonably be interpreted by the patient as being sexual." Professional discipline therefore will not be meted out based on Count One of the Administrative Complaint.

5. For similar reasons, based on the factual record before us, we cannot conclude that Respondent exhibited an inability to practice medicine with reasonable skill and safety to his patients by repeatedly committing sexual misconduct in the practice of medicine as charged in Count Four of the Administrative Complaint.

6. Based on the factual record before us, we cannot conclude that Respondent violated his APHP Behavioral Assistance Agreement signed on August 22, 2016, as charged in Count Two of the Administrative Complaint.

7. With respect to Count Three of the Administrative Complaint, however, we find that Respondent violated condition (j) of his Voluntary Agreement with the Alabama Board of Medical Examiners, and that that transgression

constitutes “unprofessional conduct” within the sweep of Ala. Code § 34-24-360(2) and Ala. Admin. Code r. 545-X-4-.06.⁵

8. “Unprofessional conduct” is described in our regulations as:

the commission or omission of any act that is detrimental or harmful to the patient of the physician or detrimental or harmful to the health, safety, and welfare of the public, and which violates the high standards of honesty, diligence, prudence and ethical integrity demanded from physicians and osteopaths licensed to practice in the State of Alabama.

Ala. Admin. Code r. 545-X-4-.06. The regulation goes on to list 22 non-exclusive examples of behaviors that constitute “unprofessional conduct.” In this case, it is our job to interpret and apply the meaning of “unprofessional conduct” as outlined in this regulation, and our interpretation is authoritative. “[T]he interpretation of an agency regulation by the promulgating agency *carries controlling weight* unless it is plainly erroneous or inconsistent with the regulation.” *Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson County*, 103 So. 3d 17, 25 (Ala. 2012) (emphasis added).

9. The Voluntary Agreement was entered into against the backdrop of an extensive history of professional misconduct and boundary violations by the Respondent, some of which had resulted in professional discipline, and some of

⁵ Respondent did not argue that violation of his Voluntary Agreement with the Board did not constitute “unprofessional conduct.” Instead, he argued that he did not violate the Voluntary Agreement. Nonetheless, we believe it is appropriate to summarize the reasons why Respondent’s violation of his Voluntary Agreement also constitutes “unprofessional conduct.”

which resulted in a major hospital revoking Respondent's privileges. The Voluntary Agreement contained very reasonable, achievable, and agreed-upon guardrails for the mutual benefit and protection of Respondent and the public. Respondent's violation of the Voluntary Agreement led directly to patient harm. Under the circumstances presented in this case, therefore, we conclude that Respondent's violation of his Voluntary Agreement constitutes "unprofessional conduct" under Ala. Admin. Code r. 545-X-5-.06.

10. Because Respondent exhibited disregard for the voluntarily-assumed obligation to have a chaperone present with *every* female patient, we have no alternative but to make the chaperone requirement involuntary, and to give that requirement teeth.

V. Decision

Based on all of the foregoing, it is **ORDERED, ADJUDGED, AND DECREED:**

1. That the Respondent, Oscar Domingo Almeida, M.D., is adjudged **GUILTY** of violating Ala. Code § 34-24-360(2), in that he violated his Voluntary Agreement with the Alabama Board of Medical Examiners, as charged in Count Three of the Administrative Complaint.

2. That the Respondent, Oscar Domingo Almeida, M.D., is adjudged **NOT GUILTY** of violating Ala. Code § 34-24-360, as charged in Counts One, Two, and Four of the Administrative Complaint.

3. That Respondent's license to practice medicine in the State of Alabama is hereby **REVOKED**; said revocation is **STAYED**; and Respondent's license is placed on **PROBATION** for an indefinite term, subject to the following conditions of probation:

- a. Respondent is **PROHIBITED** from practicing medicine in Alabama as a solo practitioner;
- b. Respondent shall practice medicine only pursuant to a practice plan that has been approved in advance by the Commission;
- c. Respondent shall at all times have a practice monitor, who shall be subject to approval by the Commission;
- d. Respondent is **PROHIBITED** from conducting any examination or treatment of any female patient unless a chaperone is physically present in the same room with the patient and Respondent at all times with continuous, direct visual and aural observation of all activities. All chaperones referred to in this provision shall be employed by Respondent's employer and not by Respondent himself, and shall have successfully completed the PBI Medical Chaperone Training Program. The chaperone's name shall be recorded in each female patient's chart. These are absolute, non-negotiable, non-waivable requirements, and Respondent is forewarned that any deviation from them will be met with severe professional discipline.
- e. Respondent shall enter into a lifetime contract with the Alabama Physicians' Health Program.

- f. Respondent shall submit to a polygraph examination no less frequently than quarterly, which shall be coordinated by the Alabama Board of Medical Examiners.
- g. Respondent shall provide every employer an exact, complete, unmodified, and legible copy of Part V of this Order. Merely informing the employer of the existence of this Order, or that a copy of this Order may be obtained from the Commission, does not constitute compliance with this provision. In addition, Respondent shall be responsible for ensuring that the practice manager, head nurse, or other chief administrative officer of every individual location or clinic at which Respondent works has a copy of Part V of this Order. The copies referred to in this paragraph shall be retained on file, and shall be produced for inspection upon request of the Alabama Board of Medical Examiners.
- h. Respondent shall, within six months of this Order, submit to a multidisciplinary assessment to be conducted by Acumen Assessments in Lawrence, Kansas. The assessment shall be designed to comprehensively evaluate Respondent's fitness to safely practice medicine, in view of the repeated sexual boundary incidents and complaints over the course of Respondent's career, including the facts and circumstances surrounding the revocation of Respondent's privileges at USA Medical Center in 2016. All prior Administrative Complaints, Commission orders, and other public documents relating to Respondent's medical license shall be made available to Acumen for the evaluation. As part of the assessment required by this paragraph, Respondent shall be required to execute consents authorizing the release of further information as may be requested by Acumen. Within 30 days of the date of this Order, Respondent shall have made an appointment date with Acumen and shall report such appointment date to the Commission.
- i. The Commission reserves the right to amend these conditions of probation based on the findings of the Acumen assessment(s), or based on any other relevant information.

- j. The Alabama Board of Medical Examiners' physician monitor / investigator shall monitor Respondent's compliance with this Order and the APHP Contract required by this Order.
4. Respondent shall, within 60 days of this Order, pay a fine in the amount of \$10,000.00.
5. Respondent shall, within 60 days of this Order, pay the administrative costs of these proceedings.

DONE on this the 21st day of April, 2022.

THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

By:

E-SIGNED by Craig Christopher, M.D.
on 2022-04-21 14:22:54 CDT

Craig H. Christopher, M.D.
its Chairman

BEFORE THE MEDICAL LICENSURE COMMISSION OF ALABAMA

ALABAMA STATE BOARD OF)
MEDICAL EXAMINERS,)
)
Complainant,)
)
v.)
)
OSCAR DOMINGO ALMEIDA, M.D.,)
)
Respondent.)

CASE NO.: 2021-017

ORDER TEMPORARILY SUSPENDING LICENSE AND SETTING HEARING

Upon the verified Administrative Complaint of the Alabama State Board of Medical Examiners, and pursuant to the authority of Ala. Code § 34-24-361(f) and 41-22-19(d), it is the ORDER of the Commission that the license to practice medicine or osteopathy, license certificate number 12933, of OSCAR DOMINGO ALMEIDA, M.D., be, and the same is hereby, immediately suspended. OSCAR DOMINGO ALMEIDA, M.D., is hereby ORDERED and DIRECTED to surrender the said license certificate to Becky Daniels, a duly authorized agent of the Medical Licensure Commission. OSCAR DOMINGO ALMEIDA, M.D., is hereby ORDERED to immediately CEASE and DESIST from the practice of medicine in the State of Alabama until such time as the Administrative Complaint of the Alabama State Board of Medical Examiners shall be heard by the Commission and a decision rendered thereon.

This action is made consistent with the Rules and Regulations of the Board of Medical Examiners and the Medical Licensure Commission and Ala. Code § 34-24-361(f), based upon the request of the Alabama State Board of Medical Examiners upon the Board's finding and certification that the Board presently has evidence in its possession that the continuance in practice of OSCAR DOMINGO ALMEIDA, M.D., may constitute an immediate danger to his patients and the public.

It is the further ORDER of the Medical Licensure Commission that the Administrative Complaint of the Alabama State Board of Medical Examiners be, and the same is hereby, set for hearing on the 29th day of March, 2022, at 10:00 a. m., at the offices of the Medical Licensure Commission, 848 Washington Avenue, Montgomery, Alabama.

OSCAR DOMINGO ALMEIDA, M.D., is ORDERED to appear before the Commission at the aforesaid time and date to answer the allegations of the Administrative Complaint filed by the Alabama State Board of Medical Examiners.

It is the further ORDER of the Commission that a copy of the verified Administrative Complaint of the Alabama State Board of Medical Examiners and a copy of this order shall be forthwith served upon OSCAR DOMINGO ALMEIDA, M.D., by personally delivering the same to him at his office or at his residence or such place as he may be found in the State of Alabama, or by certified mail, return receipt requested, to his last known address if he cannot be found in the State of Alabama. The Commission further directs that the service of process shall be made by Becky Daniels, who is designated as the duly authorized agent of the Medical Licensure Commission.

It is further ordered that the parties and their attorneys immediately check their calendars for scheduling conflicts. No requests for continuances based upon scheduling conflicts of attorneys or parties will be considered unless such request is made forty-five (45) days prior to the scheduled hearing date.

ORDERED at Montgomery, Alabama, this 29th day of November, 2021.

George C. Smith, M.D.
George C. Smith, M.D., Chairman
Medical Licensure Commission of Alabama

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS**

Complainant,

v.

OSCAR D. ALMEIDA, JR., M.D.

Respondent.

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**BEFORE THE MEDICAL
LICENSURE COMMISSION
OF ALABAMA**

CASE NO. 01-027

ORDER

This matter is before the Medical Licensure Commission upon an application to reinstate his license to practice medicine in Alabama filed by Oscar D. Almeida, Jr., M.D. Dr. Almeida's license was revoked by order of the Commission on April 29, 2002. On April 10, 2007, the Commission entered an Order to Show Cause requiring Dr. Almeida to appear and show cause why his application should not be denied. A hearing was held on November 28, 2007. Dr. Almeida was present together with his attorney, Robert A. Huffaker, Esq. James R. Seal, Esq. and Patricia E. Shaner, Esq., represented the Board of Medical Examiners. Wayne P. Turner, Esq. served as Hearing Officer.

In its order revoking Dr. Almeida's license, the Commission expressed its opinion that it would be a great loss to the medical community, and to the public in general, if a physician of Dr. Almeida's obvious skill and ability would never again be able to practice medicine. The Commission also expressed the hope that Dr. Almeida would carefully consider the recommendations of the expert witness in the case and take the necessary steps to convince the Commission that he may be safely allowed to return to the practice of medicine. For the reasons set forth below, the Commission is now convinced that Dr. Almeida has in fact taken

such steps and that it is not likely that the events which led to the revocation of his license will be repeated.

Specifically, the evidence showed the following:

1. In July 2004, Dr. Almeida was evaluated by the Professional Renewal Center in Lawrence, Kansas. The assessment team stated in its report that “with a reasonable degree of psychological certainty, the assessment team finds Dr. Almeida fit to continue the practice of medicine with skill and safety from the perspectives of physiological functioning, emotional well-being, and behavioral risk provided he follow the recommendations outlined below.”

2. In February 2006 Dr. Almeida had a follow up evaluation with the same professionals who had evaluated him in 2004. The conclusions and recommendations were similar to those set forth in the 2004 report.

3. Since the revocation of his license Dr. Almeida has completed significant Continuing Medical Education hours with regard to professional boundaries.

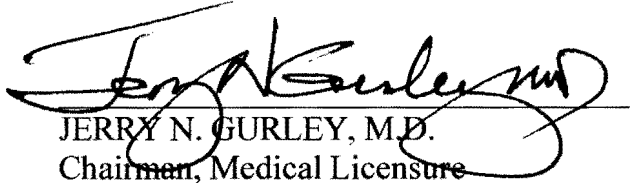
4. In March 2005 Dr. Almeida was issued a license to practice medicine in the state of Mississippi and has participated since that time with the Mississippi Professional Health Program.

5. Dr. Almeida presented for Commission review numerous letters of support from physicians and other health care professionals who are familiar with the circumstances of his case.

Based upon the above evidence, and based upon Dr. Almeida’s own testimony at the hearing, the Commission is now convinced that Dr. Almeida is qualified to practice medicine

in the state of Alabama. Therefore, it is the Order of the Medical Licensure Commission that the license to practice medicine in Alabama of the respondent, Oscar D. Almeida, Jr., M.D. be and the same is hereby REINSTATED.

ENTERED this 3rd day of December, 2007.


JERRY N. GURLEY, M.D.
Chairman, Medical Licensure
Commission of Alabama

ALABAMA STATE BOARD OF)
MEDICAL EXAMINERS,)
)
Complainant,)
)
v.)
)
OSCAR D. ALMEIDA, JR., M.D.)
)
Respondent)

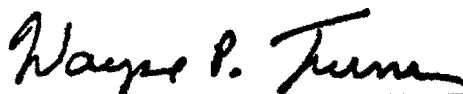
BEFORE THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

CASE NUMBER 01-027

ORDER TO SHOW CAUSE

This matter is before the Medical Licensure Commission on a request for reinstatement of license filed by Oscar D. Almeida, Jr., M.D. Accordingly it is the ORDER of the Medical Licensure Commission that Dr. Almeida appear at a hearing in which the date and time shall be pending, in the offices of the Medical Licensure Commission, 848 Washington Avenue, Montgomery, Alabama and show cause, if any he has, why such request for reinstatement should not be denied.

ENTERED this 10day of April, 2007.



Wayne P. Turner, Esq., Hearing Officer
Medical Licensure Commission
State of Alabama

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

OSCAR D. ALMEIDA,
Petitioner,

v.

JERRY GURLEY, et al.
Respondents.

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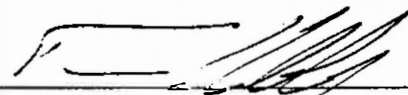
CV-02-1222

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2004 OCT 14 PM 1:21

ORDER

In accordance with the opinion and order of the Supreme Court of Alabama, Ex parte Medical Licensure Comm'n of Alabama, [Ms. 1022156, September 3, 2004] ____ So.2d ____ (Ala. 2004) and the order of the Alabama Court of Civil Appeals dated October 8, 2004, it is the order of this Court that the order of the Medical Licensure Commission of Alabama revoking the license to practice medicine in Alabama of the Petitioner, Oscar D. Almeida, Jr., be and the same is hereby AFFIRMED.

DONE this 13 day of October, 2004.



TRUMAN M. HOBBS, JR.
Circuit Judge

cc: Counsel of Record

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Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the Reporter of Decisions, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 242-4621), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2004-2005

2011096

Medical Licensure Commission of Alabama

v.

Oscar D. Almeida, Jr.

Appeal from Montgomery Circuit Court
(CV-02-1222)

After Remand from the Alabama Supreme Court

YATES, Presiding Judge.

This court, on June 27, 2003, affirmed the circuit court's judgment, without an opinion. Medical Licensure Comm'n of Alabama v. Almeida, [Ms. 2011096, June 27, 2003] ___ So. 2d ___ (Ala. Civ. App. 2003). The Alabama Supreme Court

2011096

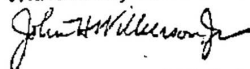
has reversed this court's judgment and has remanded the case. Ex parte Medical Licensure Comm'n of Alabama, [Ms. 1022156, September 3, 2004] ___ So. 2d ___ (Ala. 2004). Accordingly, the judgment of the circuit court is reversed, and the case is remanded for further proceedings or orders consistent with the supreme court's opinion.

REVERSED AND REMANDED.

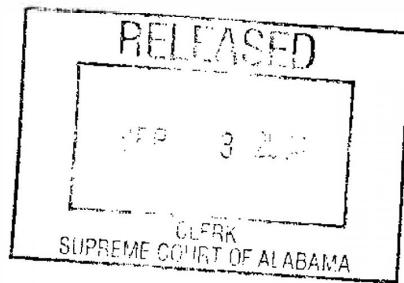
Crawley, Thompson, Pittman, and Murdock, JJ., concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 8th day of Oct., 2004



Clerk, Court of Civil Appeals of Alabama



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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2004

1022156

Ex parte Medical Licensure Commission of Alabama

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Medical Licensure Commission of Alabama

v.

Oscar D. Almeida, Jr.)

(Montgomery Circuit Court, CV-02-1222;
Court of Civil Appeals, 2011096)

On Application for Rehearing

LYONS, Justice.

1022156

The opinion of May 14, 2004, is withdrawn, and the following is substituted therefor.

The Medical Licensure Commission of Alabama ("the Commission") revoked the medical license of Oscar D. Almeida, Jr., based upon testimony of several of his former patients that he had engaged in sexual misconduct while he was rendering professional services. We granted certiorari review in this case to determine whether the Court of Civil Appeals erred in affirming the trial court's judgment reversing the revocation by the Medical Licensure Commission of Alabama of Almeida's professional license. We reverse and remand.

I. Facts and Procedural History

The Alabama Board of Medical Examiners ("the Board") received four complaints alleging that Almeida, a doctor practicing in the field of obstetrics and gynecology, had engaged in sexual misconduct while he was rendering professional services. After investigating the allegations, the Board filed a formal administrative complaint against Almeida, charging him with violating § 34-24-360(2), Ala. Code 1975,¹ and the rules and regulations of the Commission,

¹Section 34-24-360(2), Ala. Code 1975, provides:

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specifically Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.06(1)² and Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.07(17)(a)1, 2, and 3.³

"The Medical Licensure Commission shall have the power and duty to suspend, revoke, or restrict any license to practice medicine ... in the State of Alabama ... whenever the licensee shall be found guilty on the basis of substantial evidence of ... [u]nprofessional conduct as defined herein or in the rules and regulations promulgated by the commission."

²Alabama Administrative Code (Medical Licensure Commission) § 545-X-4-.06 defines "unprofessional conduct," in part, as

"any act that is detrimental or harmful to the patient of the physician or detrimental or harmful to the health, safety, and welfare of the public, and which violates the high standards of honesty, diligence, prudence and ethical integrity demanded from physicians and osteopaths licensed to practice in the State of Alabama."

³Alabama Administrative Code (Medical Licensure Commission) § 545-X-4-.07(17)(a) defines "sexual contact," in part, as

"[s]exual behavior or involvement with a patient including verbal or physical behavior which

"1. may reasonably be interpreted as romantic involvement with a patient regardless whether such involvement occurs in the professional setting or outside of it;

"2. may reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or both; or

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A hearing was held before the Commission over the course of several months; the Commission received considerable testimony and evidence. The facts as stated by the Commission reflect that the Commission heard testimony from three⁴ of Almeida's former patients, who provided explicit details of Almeida's conduct toward them in his office, which included inappropriate physical exams, winking and flirting, fondling and kissing, trying to make dates, and in one case, unbuckling his pants. Their testimony was supported by the testimony of doctors with whom Almeida's former patients had discussed Almeida's conduct toward them and by the testimony of former employees of Almeida. Almeida contended that the complaints were retaliation by a disgruntled colleague who bears a grudge against him.

The Commission also heard testimony from two expert witnesses. Gene Abel, M.D., a psychiatrist who had been practicing for 15 years at that time and a nationally

"3. may reasonably be interpreted by the patient as being sexual."

⁴While the Board's initial investigation was based on complaints it had received from four of Almeida's former patients, one of the four patients was dismissed during the course of the hearing.

1022156

recognized expert in the area of sexual misconduct by professional persons, testified for the Board. He evaluated Almeida over a three-day period and interviewed three of Almeida's former patients whose complaints formed the basis for the formal administrative complaint and a female sales representative who complained of two specific incidents of allegedly sexually inappropriate conduct by Almeida. Dr. Abel concluded that Almeida crossed well-recognized sexual boundary lines in treating the three former patients and that Almeida should undergo treatment.

Kimberly Ackerson, Ph.D., a psychologist who had practiced for seven and one-half years at the time of her testimony, testified for Almeida. She acknowledged that she is not an expert in the field of deviant sexual behavior and that her evaluation of Almeida for sexual misconduct in his professional capacity is the first one she had ever performed. Dr. Ackerson testified that she accepted Almeida's statements as true and that she rejected the complaining witnesses' allegations without interviewing those witnesses.

Based upon the evidence presented at the hearing, the Commission found that Almeida had engaged in unprofessional

1022156

conduct under § 34-24-360(2), Ala. Code 1975, as that term is defined in Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.06(1), and that he had had "sexual contact" with a patient as defined in Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.07(17)(a)1, 2, and 3. Based upon those findings, the Commission revoked Almeida's license to practice medicine in Alabama. Thereafter, Almeida filed in the Montgomery Circuit Court a notice of appeal and a motion to stay the revocation order or, in the alternative, a motion for a preliminary hearing on the motion to stay. The circuit court granted the motion to stay and subsequently reversed the Commission's order, stating that the Commission did not have "substantial evidence" before it to justify revoking Almeida's medical license. The circuit court also found that the Commission's refusal to order the Board to produce written statements of the complaining witnesses taken by the Board's attorney deprived Almeida of due process of law. The Commission appealed to the Court of Civil Appeals, which affirmed the circuit court's judgment, without an opinion. Medical Licensure Comm'n of Alabama v. Almeida, [Ms. 2011096, June 27, 2003] ___ So. 2d ___ (Ala. Civ. App. 2003) (Crawley,

1022156

J., dissenting). This Court granted the Commission's petition for a writ of certiorari.

II. Standard of Review

Our review of the Commission's order is controlled by § 41-22-20(k), Ala. Code 1975. Section 41-22-20(k) states: "[T]he [Commission's] order shall be taken as prima facie just and reasonable and the [reviewing] court shall not substitute its judgment for that of the [Commission] as to the weight of the evidence on questions of fact." See also Evers v. Medical Licensure Comm'n, 523 So. 2d 414, 415 (Ala. Civ. App. 1987). This Court has further defined the standard of review of an agency ruling in Alabama as follows:

"Judicial review of an agency's administrative decision is limited to determining whether the decision is supported by substantial evidence, whether the agency's actions were reasonable, and whether its actions were within its statutory and constitutional powers. Judicial review is also limited by the presumption of correctness which attaches to a decision by an administrative agency."

Ex parte Alabama Bd. of Nursing, 835 So. 2d 1010, 1012 (Ala. 2001) (quoting Alabama Medicaid Agency v. Peoples, 549 So. 2d 504, 506 (Ala. Civ. App. 1989)).

III. Analysis

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The Commission first argues that its decision to revoke Almeida's medical license was supported by "substantial evidence," as that term has been defined by Alabama courts. To hold that it was not, the Commission argues, would be to substitute the reviewing court's judgment for that of the Commission's and would adversely impact all administrative agencies and boards charged with the responsibility of regulating their respective professions. The Commission also argues that its failure to require the Board to furnish Almeida with written statements of the complaining witnesses taken by the Board's attorney was not a denial of due process. The Commission points out that before the hearing Almeida was given the opportunity to depose all relevant witnesses and to examine their statements, except those taken by the Board's attorney as part of trial preparation.⁵

Almeida contends that the Commission revoked his medical license on the basis of overtly flawed factual findings unsupported by substantial evidence. Almeida specifically

⁵Amici curiae the Medical Association of Alabama, the Medical Society of Mobile, the Alabama Boards of Dental Examiners, Pharmacy, and Chiropractic Examiners, and the Alabama Boards of Nursing and Podiatry have filed briefs in support of the Commission's position.

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argues that the Commission's findings of fact were based in large part on witnesses who were not credible. Almeida also argues that the Commission's refusal to order production of the complaining witnesses' statements denied him due process of law. Almeida contends that while there is no constitutional right to discovery in an administrative proceeding, the Commission could not deprive him of meaningful discovery without running afoul of constitutional protections.

A. Was the Commission's Decision Supported by Substantial Evidence?

The first issue before this Court is whether the Commission's decision to revoke Almeida's medical license was supported by substantial evidence. This Court has consistently defined substantial evidence as "'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.'" Ex parte Bowater, Inc., 772 So. 2d 1181, 1182 (Ala. 2000) (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)). Upon review of the record, we find that the Commission's decision to revoke Almeida's license was supported by substantial evidence.

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At the start of the hearing, the Commission heard testimony from three former patients of Almeida's who had complained of Almeida's misconduct toward them. It was on their testimony that the Commission based its findings of fact. The first patient testified that after her exam, when no chaperone was present in the examining room, Almeida kissed her. This same patient testified that on another visit when they met in his private office, they engaged in open-mouth kissing and fondling. He attempted to remove her undergarments and when she resisted, he unbuckled his pants, which the patient interpreted as a request that she perform oral sex. The second patient testified that Almeida conducted improper vaginal examinations of her and that he had also "come on" to her in the form of winking and smiling at her and making comments regarding her looks during his medical examinations of her. The third patient testified that Almeida had engaged in sexual misconduct in the form of flirting with her during her examinations. This third patient also testified that Almeida had asked her to meet him at various places and had invited her to go on a trip with him, during which they could participate in a "threesome."

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In addition to these three former patients whose complaints formed the basis for the administrative complaint filed against Almeida, the Commission heard testimony from a fourth former patient who provided explicit details of an improper vaginal examination Almeida had performed on her. The fourth patient's testimony that she left the office very upset after the improper examination was corroborated by one of Almeida's former employees who was working the front desk on the day of the incident. The former employee testified that she remembered the fourth patient being very upset, to the point of tears, and that after this encounter she never saw the patient at Almeida's office again. Several doctors in the community also corroborated the testimony of some of Almeida's former patients based on information the patients had disclosed to them soon after their encounters with Almeida.

The Commission also heard testimony from a female sales representative who frequently visited Almeida's office about two specific incidents of what she thought was sexually inappropriate conduct by Almeida. The sales representative alleged that Almeida made inappropriate advances toward her

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and that Almeida insinuated that they have a sexual encounter. Both incidents the sales representative described to the Commission were documented in letters she wrote to her employer, and, as a result of those letters, a male sales representative was assigned to Almeida's office. The Commission also heard testimony from one of Almeida's former nurses, who had also been a patient of Almeida's while she worked for him. While Almeida never performed an inappropriate examination of her, she testified that during other patients' exams he would engage in behavior that she deemed inappropriate, like making "smirking gestures towards the patient." This former employee also testified that Almeida was "touchy-feely" and that he paid more attention to patients who were young, petite, slender, and very attractive. Her testimony, coupled with that of the female sales representative, describes Almeida's general behavior and corroborates the descriptions of his behavior as testified to by the complaining witnesses.

Dr. Abel's expert testimony also aided the Commission in its decision. As stated previously, Dr. Abel not only evaluated Almeida over a three-day period, but also

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interviewed the complaining witnesses. Dr. Abel believed that the testimony given by the complaining witnesses was truthful. He concluded that Almeida had crossed well-recognized sexual boundary lines, that Almeida should undergo treatment for a sexual disorder, and that without such treatment he could not safely practice medicine and would pose a risk to patients.

While this Court acknowledges that there were some inconsistencies in the testimony presented to the Commission, which the Commission noted in its order, the resolution of conflicting evidence is within the exclusive province of the Commission. See, e.g., Alabama Dep't of Env'tl. Mgmt. v. Hagood, 695 So. 2d 48, 50 (Ala. Civ. App. 1997); cf. Hubbard Bros. Constr. Co. v. C.F. Halstead Contractor, Inc., 294 Ala. 688, 691, 321 So. 2d 169, 172 (1975). This rule is premised on the proposition that the trier of fact -- here the Commission -- is in the best position to observe the demeanor and credibility of the witnesses, especially in this case where the members of the Commission were members of the profession being regulated. See Ex parte Alabama Ins. Guar. Ass'n, 667 So. 2d 97, 101 (Ala. 1995). The members of the Commission not only observed the proceedings, they also

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engaged in the proceedings by rigorously questioning the witnesses after the attorneys had completed their examination of the witnesses. Based upon the totality of the evidence, the Commission found that the inconsistencies in the testimony were collateral to the central issue and unanimously found that the complaining witnesses presented credible testimony that Almeida had actually engaged in the behavior described to the Commission.

Because the Commission's decision was based on the testimony of three complaining witnesses, of an expert who had evaluated Almeida, and of numerous other witnesses whose testimony supported the allegations made by the Board, we conclude that the Commission's unanimous decision to revoke Almeida's medical license was supported by substantial evidence.

B. Did the Commission Deny Almeida Due Process of Law?

The second issue before this Court is whether the Commission denied Almeida due process by not requiring the Board to produce written statements taken by the Board's attorney during the investigation of reports by those persons

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who had complained of Almeida's conduct and who ultimately filed complaints against him.

"'It has been generally recognized that there is no basic constitutional right to prehearing discovery in administrative proceedings.'" Ex parte Alabama Dep't of Env'tl. Mgmt., 627 So. 2d 927, 930 (Ala. 1993) (quoting Dawson v. Cole, 485 So. 2d 1164, 1168 (Ala. Civ. App. 1986)). Such a matter is within the discretion of the administrative agency hearing the matter. See Ex parte Civil Serv. Bd., 571 So. 2d 1125 (Ala. 1990). Nevertheless, "'the denial of prehearing discovery as applied in a particular case' could result in a due process violation." State Oil & Gas Bd. of Alabama v. Anderson, 510 So. 2d 250, 256 (Ala. Civ. App. 1987) (quoting Dawson, 485 So. 2d at 1168) (emphasis omitted).

According to its order denying Almeida's motion to compel production of statements and prior testimony of complaining parties and other witnesses, the Commission denied that request on the basis that the statements were the work product of the Board's attorneys and were therefore not discoverable. This ruling of the Commission is in accordance with Rule 26(b)(3), Ala. R. Civ. P., which provides that materials

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produced in anticipation of litigation are not discoverable by an adverse party, unless that party can show a substantial need for those materials and can show that he or she cannot obtain the substantial equivalent of the materials without undue hardship. Ex parte State Farm Mut. Auto. Ins. Co., 386 So. 2d 1133, 1136 (Ala. 1980). The Commission's order also complies with Ala. Admin. Code (Medical Licensure Commission) § 545-X-3-.04(1), which states:

"The Commission may provide by order in a contested case that each party provide to the other parties a list of all witnesses to be called at the hearing and copies of all documents to be entered into evidence at the hearing. The Commission may authorize the parties to submit the testimony of witnesses by deposition upon oral examination in the manner prescribed in the Alabama Rules of Civil Procedure. The Commission may provide by order for such other limited discovery by the parties as is deemed necessary and prudent by the Commission or the hearing officer to ensure that the hearing is fairly conducted under the law; provided, however, that the parties shall not be permitted to prolong or unnecessarily delay the proceedings in contested cases for discovery purposes. However, no party to a hearing shall be entitled to discover the contents of any investigative files, records, including investigative reports, statements, summaries, or other materials compiled and accumulated by the investigators, attorneys or staff of the Commission, or the Board of Medical Examiners, pursuant to its ordinary and usual investigative function unless the document or statement in lieu of the actual witness is to be offered into evidence at the hearing."

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(Emphasis added.)

The record reveals that Almeida was aware of the identity of the complaining witnesses, that Almeida had the opportunity to depose those persons, and that the Commission ordered that the tape-recorded statements made by those parties during the Board's investigation be transcribed and made available to Almeida. Therefore, Almeida had ample opportunity to obtain the substantial equivalent of those statements without undue hardship. Furthermore, Almeida does not contend that the written statements were offered into evidence.

Consequently, we do not find a due-process violation by the Commission in this aspect of the case.

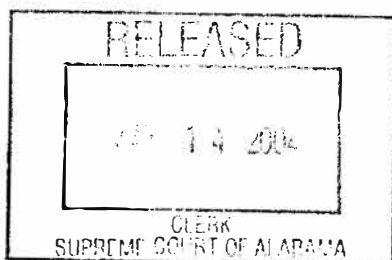
IV. Conclusion

Because we conclude that the Commission's decision was supported by substantial evidence and that Almeida's due-process rights were not violated, we reverse the judgment of the Court of Civil Appeals and remand the case for further proceedings or orders consistent with this opinion.

APPLICATION OVERRULED; OPINION OF MAY 14, 2004,
WITHDRAWN; OPINION SUBSTITUTED; REVERSED AND REMANDED.

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Houston, See, Johnstone, Harwood, Woodall, and Stuart,
JJ., concur.



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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2003-2004

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Ex parte Medical Licensure Commission of Alabama

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Medical Licensure Commission of Alabama

v.

Oscar D. Almeida, Jr.)

(Montgomery Circuit Court, CV-02-1222;
Court of Civil Appeals, 2011096)

LYONS, Justice.

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The Medical Licensure Commission of Alabama ("the Commission") revoked the medical license of Oscar D. Almeida, Jr., based upon testimony of several of his former patients that he had engaged in sexual misconduct while he was rendering professional services. We granted certiorari review in this case to determine whether the Court of Civil Appeals erred in affirming the trial court's judgment reversing the revocation by the Medical Licensure Commission of Alabama of Almeida's professional license. We reverse and remand.

I. Facts and Procedural History

The Alabama Board of Medical Examiners ("the Board") received four complaints alleging that Almeida, a doctor practicing in the field of obstetrics and gynecology, had engaged in sexual misconduct while he was rendering professional services. After investigating the allegations, the Board filed a formal administrative complaint against Almeida, charging him with violating § 34-24-360(2), Ala. Code 1975,¹ and the rules and regulations of the Commission,

¹Section 34-24-360(2), Ala. Code 1975, provides:

"The Medical Licensure Commission shall have the power and duty to suspend, revoke, or restrict any license to practice medicine ... in the State of Alabama ... whenever the licensee shall be found

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specifically Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.06(1)² and Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.07(17)(a)1, 2, and 3.³

guilty on the basis of substantial evidence of ...
[u]nprofessional conduct as defined herein or in the
rules and regulations promulgated by the
commission."

²Alabama Administrative Code (Medical Licensure Commission) § 545-X-4-.06 defines "unprofessional conduct," in part, as

"any act that is detrimental or harmful to the patient of the physician or detrimental or harmful to the health, safety, and welfare of the public, and which violates the high standards of honesty, diligence, prudence and ethical integrity demanded from physicians and osteopaths licensed to practice in the State of Alabama."

³Alabama Administrative Code (Medical Licensure Commission) § 545-X-4-.07(17)(a) defines "sexual contact," in part, as

"[s]exual behavior or involvement with a patient including verbal or physical behavior which

"1. may reasonably be interpreted as romantic involvement with a patient regardless whether such involvement occurs in the professional setting or outside of it;

"2. may reasonably be interpreted as intended for the sexual arousal or gratification of the physician, the patient or both; or

"3. may reasonably be interpreted by the patient as being sexual."

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A hearing was held before the Commission over the course of several months; the Commission received considerable testimony and evidence. The facts as stated by the Commission reflect that the Commission heard testimony from three⁴ of Almeida's former patients, who provided explicit details of Almeida's conduct toward them in his office, which included inappropriate physical exams, winking and flirting, fondling and kissing, trying to make dates, and in one case, unbuckling his pants. Their testimony was supported by the testimony of doctors with whom Almeida's former patients had discussed Almeida's conduct toward them and by the testimony of former employees of Almeida. Almeida contended that the complaints are retaliation by a disgruntled colleague who bears a grudge against him.

The Commission also heard testimony from two expert witnesses. Gene Abel, M.D., a psychiatrist who had been practicing for 15 years at that time and a nationally recognized expert in the area of sexual misconduct by professional persons, testified for the Board. He evaluated

⁴While the Board's initial investigation was based on complaints it had received from four of Almeida's former patients, one of the four patients was dismissed during the course of the hearing.

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Almeida over a three-day period and interviewed four of Almeida's former patients who had filed complaints regarding Almeida's conduct. Dr. Abel concluded that Almeida crossed well-recognized sexual boundary lines in treating those patients and that Almeida should undergo treatment.

Kimberly Ackerson, Ph.D., a psychologist who had practiced for seven and one-half years at the time of her testimony, testified for Almeida. She acknowledged that she is not an expert in the field of deviant sexual behavior and that her evaluation of Almeida for sexual misconduct in his professional capacity is the first one she had ever performed. Dr. Ackerson testified that she accepted Almeida's statements as true and that she rejected the complaining witnesses' allegations without interviewing those witnesses.

Based upon the evidence presented at the hearing, the Commission found that Almeida had engaged in unprofessional conduct under § 34-24-360(2), Ala. Code 1975, as that term is defined in Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.06(1), and that he had had "sexual contact" with a patient as defined in Ala. Admin. Code (Medical Licensure Commission) § 545-X-4-.07(17)(a)1, 2, and 3. Based upon those

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findings, the Commission revoked Almeida's license to practice medicine in Alabama. Thereafter, Almeida filed in the Montgomery Circuit Court a notice of appeal and a motion to stay the revocation order or, in the alternative, a motion for a preliminary hearing on the motion to stay. The circuit court granted the motion to stay and subsequently reversed the Commission's order, stating that the Commission did not have "substantial evidence" before it to justify revoking Almeida's medical license. The circuit court also found that the Commission's refusal to order the Board to produce written statements of the complaining witnesses taken by the Board's attorney deprived Almeida of due process of law. The Commission appealed to the Court of Civil Appeals, which affirmed the circuit court's judgment, without an opinion. Medical Licensure Comm'n of Alabama v. Almeida, [Ms. 2011096, June 27, 2003] ___ So. 2d ___ (Ala. Civ. App. 2003) (Crawley, J., dissenting). This Court granted the Commission's petition for a writ of certiorari.

II. Standard of Review

Our review of the Commission's order is controlled by § 41-22-20(k), Ala. Code 1975. Section 41-22-20(k) states:

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"[T]he [Commission's] order shall be taken as prima facie just and reasonable and the [reviewing] court shall not substitute its judgment for that of the [Commission] as to the weight of the evidence on questions of fact." See also Evers v. Medical Licensure Comm'n, 523 So. 2d 414, 415 (Ala. Civ. App. 1987). This Court has further defined the standard of review of an agency ruling in Alabama as follows:

"Judicial review of an agency's administrative decision is limited to determining whether the decision is supported by substantial evidence, whether the agency's actions were reasonable, and whether its actions were within its statutory and constitutional powers. Judicial review is also limited by the presumption of correctness which attaches to a decision by an administrative agency."

Ex parte Alabama Bd. of Nursing, 835 So. 2d 1010, 1012 (Ala. 2001) (quoting Alabama Medicaid Agency v. Peoples, 549 So. 2d 504, 506 (Ala. Civ. App. 1989)).

III. Analysis

The Commission first argues that its decision to revoke Almeida's medical license was supported by "substantial evidence," as that term has been defined by Alabama courts. To hold that it was not, the Commission argues, would be to substitute the reviewing court's judgment for that of the

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Commission's and would adversely impact all administrative agencies and boards charged with the responsibility of regulating their respective professions. The Commission also argues that its failure to require the Board to furnish Almeida with written statements of the complaining witnesses taken by the Board's attorney was not a denial of due process. The Commission points out that before the hearing Almeida was given the opportunity to depose all relevant witnesses and to examine their statements, except those taken by the Board's attorney as part of trial preparation.⁵

Almeida contends that the Commission revoked his medical license on the basis of overtly flawed factual findings unsupported by substantial evidence. Almeida specifically argues that the Commission's findings of fact were based in large part on witnesses who were not credible. Almeida also argues that the Commission's refusal to order production of the complaining witnesses' statements denied him due process of law. Almeida contends that while there is no

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constitutional right to discovery in an administrative proceeding, the Commission could not deprive him of meaningful discovery without running afoul of constitutional protections.

A. Was the Commission's Decision Supported by Substantial Evidence?

The first issue before this Court is whether the Commission's decision to revoke Almeida's medical license was supported by substantial evidence. This Court has consistently defined substantial evidence as "'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.'" Ex parte Bowater, Inc., 772 So. 2d 1181, 1182 (Ala. 2000) (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)). Upon review of the record, we find that the Commission's decision to revoke Almeida's license was supported by substantial evidence.

At the start of the hearing, the Commission heard testimony from three former patients of Almeida's who had filed complaints against him with the Board. It was on their testimony that the Commission based its findings of fact. The first patient testified that Almeida conducted an improper vaginal examination and that after the exam, when no chaperone

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was present in the examining room, he kissed her. This same patient testified that on another visit when they met in his private office, they engaged in open-mouth kissing and fondling. He attempted to remove her undergarments and when she resisted, he unbuckled his pants, which the patient interpreted as a request that she perform oral sex. The second patient testified that not only had the vaginal examinations conducted by Almeida been inappropriate, but he had also "come on" to her in the form of winking and smiling at her and making comments regarding her looks during his medical examinations of her. The third patient testified that Almeida had engaged in sexual misconduct in the form of flirting with her during her examinations. This third patient also testified that Almeida had asked her to meet him at various places and had invited her to go on a trip with him, during which they could participate in a "threesome."

In addition to these three former patients who had filed complaints against Almeida, the Commission heard testimony from a fourth former patient who provided explicit details of an improper vaginal examination Almeida had performed on her. The fourth patient's testimony that she left the office very

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upset after the improper examination was corroborated by one of Almeida's former employees who was working the front desk on the day of the incident. The former employee testified that she remembered the fourth patient being very upset, to the point of tears, and that after this encounter she never saw the patient at Almeida's office again. Several doctors in the community also corroborated the testimony of some of Almeida's former patients based on information the patients had disclosed to them soon after their encounters with Almeida.

The Commission also heard testimony from a female sales representative who frequently visited Almeida's office about two specific incidents of sexually inappropriate conduct by Almeida. The sales representative alleged that Almeida made inappropriate advances toward her and that Almeida insinuated that they have a sexual encounter. Both incidents the sales representative described to the Commission were documented in letters she wrote to her employer, and, as a result of those letters, a male sales representative was assigned to Almeida's office. The Commission also heard testimony from one of Almeida's former nurses, who had also been a patient of

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Almeida's while she worked for him. While Almeida never performed an inappropriate examination of her, she testified that during other patients' exams he would make "smirking gestures in a sexual way." This former employee also testified that Almeida was "touchy-feely" and that he paid more attention to patients who were young, petite, slender, and very attractive. Her testimony, coupled with that of the female sales representative, describes Almeida's general behavior and corroborates the descriptions of his behavior as testified to by the complaining witnesses.

Dr. Abel's expert testimony also aided the Commission in its decision. As stated previously, Dr. Abel not only evaluated Almeida over a three-day period, but also interviewed the complaining witnesses. Dr. Abel believed that the testimony given by the complaining witnesses was truthful. He concluded that Almeida had crossed well-recognized sexual boundary lines, that Almeida should undergo treatment for a sexual disorder, and that without such treatment he could not safely practice medicine and would pose a risk to patients.

While this Court acknowledges that there were some inconsistencies in the testimony presented to the Commission,

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which the Commission noted in its order, the resolution of conflicting evidence is within the exclusive province of the Commission. See Hubbard Bros. Constr. Co. v. C.F. Halstead, 321 So. 2d 169, 172 (Ala. 1975); McKenzie v. American Bread Co. of Alabama, 579 So. 2d 667 (Ala. Civ. App. 1991). This rule is premised on the proposition that the trier of fact -- here the Commission -- is in the best position to observe the demeanor and credibility of the witnesses, especially in this case where the members of the Commission were members of the profession being regulated. See Ex parte Alabama Ins. Guar. Ass'n, 667 So. 2d 97, 101 (Ala. 1995). The members of the Commission not only observed the proceedings, they engaged in the proceedings by rigorously questioning the witnesses after the attorneys had completed their examination of the witnesses. Based upon the totality of the evidence, the Commission found that the inconsistencies in the testimony were collateral to the central issue and unanimously found that the complaining witnesses presented credible testimony that Almeida had actually engaged in the behavior described to the Commission.

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Because the Commission's decision was based on the testimony of three complaining witnesses, of an expert who had evaluated Almeida, and of numerous other witnesses whose testimony supported the allegations made by the Board, we conclude that the Commission's unanimous decision to revoke Almeida's medical license was supported by substantial evidence.

B. Did the Commission Deny Almeida Due Process of Law?

The second issue before this Court is whether the Commission denied Almeida due process by not requiring the Board to produce written statements taken by the Board's attorney during the investigation of reports by those persons who had complained of Almeida's conduct and who ultimately filed complaints against him.

"It has been generally recognized that there is no basic constitutional right to prehearing discovery in administrative proceedings." Ex parte Alabama Dep't of Env'tl. Mgmt., 627 So. 2d 927, 930 (Ala. 1993) (quoting Dawson v. Cole, 485 So. 2d 1164, 1168 (Ala. Civ. App. 1986)). Such a matter is within the discretion of the administrative agency hearing the matter. See Ex parte Civil Serv. Bd., 571 So. 2d 1125 (Ala. 1990).

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Nevertheless, "'the denial of prehearing discovery as applied in a particular case' could result in a due process violation." State Oil & Gas Bd. of Alabama v. Anderson, 510 So. 2d 250, 256 (Ala. Civ. App. 1987) (quoting Dawson, 485 So. 2d at 1168) (emphasis ommitted).

According to its order denying Almeida's motion to compel production of statements and prior testimony of complaining parties and other witnesses, the Commission denied that request on the basis that the statements were the work product of the Board's attorneys and were, therefore, not discoverable. This ruling of the Commission is in accordance with Rule 26(b)(3), Ala. R. Civ. P., which provides that materials produced in anticipation of litigation are not discoverable by an adverse party, unless that party can show a substantial need for those materials and can show that he or she cannot obtain the substantial equivalent of the materials without undue hardship. Ex parte State Farm Mut. Auto. Ins. Co., 386 So. 2d 1133, 1136 (Ala. 1980). The Commission's order also complies with Ala. Admin. Code (Medical Licensure Commission) § 545-X-3-.04(1), which states:

"The Commission may provide by order in a contested case that each party provide to the other parties a

list of all witnesses to be called at the hearing and copies of all documents to be entered into evidence at the hearing. The Commission may authorize the parties to submit the testimony of witnesses by deposition upon oral examination in the manner prescribed in the Alabama Rules of Civil Procedure. The Commission may provide by order for such other limited discovery by the parties as is deemed necessary and prudent by the Commission or the hearing officer to ensure that the hearing is fairly conducted under the law; provided, however, that the parties shall not be permitted to prolong or unnecessarily delay the proceedings in contested cases for discovery purposes. However, no party to a hearing shall be entitled to discover the contents of any investigative files, records, including investigative reports, statements, summaries, or other materials compiled and accumulated by the investigators, attorneys or staff of the Commission, or the Board of Medical Examiners, pursuant to its ordinary and usual investigative function unless the document or statement in lieu of the actual witness is to be offered into evidence at the hearing."

(Emphasis added.)

The record reveals that Almeida was aware of the identity of the complaining witnesses, that Almeida had the opportunity to depose those persons, and that the Commission ordered that the tape-recorded statements made by those parties during the Board's investigation be transcribed and made available to Almeida. Therefore, Almeida had ample opportunity to obtain the substantial equivalent of those statements without undue

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hardship. Furthermore, Almeida does not contend that the written statements were offered into evidence.

Consequently, we do not find a due-process violation by the Commission in this aspect of the case.

IV. Conclusion

Because we conclude that the Commission's decision was supported by substantial evidence and that Almeida's due-process rights were not violated, we reverse the judgment of the Court of Civil Appeals and remand the case for further proceedings or orders consistent with this opinion.

REVERSED AND REMANDED.

Houston, See, Brown, Johnstone, Harwood, Woodall, and Stuart, JJ., concur.

JUN 27 2003

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2002-2003

2011096

Medical Licensure Commission of Alabama

v.

Oscar D. Almeida, Jr.

Appeal from Montgomery Circuit Court
(CV-02-1222)

YATES, Presiding Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.; Ex parte Pegram, 646 So. 2d 644 (Ala. 1994); Medical Servs. Admin. v. Duke, 378 So. 2d 685 (Ala. 1979); Kids' Klub, Inc.

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v. State Dep't of Human Res., [Ms. 2010453, June 20, 2003] ___
So. 2d____ (Ala. Civ. App. 2003); Barngrover v. Medical
Licensure Comm'n, [Ms. 2010034, July 26, 2002] ___ So. 2d __
(Ala. Civ. App. 2002); Chafian v. Board of Chiropractic
Exam'rs, 647 So. 2d 759 (Ala. Civ. App. 1994); Flowers v.
Alcoholic Beverage Control Bd., 627 So. 2d 415 (Ala. Civ. App.
1993); Ferlisi v. Alabama Medicaid Agency, 481 So. 2d 400
(Ala. Civ. App. 1985); and Alabama Dep't of Public Health v.
Perkins, 469 So. 2d 651 (Ala. Civ. App. 1985).

Thompson, Pittman, and Murdock, JJ., concur in the
result.

Crawley, J., dissents.

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CRAWLEY, Judge, dissenting.

I respectfully dissent. The decision of the Medical Licensure Commission of Alabama (hereinafter referred to as "the Commission") to revoke the medical license of Oscar D. Almeida, Jr., is subject to the standard of review set out in the Alabama Administrative Procedure Act, § 41-22-20, Ala. Code 1975. See § 34-24-367, Ala. Code 1975 ("Judicial review of the orders and decisions of the Medical Licensure Commission shall be governed by the provisions of Section 41-22-20"). Section 41-22-20(j) provides for a trial de novo under certain circumstances -- i.e., "where review is sought from tax assessments, tax determinations or tax redeterminations, rulings of the revenue department granting, denying, or revoking licenses, or rulings on petitions for tax refunds" -- which are not present here. The standard of review is therefore provided in § 41-22-20(k), as follows:

"(k) Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other

appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:

"(1) In violation of constitutional or statutory provisions;

"(2) In excess of the statutory authority of the agency;

"(3) In violation of any pertinent agency rule;

"(4) Made upon unlawful procedure;

"(5) Affected by other error of law;

"(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

"(7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion."

The Commission was the finder of fact in this case, and, upon review of the evidence presented, it is my opinion that there was substantial evidence, despite there being some evidence that was inconsistent, to support the Commission's decision to revoke Almeida's medical license. Therefore, I believe that the trial court impermissibly substituted its

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judgment for that of the Commission and that its judgment is due to be reversed.

Almeida also contends that the Commission's failure to provide him with the written statements provided to the Commission during its investigation by those persons who had complained of Almeida's conduct violated his rights to due process. This court has stated:

"We note that in the case of Dawson v. Cole, 485 So. 2d 1164 (Ala. Civ. App. 1986), we stated: 'It has been generally recognized that there is no basic constitutional right to prehearing discovery in administrative proceedings.' Appellants assert that this statement forecloses any further inquiry into this issue. We disagree.

"A closer reading of our opinion in Dawson, supra, discloses our acknowledgment that 'the denial of prehearing discovery as applied in a particular case' could result in a due process violation. Thus, we must examine whether the Board's denial of appellee's discovery request did in fact result in a denial of procedural due process."

State Oil & Gas Bd. of Alabama v. Anderson, 510 So. 2d 250, 256 (Ala. Civ. App. 1987).

Upon reviewing the record of the proceedings before the Commission, I would not conclude that the Commission's refusal to produce the written statements by the complaining parties was a violation of Almeida's due-process rights. A review of

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those proceedings show that Almeida was aware of the identity of the complaining parties, that Almeida was able to depose those parties, and that the Commission ordered that tape-recorded statements made by those parties during the Commission's investigation be transcribed and made available to Almeida. It was only the written statements provided by those parties to the Commission's investigator that were not provided to Almeida.

Further, § 545-X-3-.04(1), Ala. Admin. Code, applicable to the Commission, provides:

"The Commission may provide by order in a contested case that each party provide to the other parties a list of all witnesses to be called at the hearing and copies of all documents to be entered into evidence at the hearing. The Commission may authorize the parties to submit the testimony of witnesses by deposition upon oral examination in the manner prescribed in the Alabama Rules of Civil Procedure. The Commission may provide by order for such other limited discovery by the parties as is deemed necessary and prudent by the Commission or the hearing officer to ensure that the hearing is fairly conducted under the law; provided, however, that the parties shall not be permitted to prolong or unnecessarily delay the proceedings in contested cases for discovery purposes. However, no party to a hearing shall be entitled to discover the contents of any investigative files, records, including investigative reports, statements, summaries, or other materials compiled and accumulated by the investigators, attorneys or staff of the Commission, or the Board of Medical Examiners, pursuant to its

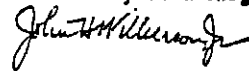
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ordinary and usual investigative function unless the document or statement in lieu of the actual witness is to be offered into evidence at the hearing."

(Emphasis added.) Almeida does not contend that the written statements were offered into evidence. Accordingly, it is my opinion that Almeida's due-process rights were not violated by the Commission's failure to provide him with the written statements of the complaining parties.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 27th day of June, 2013



Clerk, Court of Civil Appeals of Alabama

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTRY, ALABAMA

OSCAR D. ALMEIDA,)
)
 Petitioner,)
)
 v.) CV-02-1222-GR
)
 JERRY GURLEY, et al.)
)
 Respondents.)

ORDER

This matter is before the Court on a Petition For Judicial Review. A Record On Appeal has been filed and the parties and their attorneys were present for oral argument.

PROCEDURAL BACKGROUND

Petitioner is a licensed physician and the Alabama State Board of Medical Examiners ("Board") filed a complaint seeking to discipline Dr. Oscar Almeida's ("Almeida") license to practice medicine in the State of Alabama. The basis for the complaint was that Dr. Almeida had engaged in professional sexual misconduct in the treatment of four of his patients. The allegation with regard to one of the patients was dismissed during the course of the hearing.

A hearing was held before the Medical Licensure Commission of Alabama ("Commission") over the course of several months and considerable testimony and evidence was received. Based on findings regarding three of his

patients, the Commission revoked Dr. Almeida's license to practice medicine.

STANDARD OF REVIEW

This Court's review is limited in scope as to whether the action taken by the Commission was arbitrary and unsupported by the evidence or reflects an improper application of law to the facts. Pursuant to Ala. Code, §41-22-20, the decision of the Respondent should be affirmed if it is prima facie just and reasonable and it is supported by substantial evidence.

In *Ex parte Bowater*, 772 So.2d 1181 (Ala. 2000), substantial evidence was defined as "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved".

The Commission found that Dr. Almeida had engaged in immoral, unprofessional or dishonorable conduct pursuant to Ala. Code §34-24-360(2). It also determined that Dr. Almeida had violated Alabama Medical Licensure Board Administrative Code Sec. 545-X-4-.06 which defines "Unprofessional Conduct", in part, as the "commission . . . of any act that is detrimental or harmful to the patient of the physician or detrimental or harmful to the health, safety, and welfare of the public, and which violates the

high standard of honesty, diligence, prudence and ethical integrity demanded from physicians . . ."

The Commission also found that Dr. Almeida engaged in sexual misconduct pursuant to Alabama Medical Licensure Commission Administrative Code Sec. 545-x-.4-.07(17)(a) 1, 2 and 3. Sexual misconduct is defined, in part, as 1. may reasonably be interpreted as romantic involvement with a patient, 2. may reasonably be interpreted as intended for the sexual arousal or gratification of the physician and/or patient, 3. may reasonably be interpreted by the patient as being sexual.

This Court has reviewed the transcript of the evidence, the record on appeal, the documentary evidence and argument of counsel and is of the opinion that some of the findings of the Commission are arbitrary and not supported by substantial evidence and that there was an improper application of law to the facts.

ERRONEOUS FINDINGS

A. RELATIONSHIP BETWEEN T.N. AND C.A.

One of the most significant findings of the Commission that was clearly erroneous was that the three complaining witnesses, none of whom initiated the charges, had never had much, if any, contact with one another. However, the evidence clearly showed that two of the complainants, T.N.

and C.A., had contact with one another for almost twenty years.

C.A. and T.N had been friends since childhood and C.A. referred T.N. to Dr. Almeida.¹ C.A. accompanied T.N on prenatal visits to Dr. Almeida and was present, along with Dr. Almeida and a nurse, during vaginal examinations. C.A was also present at the hospital and delivery room when T.N. had her baby. In addition, the two women had lunch together and would talk to each other on the telephone. They also talked to each other before their interviews with the Board's investigator and went to give their statements at the same time.

The finding that these two witnesses had never had much, if any, contact with each other is exacerbated by the Commission's statement, in which this Court agrees, that the evidence "was often conflicting and confusing." The Commission also stated that "In order to believe the testimony of some witnesses it is necessary . . . to almost totally disbelieve the testimony of others". In addition, the Commission stated, "While inconsistencies were shown to exist in some areas, for the most part such areas were collateral to the central issue."

The Court is mindful that it cannot assess the credibility of witnesses, however, the transcript contains

¹ C.A. was no longer a patient of Dr. Almeida at the time.

considerable testimony that is conflicting between these two witnesses, including C.A.'s testimony that she did not observe anything inappropriate during T.N.'s pelvic examinations and that T.N. never told her that the exams made her uncomfortable. Certainly, C.A.'s testimony in this regard would not be collateral to the finding by the Commission that Dr. Almeida's vaginal examinations of T.N. "appeared" to be inappropriate to her.

When the Court questioned this finding at oral argument, the Hearing Officer stated that he drafted the order and the Commission should not be held responsible for it. However, the Court is confident that the Commission carefully considered its order, just as it considered the evidence, before issuing it.

B. SPECIFIC FINDINGS REGARDING T.N.

One of the Commission's findings of sexual misconduct was that Dr. Almeida was flirtatious and made comments regarding T.N.'s looks. T. N. testified that Dr. Almeida was flirty and "irritatingly happy". She also stated the Dr. Almeida would wink all the time and when C.A. was there C.A. would wink at him and he would wink back. Although the Court may not agree that such evidence supports a finding of sexual misconduct, there was evidence presented to support the "flirtatious" finding.

As to comments about T.N.'s looks, the evidence was that Dr. Almeida told T.N. that she was pretty and looked nice but she thought he was just being nice to her because she was fat. The Court is of the opinion that this incident was not interpreted by T.N. as a "romantic involvement" or as "being sexual". In addition, such comments could not be interpreted as "sexual arousal or gratification" of T.N. and/or Dr. Almeida. The Court is of the opinion that this finding does not constitute sexual misconduct.

T.N. also stated that she felt he was "coming on to her" by making comments referring to her boyfriend. The evidence was that her boyfriend also came with her on prenatal visits but T.N. could not recall if she had ever introduced her boyfriend to Dr. Almeida. She testified to only one specific incident and that was a conversation among her, C.A. and Dr. Almeida about her boyfriend being 25 years older than she but could not remember whether C.A. or Dr. Almeida brought up the subject. C.A. said the boyfriend had money and Dr. Almeida said he had money. T.N. considered that Dr. Almeida was "implying" that he wanted to go out on a date but that he never actually asked her out on a date.

The Court is of the opinion that, based on the evidence, T.N.'s conclusion that Dr. Almeida was "coming on to her" by making comments about her boyfriend lacks logic. It does not seem that it would be that unusual, immoral,

unprofessional, or dishonorable for an obstetrician to ask a pregnant patient about her boyfriend. The Court is of the opinion that substantial evidence was not presented to support the Commission's finding that Dr. Almeida "came on to" T.N. and that evidence presented does not constitute sexual misconduct.

The Commission also found that Dr. Almeida asked T.N. to join him for drinks. In response to a question, T.N. testified that there were a few times he asked her to join him for a drink or said he would join "them" for a drink. She also stated that C.A. was usually present and "we would just talk about, you know, going out or doing stuff after the visits or later that night or whatever".

The only specific incident mentioned by T. N. was that after her exams, she and C.A. would go to a restaurant and Dr. Almeida "implied" that he would like to meet them there. C.A. did not testify as to any invitations by Dr. Almeida in his office or when accompanying T.N. There was no evidence that Dr. Almeida ever had drinks with T.N. or C.A. Again, a finding that Dr. Almeida is guilty of sexual misconduct based on implications is not substantial evidence to support a finding of sexual misconduct.

The Commission further found that Dr. Almeida "appeared" to conduct inappropriate vaginal examinations of T.N. T. N. was pregnant when she began seeing Dr. Almeida

during the end of her first trimester and did not have any problems with him when she first began going to him. A nurse was always present during examinations. T.N. stated that she was uncomfortable with the exams and C.A. accompanied her 90% of the time to her exams. C.A. denied T.N. telling her that she was uncomfortable during exams. It is not clear how many vaginal examinations T.N. had while pregnant.

Certainly, a patient's testimony of inappropriate vaginal examinations is difficult to dispute and just as in criminal sexual offense cases, the testimony of the complaining witness should not have to be corroborated. However, there was considerable conflicting evidence presented which raises questions about this finding.

C. SPECIFIC FINDINGS REGARDING C.A.

With regard to C.A., the Commission found that that Dr. Almeida flirted with her during examinations and he "appeared" to be "hitting" on her. There was always a nurse present during examinations. C.A. testified that it was obvious to her that Dr. Almeida was flirting with her because he would wink at her and that he would "hit" on her. However, C.A. testified that she was "hit on" at least every other day by men driving down the street. She also testified that men hit on her on a regular basis at the gas station, grocery store as well as work and her testimony

seemed to indicate that such conduct was an everyday occurrence. C.A. never specifically described how Dr. Almeida "hit on" her.

Again the Court is of the opinion that there was not substantial evidence presented to support a finding of sexual misconduct as to Dr. Almeida "hitting" on C.A. And again, although the Court may not agree that the evidence supports a finding of sexual misconduct based on Dr. Almeida being flirtatious, there was evidence to support a "flirtatious" finding.

In addition, the Commission found that Dr. Almeida was guilty of sexual misconduct by asking C.A. personal questions about her private relationships. When C.A. first starting seeing Dr. Almeida she told him that as soon as she got married she wanted to start a family, however, she felt it was inappropriate for Dr. Almeida to ask about her fiancé. C.A. also asked Dr. Almeida about artificial insemination but he told her that he did not do that in his practice and she subsequently transferred her records to an infertility specialist.

Again the Court is of the opinion that asking a gynecological patient, who is interested in conceiving and artificial insemination, about her fiancé, does not constitute sexual misconduct.

Another finding was that Dr. Almeida asked C.A. to meet him at various places. During the time C.A. was a patient she would make phone calls to him and she testified that he asked her to meet him at Burger King and Bojangles. It is difficult to interpret such invitations as constituting romantic involvements, or as intended to be for the sexual arousal or gratification of C.A. and/or Dr. Almeida, or that it could reasonably be interpreted as being sexual. The Court is of the opinion there was not substantial evidence to support a finding of sexual misconduct.

The Commission also found that Dr. Almeida asked C.A. to go with him to a medical conference² during a telephone call she initiated. This conversation occurred several months after C.A. had her medical records transferred to an infertility specialist and approximately ten (10) months after she had seen Dr. Almeida as a patient but she continued to call him for "medical advice".

In that telephone conversation about the conference, C.A. testified Dr. Almeida proposed a "threesome", which would include the two of them and T.N. When C.A. called T.N. and told her that Dr. Almeida had proposed a "threesome" they laughed about it. It appears from the record that this conversation would have occurred approximately six to eight weeks after T.N.'s baby was born

² There was no evidence that Dr. Almeida attended a conference.

and Dr. Almeida's notes reflect that T.N. was breast feeding.

In order to constitute sexual misconduct with one who is not actively receiving treatment, the criteria given under the definition of sexual misconduct, as defined above, must be made and, in addition, such conduct must result from the "use or exploitation of trust, knowledge, influence or emotions derived from the professional relationship", or it must misuse "privileged information or access to privileged information to meet the physician's personal or sexual needs" or it must misuse "privileged information or access to privileged information to meet the physician's personal or sexual needs" or is "an abuse or reasonably appears to be an abuse of authority or power". Alabama Medical Licensure Commission Administrative Code §545-X-4.07(17)(b). Clearly, the incidents after C.A. was no longer a patient of Dr. Almeida do not constitute sexual misconduct.

It should also be noted C.A. she continued to call Dr. Almeida and in May of 1999, which was well after the time of the incidents and invitation, she called his office requesting to have a pregnancy test but then went to another obstetrician for medical care.

D. SPECIFIC FINDINGS AS TO J.S.

With regard to J.S., evidence was presented of sexual misconduct, however, there were conflicts in her testimony

and that of other witnesses. There are also inconsistencies in her testimony and Dr. Gene Abel's report. In addition, J.S. denied ever talking to Dr. Abel.

D. DR. ABEL'S REPORT AND TESTIMONY

Because of the inconsistencies and contradictions concerning the three complaining witnesses' testimony, the finding by the Commission that the testimony of Dr. Gene Gordon Abel, the Board's expert, "indicates a high probability that the complaining witnesses gave truthful testimony" should also be taken into consideration.

Dr. Abel was provided the Board's investigative file and he testified that the complaining witnesses interviews were very important in forming his opinion. He also testified that he interviewed all three of the complaining witnesses by telephone for less than twenty (20) minutes each. However, T.N. and C.A. did not recall ever talking to him and J.S. testified that she was sure she had never talked to him. And just as the Court, Dr. Abel did not have an opportunity to personally observe and assess the demeanor of the complaining witnesses in making his report.

The Court has reviewed his report and there are inconsistencies in it with the hearing testimony of the complaining witnesses which has been taken into consideration in reaching this decision.

E. DUE PROCESS

Because of the countless inconsistencies and contradictions regarding the complaining witnesses' testimony, the Court is of the opinion that a due process issue is presented. Prior to the hearing, defense counsel filed a motion seeking production of statements and prior testimony of the complaining parties which was denied. In the Supplemental Record filed by defense counsel, excerpts from depositions taken prior to the hearing were attached. In J.S. deposition's she stated that a court reporter was present when she gave a statement during the investigation and that she was given a copy of it. In her deposition, T.N. testified that she was provided with a copy of the statement she gave during the investigation. C.A. also testified that she had given a statement, or deposition, before a court reporter.

At oral argument when the Court questioned this matter, the prosecuting attorney stated that there were not any depositions and the Court certainly has no reason to doubt his statement. However, it appears that all three complaining witnesses were provided with copies of statements they had previously made. Defense counsel

received a summary of the statements but were not provided any statements of complaining witnesses.³

The Court is mindful that there is no constitutional right to pre-hearing discovery in administrative proceedings. *Delevan v. Board of Dental Examiners*, 620 So.2d 13 (Ala.Civ.App. 1992). However, denial of discovery as applied in a particular case could result in a due process violation. *State Oil & Gas Board v.* 510 so.2d 250 The Court is of the opinion that this is particularly significant in a case where there is substantial conflicting evidence. It could be extremely important to have such testimony to effectively cross-examine the complaining witnesses. Under the circumstances presented here, the Court is of the opinion that failure to provide such statements is a denial of due process of law.

F. CONSPIRACY FINDING

Finally, the Commission found that "A large part of Dr. Almeida's defense centered on a claim that he was the victim of a conspiracy . . ." which the commission determined lacked credibility. During the course of the hearing, defense counsel stated that there was no conspiracy defense and Dr. Almeida never stated that there was a conspiracy. Standing alone, this finding would probably not be cause for

³ In addition, defense counsel apparently inadvertently received the investigative file in exhibits provided to them by the Board's expert witness.

reversal of the Commission's order, however, when considered with the other erroneous findings, the Court cannot ignore it.

CONCLUSION

The Court has carefully reviewed and considered this matter. And in reaching its decision, it does not condone any actions that it did not find to constitute sexual misconduct. However, considering the record in its entirety, the Court is of the opinion that that were arbitrary and capricious findings of the Commission that were not supported by substantial evidence and that were contrary to law.

Wherefore, it is hereby ORDERED as follows:


1. That the decision of the Medical Licensure Commission of Alabama is reversed.
2. That the Motion To Participate As Amicus Curiae filed by patients of Dr. Almeida was denied, however, they were granted permission to appear as Amicus Curiae.
3. That the Motion For Protective Order and Motion To Seal Records was filed on May 20, 2002, which was after the record on appeal had been filed. However, the Court has maintained it and other documents and pleadings subject to a protective order in its office and it has not been made available for public inspection. The Motions for Protective Order and Motion To Seal Records is granted and the

proceedings before the Medical Licensure Board, as well as any exhibits, are to be sealed.

4. That other documents filed are also subject to being sealed as they contain names of the complainants and and/or excerpts of the hearing transcript, some of which contain complainants' names, and it is further ordered that the following items shall be sealed.

- a. Response Of Dr. Almeida To Motion To Reconsider.
- b. Brief filed by Petitioner on May 13, 2002.
- c. Appendix To Brief filed by Petitioner on May 13, 2002.
- d. Supplemental Record filed on May 13, 2002.
- e. Two Motions For Judgment As A Matter Of Law filed in open court on April 30, 2002.
- f. Attachments to the Motion To Participate As Amicus Curiae.

Done this 24th of June, 2002.


SALLY GREENHAW
CIRCUIT JUDGE

cc: Counsel of Record

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

OSCAR D. ALMEIDA,)	
)	
Petitioner,)	
)	
v.)	CV-02-1222-GR
)	
JERRY GURLEY, et al.,)	
)	
Respondents.)	

ORDER

This matter was before the Court on a Motion For Stay, or in the Alternative, Motion For Preliminary Injunction. Present in Court were the attorneys for the parties.

On April 29, 2002, the Medical Licensure Commission of Alabama ("Commission") entered an order revoking Petitioner's license to practice medicine in the State of Alabama. A Petition For Review has been filed and the Court was informed that a Record On Appeal should be filed within a week.

Pursuant to Ala. Code §34-24-367, no stay shall be granted pending judicial review, unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action was arbitrary or capricious or constituted a gross abuse of discretion.


The Court has had an opportunity to review the order of the Commission, as well as the exhibits and portions of some of the hearing testimony. The Court has considered the

matter and is of the opinion that the evidence before it, at this time, tends to show that the action of the Commission was arbitrary and/or capricious, or constituted a gross abuse of discretion. The Court is mindful that it has not had an opportunity to review the entire record and nothing in this order should be construed to mean that it has made a final determination regarding the Commission's order.

Wherefore, it is hereby ORDERED as follows:

1. That the Motion For Stay is granted pending further order of the Court.
2. That Petitioner shall file a brief within one week after the Record On Appeal is filed.
3. That Respondents shall file a brief within one week after receipt of Petitioner's brief.
4. That this matter is set for argument on May 24, 2002, Courtroom 3C, at 8:30 a.m.

Done this 1st day of May, 2002.


SALLY GREENHAW
CIRCUIT JUDGE

cc: Counsel of Record

**ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,**

Complainant,

vs.

OSCAR D. ALMEIDA, JR.,

Respondent.

*** BEFORE THE MEDICAL LICENSURE
* COMMISSION OF ALABAMA**

*** Case No. 01-027**

*
*
*
*

ORDER

This matter is before the Medical Licensure Commission of Alabama on an Administrative Complaint filed by the Alabama State Board of Medical Examiners seeking to revoke or otherwise discipline the license to practice medicine in Alabama of the Respondent, Oscar D. Almeida, Jr., M.D. A hearing was held, and testimony was taken on January 23 and 24, February 27, March 27 and 28, and April 17, 2002. Dr. Almeida was present and was represented by his attorneys, Lenora W. Pate, Esq., Peter F. Burns, Esq., and Robert A. Huffaker, Esq. The Board of Medical Examiners was represented by James R. Seale, Esq. and Patricia E. Shaner, Esq. Wayne P. Turner, Esq. served as hearing officer.

At the conclusion of the hearing, Dr. Almeida filed a Motion for Judgment as a Matter of Law. Such motion, having been read and considered by the Commission, is DENIED.

The Administrative Complaint alleged that Dr. Almeida had engaged in immoral, unprofessional or dishonorable conduct by engaging in professional sexual misconduct in his treatment of four specific patients. The allegations with regard to one of such patients was dismissed by the Board during the course of the hearing. In support of its allegations the Board offered testimony from the three complaining witnesses, an expert witness who had evaluated Dr. Almeida, and numerous other witnesses whose testimony tended to support the Board's allegations. Dr. Almeida emphatically denied all charges and he presented, in his defense, an expert witness and numerous other witnesses whose testimony tended to support his denial of the charges.

The evidence presented to the Commission was lengthy and was often conflicting and even confusing. Dr. Almeida's attorneys pointed out inconsistencies in the testimony of witnesses. They explored in great detail the personal backgrounds of the complaining witnesses and of other witnesses presented by the Board. A large part of Dr. Almeida's defense centered on a claim that he was the victim of a conspiracy designed to do him harm. It was strongly suggested that one or more physicians who held grudges against him had somehow put the complaining witnesses up to making their complaints.

Dr. Almeida presented numerous witnesses who testified that he has an excellent reputation as a physician, that he is highly qualified, and that he has

a large and dedicated patient base. Several of his patients testified about the high quality of medical care received by them. They also testified of their belief that he is an extremely caring physician and numerous examples were given.

A large number of patients came to Montgomery on the last day of the hearing to show their support for Dr. Almeida. The Commission acknowledges that Dr. Almeida is indeed a highly qualified, highly competent, and, for the most part, caring physician. However, Dr. Almeida's competence as a physician is not the issue which the Commission must decide.

Having heard the evidence, it is the task of the Commission to determine what evidence is credible and what evidence is not. In order to believe the testimony of some witnesses it is necessary for the Commission to almost disbelieve totally the testimony of others. The Commission has, however, had the opportunity to view the witnesses in person, to observe their demeanor, and, in the context of other testimony, to make judgments as to their general credibility.

While inconsistencies were shown to exist in some areas, for the most part such areas were collateral to the central issue. With regard to the allegations of misconduct, the Commission finds the testimony to be very consistent. Such finding is reinforced by the fact that the three complaining witnesses had never had much, if any, contact with one another and the key

supporting witnesses did not know the complaining witnesses. The complaining witnesses subjected themselves to a rigorous examination of their lives and to the disclosure of facts about themselves which they probably would have preferred to remain private. This was done by them with no apparent motive other than to expose Dr. Almeida. Moreover, the conspiracy theory advanced by Dr. Almeida, in the opinion of the Commission, is not supported by the evidence, and, therefore, lacks credibility.

The Commission is convinced, from the totality of the evidence, that the complaining witnesses presented credible evidence and that their allegations regarding Dr. Almeida are truthful. In making such determination, the Commission is aided greatly by expert testimony and by the testimony of supporting witnesses. Gene Gordon Abel, M.D., a highly qualified psychiatrist, who specializes in the area of professional sexual misconduct, evaluated Dr. Almeida at the request of the Board. Dr. Abel's credentials are impressive and he has extensive experience in the area, having evaluated more than 300 cases of professional sexual misconduct in his career. His testimony indicates a high probability that the complaining witnesses gave truthful testimony. Dr. Almeida presented the expert testimony of Kimberly Svec Ackerson, Ph.d. While the Commission considers Dr. Ackerson to be qualified in her particular areas of expertise, it is noted that Dr. Almeida is the only physician whom she

has ever evaluated for professional sexual misconduct. Although Dr. Ackerson does not believe that Dr. Almeida committed the offenses alleged, her testimony is not persuasive when compared to that of Dr. Abel.

Other witnesses presented by the Board gave testimony which tended to substantiate the general behavior by Dr. Almeida described by the complaining witnesses. Specifically, K.H. testified that Dr. Almeida was very flirtatious, that he held her hand too long, that he invaded her personal space, that he examined her with no chaperone present, and that he performed a vaginal examination which she deemed to be inappropriate. B.C., a salesperson who frequently called on his office, recounted instances in which she believes that he made inappropriate advances toward her. Two of such instances were documented by her in reports to her employer and, as a result of such reports, a male salesman was assigned to call on Dr. Almeida's office in her stead.

Based upon the totality of the evidence, the Medical Licensure Commission is unanimous in its opinion that the complaining witnesses presented credible testimony that Dr. Almeida actually engaged in the behavior described by them. The Commission is also unanimous in its belief that it would be a great loss to the medical community, and to the public in general, if a physician of Dr. Almeida's obvious skill and ability were to never again be

allowed to practice medicine. Although the Commission feels compelled to take the action to be hereinafter set forth, it is its fervent hope that Dr. Almeida will consider carefully Dr. Abel's report and recommendations and that he will take the necessary steps to convince the Commission that he may be safely allowed to return to the practice of medicine in the future.

Based upon the totality of the evidence, therefore, the Medical Licensure Commission makes the following findings of fact:

1. Dr. Almeida engaged in professional sexual misconduct with his patient, J.S. He performed a vaginal examination and, after such examination, when no chaperone was present, he kissed her. He met with her at a later time in his private office and, at such meeting, they engaged in open mouth kissing. He attempted to take her cloths off and, when she resisted, he unbuttoned his pants in front of her suggesting that she perform oral sex.

2. Dr. Almeida engaged in professional sexual misconduct with his patient, T.N. He was flirtatious and he made comments regarding her looks. He "came on" to her. He asked her to join him for drinks. The manner in which he did vaginal examinations appeared to her to be inappropriate.

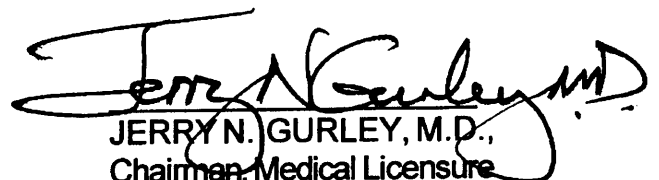
3. Dr. Almeida engaged in professional sexual misconduct with his patient, C.A. He flirted with her during examinations. He asked personal questions about her private relationships. He appeared to be "hitting on" her.

He asked her to meet him at various places and he asked her to go on a trip with him.

Based upon the foregoing findings of fact, the Medical Licensure Commission concludes, as a matter of law, that Dr. Almeida has engaged in immoral, unprofessional or dishonorable conduct as defined in Ala. Code §34-24-360(2)(1997) and in the Medical Licensure Commission of Alabama Administrative Code §545-X-4-.06(1) and Alabama Medical Licensure Commission Administrative Code §545-X-4-.07(17) (a) 1,2, and 3.

Based upon the foregoing findings of fact and conclusions of law it is the Order of the Medical Licensure Commission of Alabama that the license to practice medicine in Alabama of the Respondent, Oscar D. Almeida, Jr., M.D., be and the same is hereby REVOKED.

ENTERED this 29th day of April, 2002.


JERRY N. GURLEY, M.D.,
Chairman, Medical Licensure
Commission of Alabama

ALABAMA STATE BOARD OF
MEDICAL EXAMINERS,

Complainant,

-vs-

OSCAR D. ALMEIDA, JR.

Respondent.

BEFORE THE MEDICAL LICENSURE
COMMISSION OF ALABAMA

CASE NO. 01- 027

ADMINISTRATIVE COMPLAINT

COMES NOW the Alabama State Board of Medical Examiners and submits herein its sworn petition pursuant to the authority of *Ala. Code* §34-24-361(e)(1997) and respectfully represents to the Medical Licensure Commission the following:

1. The Respondent, Oscar D. Almeida, Jr., M.D., was duly licensed to practice medicine in the State of Alabama, having been issued license number 12933, on July 30, 1986.

2. The Board of Medical Examiners has caused an investigation to be made into the medical practice of Dr. Almeida and, based upon information developed during the course of its investigation, has determined that there exists probable cause to believe that the Respondent, Oscar D. Almeida, Jr., M.D., has committed the following violations of *Ala. Code* §34-24-360 (1997), and Rules and Regulations of the Medical Licensure Commission of Alabama:

a. Immoral, unprofessional or dishonorable conduct as defined in *Ala. Code* § 34-24-360(2)(1997) and in the Medical Licensure Commission of Alabama Administrative Code § 545-X-4-.06(1) ; and

b. Immoral, unprofessional or dishonorable conduct as defined in *Ala. Code* § 34-24-360(2)(1997) and in the Medical Licensure Commission of Alabama Administrative Code § 545-X-4-.07(17)(A) 1, 2 and 3.

3. In support of the allegations of the violations of *Ala. Code* § 34-24-360(2) (1997) and Medical Licensure Commission Rule 545-X-4-.06(1), the Board of Medical Examiners specifically alleges that, during the period of January 1993 through October 1999, Dr. Oscar D. Almeida committed unprofessional or dishonorable conduct in his treatment of patients, inappropriately touched patients, hugged, kissed and caressed patients, made comments which made his patients feel uncomfortable, attempted to engage in sexual relations with patients, asked patients to meet him and go out with him, and sought personal

and private information which was of no medical benefit from patients. Persons who were subjected to unprofessional or dishonorable conduct in their treatment, inappropriately touched, hugged, kissed and caressed, had comments made to them which made them feel uncomfortable, subjected to attempts to engage in sexual relations, asked to meet Dr. Almeida and go out with him, and from whom he sought personal and private information which was of no medical benefit are the following: J.S., T.G., C.A. and T.B.

4. The Board of Medical Examiners specifically alleges that Dr. Almeida in his treatment of patients J.S., T.G., C.A. and T.B., committed unprofessional or dishonorable conduct in his treatment of patients, inappropriately touched patients, hugged, kissed and caressed patients, made comments which made his patients feel uncomfortable, attempted to engage in sexual relations with patients, asked patients to meet him and go out with him, and sought personal and private information which was of no medical benefit from patients, thereby constituting unprofessional conduct as that term is defined in the Medical Licensure Commission Rule 545-X-4-.06(1) and, consequently, that Dr. Almeida in committing unprofessional or dishonorable conduct in his treatment of patients, inappropriately touched patients, hugged, kissed and caressed patients, made comments which made his patients feel uncomfortable, attempted to engage in sexual relations with patients, asked patients to meet him and go out with him, and sought personal and private information which was of no medical benefit from patients is guilty of unprofessional conduct.

5. In further support of the allegations of the violations of *Ala. Code* § 34-24-360(2)(1997) and the Medical Licensure Commission of Alabama Administrative Code § 545-X-4-.07(17)(a) 1, 2 and 3 concerning sexual misconduct in the practice of medicine, the Board of Medical Examiners specifically alleges that during the period of January 1993 through October 1991, Dr. Oscar D. Almeida inappropriately touched patients, hugged, kissed and caressed patients, made comments which made his patients feel uncomfortable, attempted to engage in sexual relations with patients, asked patients to meet him and go out with him, and sought personal and private information which was of no medical benefit from patients.

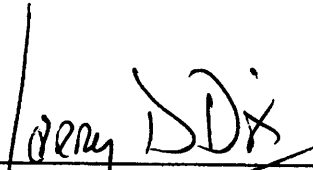
6. The Board of Medical Examiners specifically alleges that Dr. Almeida in his treatment of patients J.S., T.G., C.A. and T.B., committed unprofessional or dishonorable conduct in his treatment of patients, inappropriately touched patients, hugged, kissed and caressed patients, made comments which made

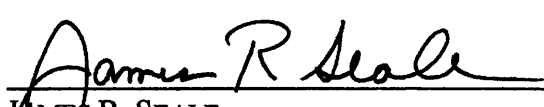
his patients feel uncomfortable, attempted to engage in sexual relations with patients, asked patients to meet him and go out with him, and sought personal and private information which was of no medical benefit from patients thereby constitutes a violation of *Ala. Code* § 34-24-360(2)(1997) and Medical Licensure Commission Rule 545-X-4-.07(17)(a) 1, 2 and 3 and, consequently, that Dr. Almeida in inappropriately touching patients, hugging, kissing and caressing patients, making comments which made his patients feel uncomfortable, attempting to engage in sexual relations with patients, asking patients to meet him and go out with him, and seeking personal and private information which was of no medical benefit from patients is guilty of violating *Ala. Code* § 34-24-360(2)(1997) and Medical Licensure Commission Rule 545-X-4-.07(17)(a) 1, 2 and 3.

WHEREFORE, the foregoing premises considered, the Alabama State Board of Medical Examiners respectfully requests that the Medical Licensure Commission of Alabama take jurisdiction of this *Administrative Complaint*, set a hearing thereon, and cause notice of such hearing and a copy of this *Administrative Complaint* to be served upon the Respondent, Oscar D. Almeida, Jr., M.D., requiring that he appear and answer the allegations contained in this *Administrative Complaint* in accordance with the Rules and Regulations of the Medical Licensure Commission. Further, the Board requests that, at the conclusion of the hearing, the Medical Licensure Commission revoke, suspend, or place on probation the license to practice medicine in Alabama of Dr. Almeida and/or take other action which the Commission deems appropriate based upon the evidence presented for consideration.

This *Administrative Complaint* is executed for and on behalf of the Alabama State Board of Medical Examiners by its Executive Director pursuant to the instructions of the Board contained in its Resolution adopted on July 18, 2001, a copy of which is attached hereto and incorporated herein.

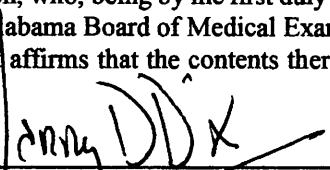
EXECUTED THIS the 31st day of July, 2001.


LARRY D. DIXON, Executive Director
Alabama Board of Medical Examiners


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STATE OF ALABAMA)
 :
MONTGOMERY COUNTY)

Before me, the undersigned, personally appeared Larry D. Dixon, who, being by me first duly sworn, deposes and says that he, in his capacity as Executive Director of the Alabama Board of Medical Examiners, has examined the contents of the foregoing complaint and petition and affirms that the contents thereof are true and correct to the best of his knowledge, information and belief.


LARRY D. DIXON, Executive Director
Alabama Board of Medical Examiners

SWORN TO AND SUBSCRIBED before me this the 31st day of July, 2001.

(seal)


Notary Public

My commission expires: 10/1/03

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

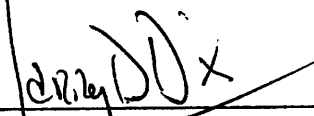
A F F I D A V I T

Before me, the undersigned, personally appeared Larry D. Dixon, Executive Director of the Alabama State Board of Medical Examiners, who, being by me first duly sworn, deposes and says as follows:

The Alabama State Board of Medical Examiners session on July 18, 2001, a quorum of the members of the Board being present, conducted an investigation in to the medical practice of Oscar D. Almeida, Jr., M. D. At the conclusion of the discussion, the Board adopted the following resolution:

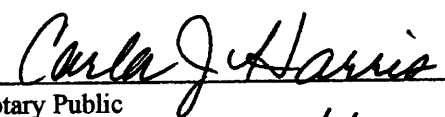
Oscar D. Almeida, Jr., M.D., Mobile. After consideration of investigative information, the Credentials Committee recommended filing an Administrative Complaint with the Medical Licensure Commission based on the grounds of immoral, unprofessional, and dishonorable conduct and seeking revocation and any other disciplinary action the Medical Licensure Commission deems appropriate. The motion was adopted. Dr. Lightfoot recused himself from the discussion, deliberation and determination. The motion was adopted.

I further certify that the foregoing resolution was adopted by the Alabama State Board of Medical Examiners on the 18th day of July, 2001.



Larry D. Dixon, Executive Director
Alabama Board of Medical Examiners

SWORN TO AND SUBSCRIBED before me this the 31st day of July, 2001.



Notary Public
My commission expires: 10/1/03