BEFORE THE
OREGON MEDICAL BOARD
STATE OF OREGON

IN THE MATTER OF:	)	
	)	
DAVID J. OGLE, MD	)	FINAL ORDER
License No. MD20318	)	
	)	

HISTORY OF THE CASE

On August 4, 2008, the Oregon Medical Board (Board) issued a Complaint and Notice of Proposed Disciplinary Action to David J. Ogle, MD, alleging multiple violations of the Medical Practice Act. On August 18, 2008, Dr. Ogle requested an administrative hearing. On January 22, 2009, the Board issued an Amended Complaint and Notice of Proposed Disciplinary Action (Amended Notice) to Dr. Ogle, again alleging multiple violations of the Medical Practice Act. On February 9, 2009, Dr. Ogle requested an administrative hearing with respect to the Board's Amended Notice.

On February 23, 2009, the Board referred the hearing requests to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Jennifer H. Rackstraw to preside over the matter.

On May 14, 2009, a prehearing conference was held, with ALJ Rackstraw presiding. Senior Assistant Attorney General Warren Foote represented the Board. Attorney Thomas Doyle represented Dr. Ogle.

A hearing was held on September 14, 15, and 16, 2009, at the Board's Offices in Portland, Oregon. Mr. Foote represented the Board. Mr. Doyle represented Dr. Ogle.

The following witnesses testified for the Board: Dr. Ogle; Clayton Bauman, brother of Sarah Ogle; Drug Enforcement Agency (DEA) Diversion Investigator Michelle Carroll; Anne Nedrow, MD; Board Investigator Mei-Mei Wang; Board Investigator Terry Lewis; Board Investigator Eric Brown; and Joseph Bloom, MD. Dr. Ogle also testified on his own behalf. The following persons testified for Dr. Ogle: Sarah Bauman Ogle, Dr. Ogle's wife; Cambor Wade, owner of Center for Environmental Medicine; and Steven Brockdorf, Lutheran pastor. Also present at the hearing was court reporter Jeanine Rood. Assistant Attorney General Katherine Lozano, JD attended the first day of the hearing as an observer.

On October 1, 2009, the OAH received a written transcript of the hearing. The record closed on that date.

ISSUES

1. Whether Dr. Ogle engaged in unprofessional or dishonorable conduct. ORS 677.190(1)(a), 677.188(4).

2. Whether Dr. Ogle committed gross negligence or repeated acts of negligence. ORS 677.190(14).[1]

3. Whether Dr. Ogle willfully or negligently divulged a professional secret without written consent of the patient. ORS 677.190(5).

4. Whether Dr. Ogle aided or abetted the practice of medicine by a person not licensed by the Board. ORS 677.190(11).

5. Whether Dr. Ogle committed one or more violations of the federal Controlled Substances Act. ORS 677.190(24).

6. If one or more violations are proven, what is the appropriate sanction?

EVIDENTIARY RULINGS

The Board offered Exhibits A1 through A22. Exhibits A1 through A3, A5, A7 through A9, A13 through A16, and A18 through A22 were admitted into the record without objection. Exhibit A4 was admitted over Dr. Ogle's objection that the information contained in the exhibit was illegally obtained. Exhibits A6 and A17 were admitted over Dr. Ogle's objection that the authors of those exhibits were not previously disclosed by the Board as expert witnesses. Exhibits A10 through A12 were admitted over Dr. Ogle's objections as to authenticity and relevancy.

Dr. Ogle offered Exhibits R1 through R85. Those exhibits were admitted into the record without objection.

FINDINGS OF FACT

1. Dr. Ogle has been licensed by the Board since 1997. (Exs. A7 at 8; R63 at 2.) His date of birth is April 11, 1948. At the time of the hearing, he was 61 years of age. (Tr. at 60.)

2. Dr. Ogle graduated from Ross University School of Medicine, in the West Indies, in 1989. He then completed a three-year residency in family medicine at Wheeling Hospital, in West Virginia. (Tr. at 56-57, 345-349.) He associates with the American Academy of Environmental Medicine. He has had training in integrative and environmental medicine. (*Id.* at 57, 59-60.)

[1] HB 2118 (2009) changed the citation of ORS 677.190(14) gross negligence or repeated negligence in the practice of medicine or podiatry to ORS 677.190(13). The bill also changed the citation for ORS 677.190(24) Violation of the federal Controlled Substances Act to ORS 677.190(23). The case was heard prior to the effective date of this Act, so this Order will retain the former citations.

3. In 1997, Dr. Ogle moved to Linn County, Oregon, and took over a medical practice in the small town of Sweet Home. (Tr. at 58, 60, 350-351.) Dr. Ogle got to know his patients well. Patients often extended invitations for Dr. Ogle to join them at church and for dinners. (*Id.* at 365-366.)

4. In late 2002, Dr. Ogle began working as an independent contractor at the Center for Environmental Medicine (Center) in Portland. (Tr. at 58-59, 99, 369-370.) He served as the medical director at the Center. (*Id.* at 99.) He spent approximately 55 percent of his time working at his Sweet Home practice and 45 percent of his time working at the Center. (*Id.* at 58-59.) His responsibilities at the Center increased in 2003, following the departure of the Center's naturopathic physician. (*Id.* at 99-100.)

5. Some time prior to July 2004, the Oregon Board of Naturopathic Examiners filed a complaint with the Board against Dr. Ogle after the Board of Naturopathic Examiners disciplined a naturopath, David Young, ND, who was working at the Center. Dr. Young had been practicing with Ms. Wade at the Center, and he and Dr. Ogle had shared some of the same patients. (Ex. A8 at 4-5.) On or about July 9, 2004, the Board issued a "Letter of Concern" to Dr. Ogle with respect to his oversight at the Center following the Board's investigation of Dr. Ogle. (Tr. at 209-210.) The letter provided, in part:

> [T]he Board was concerned about your care of multiple patients treated for allergy. The Board felt you provided inadequate supervision of an unlicensed provider [Ms. Wade] who was treating, charting and billing for these allergy patients, a job that should have been managed by a licensed provider.

(Ex. A8 at 4.)

6. In November 2005, Dr. Ogle met Sarah Bauman.[2] Dr. Ogle hired Sarah as a receptionist in his Sweet Home practice in December 2005. (Tr. at 61, 388.) Sarah's date of birth is July 26, 1987. (Ex. A5 at 2.)

7. Sarah was born in Vancouver, Washington, and she subsequently lived in the Oregon towns of Vernonia, Lebanon, and Sweet Home with her family. She was raised in an "extremely" conservative home, where religious instruction played a large role in family life. She was not allowed to date. She was home-schooled, and she received her high school diploma in June 2004. (Tr. at 383-384, 386.) Her employment with Dr. Ogle at the Sweet Home clinic was her first full-time job, after high school. (*Id.* at 61.)

8. Dr. Ogle's physical examinations include listening to a patient's chest, checking vital signs and reflexes, examining a patient's head, neck, and abdomen, and possibly performing blood testing. (Tr. at 67-68.)

9. On December 27, 2005, Sarah had the flu, and she was experiencing upper respiratory congestion. Despite her illness, she elected to come to work. (Tr. at 62.) She filled out a "Patient Information Form" and a form titled "Patient Consent to Treatment & Office Policies."

[2] Sarah Bauman is currently Sarah Ogle, and hereinafter is referred to as Sarah.

(Ex. A5 at 3, 12-13.) Dr. Ogle physically examined her, and subsequently administered vitamins and minerals to her intravenously. (Ex. A5 at 2, 8, 15; Tr. at 63.) She had the IV line in for approximately two hours while she worked that day. (Tr. at 65-66.)

10. In January or February 2006, Dr. Ogle went on a trip to the mountains with Sarah, Sarah's mother, Sarah's stepfather, Sarah's two brothers, and one of Dr. Ogle's male friends. (Tr. at 68-70.)

11. On February 8, 2006, Dr. Ogle physically examined Sarah's mother, Lorna Bauman, and performed allergy testing on her. On March 14, 2006, Dr. Ogle physically examined Sarah's brother, Jonathan Bauman, and performed allergy testing on him. (Tr. at 66-68.)

12. In February 2006, Dr. Ogle took Sarah to the Center in Portland, where he introduced her to staff, and she spent several hours at the clinic. Dr. Ogle knew that he was eventually going to close his medical practice in Sweet Home, and he thought that Sarah might be interested in moving to Portland and working at the Center after his solo practice closed. After the Clinic visit, Dr. Ogle took Sarah to dinner with Steven Brockdorf, a Lutheran pastor, and Mr. Brockdorf's wife, Yulia, a licensed dietitian who contracted with the Center. (Tr. at 79-82, 426-427, 531.)

13. On March 21, 2006, Dr. Ogle conducted a comprehensive history and physical examination on Sarah. (Tr. at 70.) He filled out a form titled "History & Physical," on which he noted, among other things, that Sarah experienced recurrent headaches. (Ex. A5 at 5.) He ordered that Sarah undergo food and inhalant testing, as well as certain blood testing. (*Id.* at 6; Tr. at 71-72.) A blood draw was performed on Sarah at the clinic, and it was then sent to a laboratory for testing. (Tr. at 73.)

14. In the spring of 2006, Sarah was living in Sweet Home, and her brother, Clayton Bauman, was living in Hillsboro, Oregon with his wife. On a few occasions during that spring, Sarah stayed at Mr. Bauman's home for a short period of time. (Tr. at 33-36.)

15. In an e-mail to Dr. Ogle dated March 31, 2006, with the subject line "New e-mail address," Sarah wrote, in part:

> Dear Dr. Ogle,
>
> Clayton helped set me up with an e-mail account so now I can e-mail you instead of sending text messages over my Sprint phone[.]
>
> * * * * *
>
> I hope work goes well for you today...I think about you...alot [*sic*].
>
> Sarah B.

(Ex. A4 at 9.)

16. In an e-mail to Sarah dated March 31, 2006, with the subject line "RE: new e-mail address," Dr. Ogle wrote, in part:

> Hi Sarah,
>
> Nice to be able to communicate with you in every possible way. This adds another element to our repertoire[.]
>
> David

(Ex. A4 at 8-9.)

17. In the spring of 2006, Sarah's family invited Dr. Ogle to attend their church. On one occasion when Dr. Ogle attended the church, he sat with Sarah's family. On approximately two occasions, Dr. Ogle accompanied Sarah's family for coffee or a meal after a church service. (Tr. at 75-76.)

18. On several occasions, Sarah's family invited Dr. Ogle to their home for dinner. Dr. Ogle accepted the invitations. After sharing dinner, Sarah's stepfather, John, generally read the Bible to the family and Dr. Ogle. (Tr. at 76-77, 396-397.)

19. By April of 2006, Dr. Ogle had decided to close his Sweet Home practice. It was around that time that Dr. Ogle and Sarah first discussed that they had a "mutual interest" in each other. (Tr. at 391-393.) They discussed waiting to "date" until the Sweet Home office closed, and they were no longer working together. (*Id.*) They also discussed that it would be best for Sarah to wait to tell her parents about their mutual interest and their desire to date until after the Sweet Home office closed. (*Id.* at 397-398.)

20. On April 4, 2006, Dr. Ogle reviewed Sarah's allergy and blood test results, and he made recommendations based on the results. (Ex. A5 at 15; Tr. at 72-73.) Sarah did not consider Dr. Ogle to be her "doctor." Although she had seen a doctor at Albany Family Medicine a couple of times during her life, she and her family did not regularly see doctors. (Tr. at 394, 423.)

21. In an e-mail to Sarah dated April 6, 2006, at 10:39 p.m., with the subject line "measured enlightenment!!!!!!!!!!!!!!!!!!!," Dr. Ogle wrote, in part:

> Dear Sarah,
>
> Wow! You really have telepathy. I wanted to spend time with you and your family. * * *. I was waiting to hear you suggest getting together after the very pleasant experience last week. I do not like to force myself on anyone. I just enjoy your company. You folks never talk my ear off. * * *. I shall see Andy and Tonya when it works out at some future date. * * *. I would love you to meet them with me whenever we feel it appropriate at some future date[.]

> Yes, I had an uneventful drive to Gresham. * * *. It would have been nice to have you along I thought in my mind dreaming of some future day when we would be together.
>
> I enjoy hearing what you say to me, Sarah. * * *. You should say what you feel especially about what "almost scares me the things I have thought about lately." I agree that you should not tell your folks yet. They are not ready. Time is needed for the relationship and understanding to develop between your family and me. That is if you want it, Sarah. I do, but you have freedom to choose. You and I have been able to interact. We get on well, and have much in common. It is expected that there might be some differences between any 2 people, but when recognized can be dealt with. I would love to read the computer Romance program with you sometime to see what we think. The "several reasons" you mentioned need to be addressed, Sarah, so as to overcome the objections. * * *. Communication is very important in a successful relationship[.]
>
> [I]f I could find purity of heart, I would know happiness and God's greatest gift to me as a man. I see this in you, Sarah and I am not afraid to tell you[!]
>
> David

(Ex. A4 at 6-7.)

22. In an e-mail to Dr. Ogle dated April 7, 2006, at 8:05 a.m., with the subject line "To someone special," Sarah wrote, in part:

> Dear David,
>
> [O]ne of the "several reasons" I had in mind was the doubt I have of your being a [C]hristian. * * * I am expected (and expect myself) to never marry a non-believer[.]
>
> I see in you qualities that are more precious than gold. * * * what I see is a man * * * that this girl never expects to deserve.
>
> * * * * *
>
> [Y]ou'll be in my thoughts throughout the day.
>
> Sarah

(Ex. A4 at 13.)

23. In an e-mail to Sarah dated April 7, 2006, at 11:07 p.m., with the subject line "RE: medical terminology," Dr. Ogle wrote, in part:

Dear Sarah,

* * * * *

I am curious where you got the idea that I am a non-Christian?

David

(Ex. A4 at 14-15.)

24. In an e-mail to Dr. Ogle dated April 8, 2006, at 4:46 p.m., with the subject line "Love talking to you!," Sarah wrote, in part:

> Dear David,
>
> [I] can tell that you didn't like what I said about your not being a [C]hristian. The reason why I even brought up the question about your faith was mostly to test you for your response. I don't know your heart, and you could be a true believer. The assumption that I made in my previous e-mail was based purely on observation.
>
> [Y]ou deserve the best, David.
>
> I better go before I say something I shouldn't[.]
>
> Sincerely,
> Sarah

(Ex. A4 at 15.)

25. In an e-mail to Sarah dated April 8, 2006, at 5:38 p.m., with the subject line "RE: Love talking to you!," Dr. Ogle wrote, in part:

> Dear Sarah,
>
> Always good to hear from you, Sarah.
>
> * * * * *
>
> I do like your e-mails and better yet your voice[.]
>
> I am a Christian and know with time I shall be an improved one. I am a forgiving person and have been humbled many times before God. I wish only for doing good works and charity when I find suitable situations. * * *. I often think of my Mom who was an Elder and my Dad who was a Deacon in our church. Their example inspires me[!]
>
> [A]m I a Christian in my medical practices? I think so[.]

All the best and enjoy your computer,

David

(Ex. A4 at 15-16.)

26. In an e-mail to Sarah dated April 21, 2006, at 11:13 p.m., with the subject line "Hello Sarah," Dr. Ogle wrote, in part:

Dear Sarah,

[I] am sad not to hear from you and I miss you when I cannot see you. How do you feel[?]

Miss you,

David

(Ex. A4 at 55-56.)

27. In an e-mail to Sarah dated April 27, 2006, at 10:19 p.m., with the subject line "RE: Hello!," Dr. Ogle wrote, in part:

Dear Sarah,

Thank-you so much for the card. * * *. You are so sweet. I am so glad I met you. You really know how to inspire.

* * * * *

I truly enjoyed being with you and the family last night. I am starting to feel very much at home and comfortable with everyone[.]

* * * * *

Sweet dreams to you, Sarah!

David

(Ex. A4 at 52-53.)

28. In an e-mail to Sarah dated May 2, 2006, at 1:30 p.m., with the subject line "RE: Hi!," Dr. Ogle wrote, in part:

Dear Sarah,

> [I] especially have returned on the condition that we have special sunshine just for you, but knowing and learning your heart as I am privileged to do these past 4 months, I am sure you will share it with everyone. You bring such warmth into my life making me feel like the sun is always shining[.]
>
> Love,
>
> David

(Ex. A4 at 54.)

29. In May 2006, during a visit with Sarah and her family in their home after sharing dinner, Dr. Ogle mentioned to the family that he had a female patient in his Sweet Home practice with hermaphroditism. Dr. Ogle did not mention the patient by name. Sarah and her family found the discussion inappropriate, and Sarah was surprised and offended that Dr. Ogle would discuss the sexual developmental problems of a person she did not know. (Tr. at 86-87, 412-414; Ex. A4 at 37-38.)

30. In an e-mail to Dr. Ogle dated May 19, 2006, at 11:26 a.m., Sarah wrote, in part:

> Dear Dr. Ogle,
>
> Thank you for coming over Wednesday evening. I was rather surprised when you brought up the subject of that hermaphrodite person. My family and I don't even know this person and it's not really our business to hear about her sex development problems. Frankly, I feel very sorry for her, but I found the subject very inappropriate and I know my parents did as well.
>
> * * * * *
>
> Please don't be too upset with me, and if you are at least tell me.
>
> Sarah

(Ex. A4 at 37-38.)

31. In an e-mail to Sarah dated May 19, 2006, 2006, at 1:26 p.m., Dr. Ogle wrote, in part:

> Dear Sarah,
>
> * * * * *
>
> So you are back to addressing me as Dr. Ogle. I somehow feel a cold wave comes over me when you do that, as if you are distancing yourself from me[.]

Yours truly,

Doctor David J. Ogle, MD (aka the boss, the doc, the crude and rude scientist)

PS: Actually I prefer you think of me as.....?...(I leave it up to you and fate. Forcing something to happen would not be natural and certainly would not be the way of David. I certainly think of you, Sarah as more than just an employee as I have told you).

(Ex. A4 at 36-37.)

32. In an e-mail to Sarah dated May 25, 2006, at 11:35 p.m., with the subject line "RE: just me...," Dr. Ogle wrote, in part:

Dear Sarah,

[I] am feeling nostalgic and sentimental about Sweet Home and all it has meant to me over the 9 years I have been there. * * *. I am especially anxious about the future and what it means for you. I do not know what to say right now, just that I enjoy your company so much. In July, I shall feel free to speak my mind and heart to you[.]

Love,
David

(Ex. A4 at 27-28.)

33. On May 31, 2006, Dr. Ogle examined a rash on Sarah's hands. He prescribed treatment with an over-the-counter anti-fungal medication. (Tr. at 74; Ex. A5 at 15.)

34. In an e-mail to Sarah dated June 16, 2006, at 10:06 p.m., with the subject line "Sunday's weather and beyond," Dr. Ogle wrote, in part:

Dear Sarah,

[I] wanted you to know I think about you, care about you and shall do what is necessary to re-assure your parents that I am as you know an honorable man and an appropriate man for you. You know I do need your input in this effort. The only way to do that is to send me or tell me your thoughts and ideas how we may best address John's resistance. I * * * shall honor your choice[.]

David

(Ex. A4 at 26-27.)

35. In an e-mail to Sarah dated June 25, 2006, with the subject line "Just us and time," Dr. Ogle wrote the following:

> Dearest Sarah,
>
> You inspire me to such heights I cannot conceive. Your description of the night sky is so vivid I imagine the images in my mind's eye so clear it's as if I were there with you. It's hard to believe when we talk I feel so close to you like I have known you all my life. You keep my interest and attention with all your words.
>
> I finished the movie, but not without thinking about living in this world with you made more meaningful by your presence.
>
> David

(Ex. A4 at 2.)

36. On more than one occasion in the spring of 2006, Sarah accessed her e-mail account from the home computer of her brother, Mr. Bauman. (Tr. at 37-38.) Mr. Bauman and his wife subsequently logged onto Sarah's e-mail account, accessed e-mails sent between Sarah and Dr. Ogle, copied the e-mails from the internet browser, pasted the e-mails into a text file, and voluntarily provided an electronic copy of the e-mails to the Board. (*Id.* at 37-41, 208; *see* Ex. A4.)

37. On June 30, 2006, Dr. Ogle again examined the rash on Sarah's hands. He noted that it was "much improved." (Ex. A5 at 15.) He opined that Sarah might have a latex allergy, and he suggested to Sarah that follow-up treatment with a specialist might be appropriate. (*Id.*; Tr. at 74-75.)

38. On June 30, 2006, Dr. Ogle closed his Sweet Home practice. (Tr. at 91.)

39. On July 2, 2006, Dr. Ogle attended church with Sarah and her family. Later that day, Sarah confided to her stepfather, John Bauman, that she had feelings for Dr. Ogle and that she and Dr. Ogle had planned to tell him that they wished to date each other. John became enraged and told her that she needed to stop talking to Dr. Ogle. Sarah feared that John might physically harm her. (Tr. at 402-403.) In response to John's reaction, in an e-mail to Dr. Ogle dated July 2, 2006, at 10:40 p.m., Sarah wrote, in part:

> Dear David,
>
> I can[]not be your girl. It was foolish of me to say yes to your request for this the other day.
>
> I do not wish to explain everything and I realize you will probably be upset after reading this, but I've done wrong in encouraging you without first truly consulting God or my heart. I've been dishonest to you and my parents and I'm sorry. This does not mean that my heart has suddenly grown cold to you but I am unable to pursue a deeper relationship with

you. * * *. This e-mail was written mainly for your sake as you are treading a dangerous path in wanting us to form a relationship [.]

Love,
Sarah

(Ex. A4 at 4.)

40. In an e-mail to Sarah dated July 2, 2006, at 11:00 p.m., Dr. Ogle wrote the following:

Dear Sarah,

It is as if someone I do not know wrote what I just read. I wish you the best in your life.

I love you (and have since I first saw you).

David

(Ex. A4 at 4.)

41. In an e-mail to Sarah dated July 3, 2006, at 1:19 a.m., Dr. Ogle wrote, in part:

Dear Sarah,

[I] would think if you really cared for me as you portrayed in your words, deeds and behavior these past 4 months you would have handled this like a true friend at least. Do you remember our talk about our consciences being clear and true last night?

I sense that you are being either coerced into this ultimatum act or you were never truly a friend, but merely playing upon my good nature and naivety. John told you what to say. If you are afraid, Sarah, you can always stay at my friends in Hillsboro, or your brother's home if he is willing. We could see each other and I would help you until an appropriate time to marry. * * *. If [John] thinks he can dictate the kind of man you choose, you are in trouble. Wrath is God's business, not John's.

Give me a call. There is still time to repair the damage. I don't believe what you said was true from your heart, especially since you did not tell me in person. Any delay will mean what I have said is true and you accept the direction and control of your parents[.]

I still [l]ove you despite the hurt this has caused,

David

(Ex. A4 at 4-5.)

42. Between July 2 and July 4, 2006, Sarah's stepfather verbally threatened her into not seeing Dr. Ogle. John told her that she needed to get a restraining order against Dr. Ogle, he threatened to take away her cell phone, and he would not let her drive the family's car. On or about July 4, 2006, Sarah contacted Dr. Ogle in the middle of the night and requested that he help her leave her parents' home and go to Hillsboro. Dr. Ogle suggested that Sarah could stay with Pastor Steven Brockdorf and his wife. Sarah left her parents' home without informing them of her departure. She also did not leave any note. The Brockdorfs accepted Dr. Ogle's request to allow Sarah to stay in their home, and Sarah subsequently spent two weeks there. She then moved to an apartment in Hillsboro owned by the Brockdorfs. She rented that apartment until January 2007. (Tr. at 404-406, 431-434, 533-534, 557.)

43. Pastor Brockdorf counseled Sarah multiple times in July and August 2006 with respect to her relationships with her family and Dr. Ogle. He encouraged Sarah to take her relationship with Dr. Ogle slowly. He provided Dr. Ogle with the same advice. (Tr. at 407-408, 433, 536-538, 544, 551-552, 562-563.)

44. Dr. Ogle considers that his "courtship" with Sarah began in late July or early August 2006. Sometime during that time period, Sarah and Dr. Ogle had a "date" to a jazz festival. The "date" was chaperoned by Mrs. Brockdorf's father. (Tr. at 94-95.)

45. In the summer of 2006, Sarah occasionally performed volunteer billing work at the Center. In September 2006, she began employment as a billing clerk for a cardiologist. (Tr. at 94, 407, 414, 423, 434.)

46. In November 2006, Dr. Ogle and Sarah decided to marry. They got married in January 2007. In August 2007, their daughter was born. (Tr. at 410-412.)

47. The Center was opened in 2000, and it is owned by John and Cambor Wade. (Tr. at 99, 440.) Ms. Wade functions as the general office manager. (Ex. A1 at 3.) She has a certificate in nutrition and she is certified in IV and phlebotomy. She does not possess any active health care licenses. She is also trained in the allergy field. She has been performing allergy testing since 1986, including intradermal testing and provocative neutralization. Provocative neutralization entails provoking a response in a patient to a specific substance and then neutralizing the response to provide relief of symptoms. (Tr. at 373-374, 442-444, 447-448.) Ms. Wade also testified that she collected expanded medical histories from clients and was the person who conducted allergy testing on clients at the clinic. With provocative testing, she would squirt a suspected offending substance under the tongue of clients and observe their response. (Tr. at 446, 454.) She recorded her observations and finding in the chart. (Tr. at 501.)

48. Several different naturopathic physicians and chiropractors worked at the Center during the time Dr. Ogle served as its Medical Director. At times, Dr. Ogle was the only physician employed by or contracting with the Center. (Tr. at 102.)

49. As medical director of the Center, Dr. Ogle provided medical evaluation and care of patients and supervised the delivery of all medical services provided at the Center. Such medical services included allergy testing, nutritional education, diabetic education and management, minor surgery, and general practice medical care. Ms. Wade worked under Dr. Ogle's

supervision as the clinic nutritionist and allergy technician. She also assisted him in coordinating patient care. Her tasks included collecting and documenting patient information regarding nutrition, allergies, histories, and labs. (Ex. A1 at 3-4.)

50. A medical director is responsible for supervising the quality of care delivered to patients by clinicians and staff. A medical director is also responsible for ensuring that clinicians and staff are aware of and adhere to applicable regulations, such as those pertaining to controlled substances. (Tr. at 165-166, 169-170.) As the medical director of the Center, Dr. Ogle was responsible for supervising the quality of care provided by Center staff to patients, and he bore ultimate responsibility for patient safety. (*Id.* at 177-178.)

51. A new patient to the Center always saw Dr. Ogle first. If Dr. Ogle ordered allergy testing for a patient at the Center, Ms. Wade would perform the allergy testing, note the results on an allergy test sheet, and report the results back to Dr. Ogle. Dr. Ogle and Ms. Wade met every morning to discuss the patients scheduled for appointments that day. As things transpired throughout the day, they would continue to discuss patients. (Tr. at 455-456, 498-501.) Dr. Ogle reviewed all staff protocols. He gave either written or verbal authorization before staff began chelation[3] treatment on a patient. Either Dr. Ogle or one of the naturopathic doctors on staff were always on the premises when chelation treatment was performed. (*Id.* at 100-101, 510, 578.) Dr. Ogle had to recommend and authorize allergy testing before it could be conducted on patients. (*Id.* at 102.)

52. Ms. Wade performs muscle testing, also known as "autonomic response testing" or "applied kinesiology." Muscle testing is a tool used to determine sensitivity responses to foods, molds, pollens, inhalants, and other substances. The substance in question may be diluted with sterile water to the 500^{th} or $1,000^{th}$ power. The patient then has the substance introduced into his or her energy field, which may include placing the substance in proximity to the person or having the person hold the substance or dilution in a container, typically a bottle or syringe. The substance may also be administered to the person by having it squirted under his or her tongue or injected into the skin. A reaction, such as decreased muscle strength, a rash, headache, or nausea, is indicative of a negative response to the substance. (Tr. at 103-105, 164, 359-362, 449-454, 456.) Dr. Ogle never personally conducted muscle testing with prescription drugs. (*Id.* at 104.) Muscle testing is an accepted alternative practice in Oregon. (*Id.* at 164, 194.)

53. A medical professional should not possess or store expired medications. Accepting and storing returned medication from a patient falls below the standard of care for a medical professional. (Tr. at 184-187.) Using a medication turned in by one patient on another patient falls below the standard of care for a medical professional because the practitioner does not know what happened to the medication when it was in the hands of the first patient. (*Id.* at 171-172.) Conscious mislabeling of a medication or medical substance falls below the standard of care for a medical professional. (*Id.* at 177.)

54. All Center staff signed releases, indicating that their medical conditions could be discussed among Center staff, for educational purposes. (Tr. at 98.) Sarah signed a release on

[3] Chelation means to reduce the body's load of toxins, particularly heavy metal toxins such as mercury and lead. It may be performed orally, through supplementation or certain foods, by intravenous delivery or by suppository. (Tr. at 368.)

Center letterhead, dated August 14, 2006, and this release was provided to the Board only at the hearing and never during the investigation as part of her medical records or file, which the Board had requested previously. This document states:

> I give Dr. Ogle permission to reference my general medical information for educational purpose[s] among all his staff members including any meetings that may take place. As a volunteer I recognize all responsibilities of privacy as a staff member. This release excludes copying information without my specific authorization.

(Ex. R85.)

55. In an e-mail from Dr. Ogle to Sarah dated August 21,[4] Dr. Ogle wrote, in part:

> Guess what I found in my lab coat pocket today? * * *. I knew instantly that is [*sic*] was my Li'l Buddie who had placed the sweet message there that made my day and made me realize why I love her.
>
> Today went well. I had tough patients as usual, but feel I am offering the best advice I possibly have[.]
>
> How are you and are you getting things packed up?
>
> Cambor is concerned over being diagnosed with Lupus especially since she has read all the negative stuff on the Internet. Lisa also is diagnosed with the same disorder Barb Ellison you may recall her from Sweet Home with Sjogren's syndrome which consists of a constellation of symptoms and signs which Lisa actually manifests rather well. If she is not too embarrassed, I shall explain her illness to the staff in an educational tutorial some day[.]
>
> I noticed early this AM that someone * * * walked through my backyard and maliciously broke-off (nearly) a branch on my Fig tree when they ripped off some figs[.]
>
> I think of you when I go to sleep and there you are in my thoughts when I arise in the AM[.]
>
> Love,
> David

(Ex. A4 at 73-74.) Dr. Ogle was referring to Cambor Wade and a Center employee named Lisa in the e-mail. At the time Dr. Ogle sent Sarah the e-mail, Sarah was considered a volunteer staff person at the Center. (Tr. at 97-99.)

[4] Dr. Ogle confirmed at hearing that the e-mail was from 2006. (Tr. at 98.)

56. In a note to Dr. Ogle, Ms. Wade wrote that a specific patient "would like you to order Temaz 15 mg for sleeping. She last ordered it 11/01/01—doesn't use it a lot. Can she have it?" (Ex. R25.) In a response dated June 21, 2003, Dr. Ogle wrote, "Is she in a bad way or needs it at these intervening days? If so, she can have a few to last until I see her Thursday. You can call them in. #7." (*Id.*) "Temaz" refers to Temazepam, which is a Schedule IV controlled substance. (Tr. at 178-180.)

57. Testosterone, a Schedule III controlled substance, is primarily used to treat impotence and decreased libido. (Tr. at 106.) Dr. Ogle believes that it is a "fairly stable hormone that can be used in small doses to effect improving changes in the human body." (*Id.* at 108.) Injectable testosterone should not be prescribed for people with normal testosterone levels, and it should not be prescribed for people with certain risk factors, such as high blood pressure and obesity. Until approximately 10 or 15 years ago, the administration of testosterone in testosterone-deficient patients was primarily done by injection. Since that time, the standard treatment for documented testosterone deficiency in Oregon has shifted to testosterone gels, creams, and patches. Injectable testosterone is used by some physicians and alternative medicine practitioners in Oregon for anti-aging purposes. Such use can be harmful to patients. (*Id.* at 191, 194-195.)

58. There are risks to taking any sort of medication, including testosterone. Dr. Ogle has prescribed injectable testosterone for only "a handful" of patients. (Tr. at 564-566.) One such patient was a man in his 70's who had previously been on testosterone for eight to ten years and who had chronically low testosterone. Dr. Ogle has also prescribed testosterone gel for a couple of patients. In each case, Dr. Ogle believed the benefits to the patients of taking the testosterone outweighed any risks. He counseled each patient on the risks of taking the testosterone. (*Id.* at 564-566, 574.)

59. A progress note from June 12, 2007, indicates that KB, a male patient at the Center, had a blood level test for testosterone. (Ex. A9 at 2; Tr. at 106-107.) KB had diabetes and obesity—both of which are risk factors for treatment with testosterone, as well as any other medication. (Tr. at 108.) Testosterone treatment posed an increased risk to KB's vascular health. (*Id.* at 175.) Dr. Ogle never treated KB with testosterone. (*Id.* at 564.)

60. KB's medical records indicate that he has been treated with human growth hormone (HGH). (Ex. A9 at 5.) This treatment was prescribed by a naturopathic physician at the Center. Dr. Ogle has never treated a patient with HGH. (Tr. at 107.)

61. A progress note from Dr. Ogle dated March 9, 2007, indicates that "DHEA-S" was drawn from Sarah "in preparation for possible referral." (Ex. A5 at 17.) A progress note from Dr. Ogle dated March 23, 2007, indicates that serum progesterone was drawn from Sarah. (*Id.*) A laboratory report form indicates that Dr. Ogle was the ordering physician for a progesterone test for Sarah, based on a sample collected March 23, 2007. (*Id.* at 20.)

62. On June 5, 2008, Dr. Ogle participated in a Board interview at the Board's office with his former attorney. (Ex. A3.) Douglas Kirkpatrick, MD, a Board member, asked Dr. Ogle several questions regarding Dr. Ogle's past treatment of and relationship with Sarah. The interview contained, in part, the following exchanges between Dr. Kirkpatrick and Dr. Ogle:

Kirkpatrick: [W]hen did you first date her or see her socially?

Ogle: Socially I first saw her probably in late August, September 2006.

* * * * *

K: And when did you say you first became romantically inclined to or with her?

O: I don't know if I would say romantically. We were friends.

K: You married her?

O: I did, yes, sir.

K: So going backwards.

O: Romantically inclined, I would say probably in the fall—late fall, especially early winter of 2006 when I finally proposed to her.

K: Had there been any shall we say personal communications between you and her before that time?

O: No, sir, nothing but professional communications.

K: No phone calls from you to her at home or her to you at home or that kind of thing?
O: Only calls she would receive would be in relationship to work she might have been doing as an independent contractor to copy charts that I might have needed * * *.

* * * * *

K: And prior to August of '06—correction. When did you close the practice in Sweet Home?

O: June—June of '06.

K: Would you be e-mailing each other or personal letters or notes or anything?

O: No, we basically communicated by—by phone.

* * * * *

K: How would you analyze—how would you defend yourself in this case in terms of here's a young person who's got a job in your office. You're

the boss and the doctor. Do you feel that was an equal equation in terms of social relationship?

O: I felt that there was no conflict there. I felt that I didn't hold any special power over her. * * * * *. I did not have a relationship with her other than a professional relationship with her.

K: Until when?

O: Until late August or early September of 2006. And it was purely friendship to start with. We were—we were friends and that was basically it. To clarify, my—my relationship with her prior to closing my practice was strictly professional.

* * * * *

I mean, you become friends with your staff in a way. I mean, I was friendly with all my staff. We would have birthday celebrations together. I'd take them out to dinner, occasionally to lunch, but as far as that, it was—it was purely friendship on that basis.

(*Id.* at 2-4.)

63. Dr. Ogle was previously a federal DEA registrant for his Sweet Home practice. At the Sweet Home clinic, he kept controlled substances, such as anti-anxiety and pain medications, in a locked cupboard. He also kept a ledger to record the administration of the controlled substances. (Tr. at 374-377.)

64. In approximately 2001, a patient under the care of naturopath David Young, ND brought prescription medication into the Center for muscle testing for her own exclusive use. The medication remained at the Center. (Tr. at 466-467.)

65. As a result of a property settlement, in approximately February 2003, one or more doctors with whom Ms. Wade previously worked at another clinic returned property to her that included medications belonging to former patients, as well as testosterone that belonged to the other clinic. Ms. Wade stored those returned medications in a drawer at the Center. (Tr. at 461-465.)

66. Since at least 2006, Dr. Ogle registered himself as the DEA registrant for the Center. (Tr. at 122, 155, 374-376; Ex. A7 at 8.) In the proposed order, the ALJ found that Dr. Ogle elected not to use controlled substances in his practice at the Center. When he moved to the Center to work full time in 2006, he testified that he discussed his decision not to use controlled substances at the Center with Ms. Wade. (Tr. at 377-380, 468.) Following that conversation, Dr. Ogle said that he believed that there were no controlled substances at the Center.[5] (Tr. at 378,

[5] The only exception was epinephrine, a substance to stimulate the heart in case of cardiac arrest, which was located in a "crash cart" on the premises. (Tr. at 378.) The Board has not alleged any violations with respect to that substance.

380). It was also asserted at the hearing that Ms. Wade never informed Dr. Ogle about the medications at the Center that she received as part of the property settlement, or that had been brought to the Center to determine what medications were being stored there. (Tr. at 510.) The Board finds that Dr. Ogle has made serious misrepresentation to the Board on other material matters in this case, and finds these self serving statements by Dr. Ogle and Ms. Wade unworthy of belief. A cursory examination of the unlocked shelves in the Center by Dr. Ogle did reveal the presence of medications labeled as controlled substances. And had Dr. Ogle carried out his obligation as a DEA registrant and Medical Director, he would have conducted an inventory of the Center to determine what medications were being stored there. (*Id.* at 510.)

67. A January 10, 2008, progress note, signed by Ms. Wade, indicates that KB "stopped BP [blood pressure] med. Wonders if he hasn't been taking products with dyes in them causing symptoms." (Ex. A9 at 2.) KB's medical records do not indicate whether Dr. Ogle, or Ms. Wade, or someone else recommended that KB discontinue the medication. KB's medical records do not indicate that Dr. Ogle saw, spoke with, or treated KB on or about January 10, 2008. (*See* Ex. A9.) KB gave the blood pressure medication to Ms. Wade and she subsequently stored it at the Center. (Tr. at 471-473; Ex. A8 at 10.)

68. Between 2006 and July 2008, the Center came to be in possession of the medication progesterone, a hormone, from patient SS. SS had brought the progesterone to the Center for allergy testing purposes. The testing never occurred, but the medication remained at the Center. (Tr. at 471-473; Ex. R15.)

69. Some time prior to July 2008, Ms. Wade brought Demerol that had been prescribed for her to the Center. Demerol is a Scheduled II substance. She wanted to perform muscle testing on herself with the Demerol, so she made dilutions out of the medication and placed the dilutions into approximately 35 syringes. The syringes containing the diluted Demerol remained at the Center. (Tr. at 473-474, 484, 504-505.) They were never used on anyone other than Ms. Wade. Ms. Wade never told Dr. Ogle that she brought the Demerol into the Center. (*Id.* at 477-478.)

70. NH is a patient at the Center who was having a reaction to her husband's sperm. According to the testimony of Ms. Wade, some time prior to July 2008, she brought a sample of her husband's sperm to the Center, and Ms. Wade made a dilution out of it and placed the dilution in approximately 200 syringes. In effort to protect NH's privacy in the allergy lab, Ms. Wade labeled the syringes as testosterone, which is a controlled substance, instead of sperm. She did not indicate on the syringes, or on the box in which they were contained, that the syringes were only to be used on NH. Ms. Wade was the only person who knew the true contents of the syringes and to whom they belonged. She was also the only person at the Center who had reason to use the syringes, and she believed there was no risk of her inadvertently using the sperm on a patient other than NH, even though they were stored in an unsecured location and openly accessible. The syringes containing the diluted sperm, labeled "testosterone," remained at the Center. (Tr. at 475-476, 484, 506-507, 589-590; Ex. R16.) Dr. Ogle knew that the syringes containing the diluted sperm were at the Center, but he did not know that Ms. Wade had purposely mislabeled them. (Tr. 478.) The assertion by Ms. Wade that she had mislabeled the syringes, and that they really contained sperm, was made for the first time at the hearing. Previously, Ms. Wade informed DEA Investigator Carroll and Board Investigator Wang during

the clinic inspection that the syringes contained trace amounts of controlled substances, such as Demerol, that had been diluted with sterile saline. *(Ex. A8, at 13.)*

71. On July 1, 2008, Board Investigators Mei-Mei Wang, Terry Lewis, and Eric Brown conducted an investigation of the Center. Ms. Wang documented portions of the inspection using a video camera. These investigators all spoke with Dr. Ogle and Ms. Wade, who never mentioned that she had mislabeled sperm-filled syringes as "testosterone."(Tr. at 211-212, 261-262, 282.)

72. On July 2, 2008, Board Investigators Wang and Jay Drum returned for further investigation of the Center, accompanied by DEA investigator Michelle Carroll. (Tr. at 112; Ex. A8 at 1.) Over both days of inspection, the investigators found one or more containers labeled as testosterone, Valium, Versed, alprazolam, and clonazepam, all of which are controlled substances. The investigators also found 35 plastic syringes with a clear liquid labeled as Demerol, and 201 plastic syringes with a clear liquid labeled as testosterone. Each of those substances is either a Schedule 2, or Schedule 3 controlled substance under the federal Controlled Substances Act. Some of the containers held expired medication. Some of the containers held medication that had been returned or brought to the Center by the patient who had originally been prescribed the medication. One container held blood pressure medication that had been previously prescribed for KB. Some of the containers/syringes labeled as a controlled substance were in unlocked cabinets or other non-secure locations, such as a cupboard that was openly accessible. Some of the containers/syringes labeled as a controlled substance did not contain information as to the strength or amount of any controlled substance in the container. (Tr. at 114-118, 213-217, 222-224, 262-264, 277, 283-284; Exs. A7 at 2, 5-7; A8 at 2, 9, 16.) The Center had no inventory, purchase records, dispensing records, or disposal records for controlled substances. (Tr. at 113-114, 124-125.) The DEA did not verify through testing the identity of any substances found at the Center on July 1 and 2, 2008. (*Id.* at 146.)

73. Ms. Wade informed Ms. Carroll that the syringes labeled as a controlled substance contained minute or trace amounts of the labeled drug mixed with saline or water. (Tr. at 121.) Ms. Wade was not familiar with DEA regulations pertaining to the acquisition, labeling, storage, and dispensing of controlled substances. (*Id.* at 149.) She was unaware that testosterone was a controlled substance. (*Id.* at 460.)

74. Ms. Wade told one or more of the investigators that she and Dr. Ogle share patients and charts, and that she functions as the allergy technician. She indicated that she shares the results of her allergy testing with Dr. Ogle. (Tr. at 220.) She also told the investigators that she does not chart everything she does and uses on a patient in the course of conducting allergy testing. (*Id.* at 240, 242; Ex. A8 at 2, 9, 14.) She also told one or more investigators that she used the expired and returned medications for "muscle testing" on patients. (Tr. at 243, 263-265, 595; Exs. A7 at 3, A8 at 9-10.) She also told the investigators that Dr. Ogle did not know that she kept the returned medications and controlled substances at the Center. (Tr. at 244; Ex. A8 at 10.) Dr. Ogle had access to every room and cabinet in the Center. (Tr. at 585-586.)

75. On July 1, 2008, Dr. Ogle told one or more Board investigators that he treated "a few" patients with testosterone. (Tr. at 235-236; Exs. A7 at 1, A8 at 6.) He told the investigator[s] that he tests patients to ensure that they have low hormone levels before initiating testosterone treatment and that testosterone has improved his patients' decreased libidos, erectile

dysfunction issues, and mental status. He said that he did not keep testosterone at the Center, but he could not say for certain that there was no testosterone on the clinic premises. Dr. Ogle also told one or more Board investigators that a few patients had given the Center their unused medication for disposal, that any unused medication was placed in a "biohazard bag," and that any destruction of controlled substances was done with a witness present. (Ex. A8 at 6.)

76. Federal law requires that a DEA registrant make a complete and accurate record of all controlled substances at the registered location that were ordered or acquired under the registrant's registration. Federal laws require the inventory record be kept current and also requires that controlled substances be kept in a securely locked, substantially constructed cabinet, and that controlled substances be labeled with the drug name, drug strength, and drug amount. (Tr. at 113, 116, 118, 136-139.) Federal law prohibits a DEA registrant from accepting returned controlled substances from a patient, and from administering a controlled substance prescribed for one person to another person. (*Id.* at 123-124.)

77. On or about August 14, 2008, Ms. Wang authored a memorandum titled "Notes on Patients' Charts." (Ex. A16.) Ms. Wang, who is not medically trained, compiled the notes after taking a "layman's look" at multiple medical charts for Center patients. (*Id.* at 1; Tr. at 230-231.) The notes include overviews of certain charts, with an emphasis on portions of the charts for the Board's review based on the Board's concerns regarding Dr. Ogle's practice. (Tr. at 231-232.) Ms. Wang noted in her memorandum that a January 3, 2007, chart note indicated that Ms. Wade saw KB for allergy testing and evaluation, and that Ms. Wade noted in the chart note that KB was "coming off HGH & going onto D-tropin. Adjusted dosage of D-tropin & instructed regarding reducing HGH. Pt is starting Chloreller & discussed doctors ordering for testing." (Ex. A16 at 5.) Ms. Wang then wrote in the memorandum, "Mrs. Wade signs this note with Dr. Ogle's initials by her signature. It appears that Mrs. Wade is directing the medical care, making medical decisions, and changing prescriptions and dosages." (*Id.*)

78. Anne R. Nedrow, MD, is an associate professor in the division of General Internal Medicine and Geriatrics and the division of Obstetrics and Gynecology in the Department of Medicine at the Oregon Health & Sciences University (OHSU). Since 2000, she has served as the director of Women's Primary Care and the director of Integrative Medicine[6] at the Center for Women's Health at OHSU. As a director, she supervises three licensed medical doctors, a licensed nurse practitioner, a licensed acupuncturist, a licensed naturopath, and various staff persons. She is certified by the American Board of Internal Medicine and the National Board of Medical Examiners, and she has a Certificate of Fellowship in Integrative Medicine. She graduated from OHSU School of Medicine in 1983, and she subsequently received post-graduate training at Providence St. Vincent Medical Center, the University of Arizona College of Medicine as a fellow in Integrative Medicine, and the Center for Mind-body Medicine in Washington, D.C. At the time of the hearing, she anticipated completion of a master's degree in Business Administration in late September 2009, from a Massachusetts college. (Ex. A14 at 1-2; Tr. at 161, 169.) Her publications, lectures, and presentations include topics such as integrative medicine education and curriculum, collaborations between allopathic and complementary and alternative medicine health professionals, complementary and alternative therapies for

[6] Integrative medicine is the combination of what is typically referred to as "conventional medicine" (*i.e.* what is taught in U.S. medical schools) and what is typically referred to as "alternative medicine" (*i.e.* forms of treatment or medicine that are not taught in U.S. medical schools). (Tr. at 162.)

menopause-related symptoms, credentialing alternative providers, and development of an integrative patient history intake tool. (Ex. A14 at 4-8.)

79. Joseph D. Bloom, MD, is a dean emeritus at the School of Medicine and a professor Emeritus at the Department of Psychiatry at OHSU. He is board certified in psychiatry, neurology, and forensic psychiatry. He graduated from the Albert Einstein College of Medicine in 1962, and subsequently received post-graduate training at Mt. Zion Hospital & Medical Center, Massachusetts Mental Health Center, Southard Clinic Walk-in Service, Harvard Medical School, and Harvard School of Public Health. He has held various academic positions, including positions as lecturer, professor, and dean, at the University of Alaska, Drexel University College of Medicine, University of Washington School of Medicine, Lewis and Clark College, and OHSU. His clinical and administrative experience includes private psychiatry practice in Alaska; a position as chief of the mental health unit of the U.S. Public Health Service, Alaska Native Health Service; director of the Community Psychiatry training Program at OHSU; and chairman of the OHSU Department of Psychiatry. (Ex. A13 at 1-3.) He has held memberships and offices in numerous professional societies, including the American Psychiatric Association, the Oregon Psychiatric Association, the American Academy of Psychiatry and the Law, and the Oregon Medical Association. He has served as an advisor, member, grant reviewer, consultant, and editor for various professional committees and administrative bodies. (*Id.* at 3-8.) He has published full-length papers, and written books and chapters, on matters relating to psychiatry, forensic psychiatry, therapy, counseling, civil commitment, insanity defenses and acquittees, psychiatric security review boards, an individual's right to refuse treatment, community mental health programs, psychiatric treatment of offenders, inappropriate prescribing by physicians, chronic mental illness, public psychiatric hospitalization, and foreseeable harm in the practice of psychiatry. (*Id.* at 9-18.)

80. In 1999, Dr. Bloom co-edited the book "Physician Sexual Misconduct," which addresses various issues relating to professional boundaries and sexual misconduct. (Tr. at 290.)

81. The American Medical Association (AMA) has published a Code of Medical Ethics, which includes a section pertaining to sexual misconduct in the practice of medicine. (Ex. A10 at 1; Tr. at 291.) The section is an authoritative statement about the standards pertaining to professional boundaries and sexual misconduct. (Tr. at 291.) Section 8.14 of the Code of Medical Ethics provides:

> Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.
>
> If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

> Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

(Ex. A10 at 1.)

82. Using the AMA's statement regarding sexual misconduct in the practice of medicine as a framework, some medical specialty organizations have developed standards of ethics pertaining to sexual misconduct that are tailored to their specialty areas.[7] (Tr. at 291-292.)

83. The Board's "Statement of Philosophy" regarding sexual misconduct was issued in 1994 and provides:

> The Oregon Medical Board recognizes that the practice of medicine entails a unique relationship between physician and patient. The patient's trust and confidence in a physician's professional status grants power and influence to the physician.
>
> Licensees are expected to maintain a professional manner and to avoid behaviors that may be misunderstood by or considered offensive by the patient. Sexual contact or suggestion of any sort within a professional relationship, or any such contact outside the physician-patient relationship that exploits the patient's trust and confidence, is unethical.

(Ex. A10 at 2.)

84. In Dr. Bloom's opinion, the e-mail communications between Dr. Ogle and Sarah that occurred while she was his employee and patient "go far beyond what is in any way typical of an employer-employee or physician-patient relationship and clearly define a deep personal interest expressed by Dr. Ogle in regard to [Sarah]." (Ex. A6 at 1-2; Tr. at 296-297.) In Dr. Bloom's opinion, Dr. Ogle's interest in Sarah "was intensely personal, and clearly was a prelude to what developed after [Sarah] left his employ and * * * was no longer his patient." (Ex. A6 at 2.) In Dr. Bloom's opinion, the e-mails between Dr. Ogle and Sarah suggest that Dr. Ogle was infatuated with Sarah and that he had a goal of being involved with Sarah for the long-term. (Tr. at 308.)

85. In Dr. Bloom's opinion, Dr. Ogle's April 6, 2006, e-mail to Sarah (Ex. A4 at 6-7) indicates that Dr. Ogle had some sort of plan in the works regarding Sarah and her family. (Tr. at 329-330.) In Dr. Bloom's opinion, Dr. Ogle's June 25, 2006, e-mail to Sarah (Ex. A4 at 17) helps to demonstrate that a love relationship had developed between Dr. Ogle and Sarah by that time—a love relationship beyond an employer-employee relationship and "way beyond" a customary physician-patient relationship. (Tr. at 333-334.)

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[7] Examples include the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Psychiatric Association. (*See* Exs. A10 at 3-14, A12.)

86. There is an implicit power differential in a physician-patient relationship. In Dr. Bloom's opinion, the power differential between Sarah and Dr. Ogle was heightened because Sarah had the following vulnerabilities: she had lived a sheltered life; she was young; her job with Dr. Ogle was her first significant job in an important setting; and Dr. Ogle bestowed a great deal of personal attention on her. (Tr. at 296-298.)

87. In Dr. Bloom's opinion, the time that lapsed between the termination of the doctor-patient relationship between Dr. Ogle and Sarah and subsequent interactions between the two individuals did not provide significant space for Sarah to objectively examine her relationship with Dr. Ogle away from Dr. Ogle's influence. In Dr. Bloom's opinion, Sarah may not have had a neutral setting in which to truly examine the relationship because she immediately moved in with a friend and coworker of Dr. Ogle's after leaving Sweet Home. (Tr. at 302-303.)

CONCLUSIONS OF LAW

1. Dr. Ogle engaged in unprofessional or dishonorable conduct. ORS 677.190(1)(a), 677.188(4).

2. Dr. Ogle committed gross negligence or repeated acts of negligence. ORS 677.190(14).

3. Dr. Ogle willfully or negligently divulged a professional secret without written consent of the patient. ORS 677.190(5).

4. Dr. Ogle did aid or abet the practice of medicine by a person not licensed by the Board. ORS 677.190(11).

5. The Board does not agree with the ALJ's conclusion that there was a notice deficiency, and finds that Dr. Ogle committed one or more violations of the federal Controlled Substances Act, in violation of ORS 677.190(24).

6. The ALJ recommended that the Board impose the following sanctions: the Board should formally reprimand Dr. Ogle by way of a written letter; the Board should suspend Dr. Ogle from the practice of medicine for a period of six months; the Board should place Dr. Ogle on probation for a period of three years; the Board should require that Dr. Ogle take continuing education courses focusing on physician-patient boundaries, medical staff management and oversight, patient confidentiality, and any other area the Board deems relevant to the violations proven herein; the Board should impose a civil penalty of $1,000; and the Board should assess the costs of the disciplinary action to Dr. Ogle. The Board concludes that the seriousness of the multiple violations require the sanction as proposed at the hearing—to revoke the license of Dr. Ogle, to impose a civil penalty of $10,000 and to assess costs of the hearing.

OPINION

The Board alleged that Dr. Ogle committed several violations of the Medical Practice Act, for which the Board proposed revocation of his medical license, a $10,000 civil penalty, and assessment of the costs of the disciplinary proceeding. The Board has the burden of establishing by a preponderance of the evidence that the alleged violations set forth in the Amended Notice

occurred and that the proposed sanctions are appropriate. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Pursuant to the Medical Practice Act, the Board is authorized by ORS 677.190 to discipline a physician licensed in Oregon for any of several delineated reasons. As set forth in the Amended Notice, the Board has proposed disciplining Dr. Ogle based on the following statutory provisions:

> (1)(a) Unprofessional or dishonorable conduct.
>
> * * * * *
>
> (5) Willfully or negligently divulging a professional secret without the written consent of the patient.
>
> * * * * *
>
> (11) Aiding or abetting the practice of medicine * * * by a person not licensed by the board, when the licensee knows, or with the exercise of reasonable care should know, that the person is not licensed.
>
> * * * * *
>
> (14) Gross negligence or repeated negligence in the practice of medicine[.]
>
> * * * * *
>
> (24) Violation of the federal Controlled Substances Act.

ORS 677.190.

1. Unprofessional or dishonorable conduct

ORS 677.188(4) defines "unprofessional or dishonorable conduct" as follows:

> "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine * * *, or detrimental to the best interests of the public, and includes:
>
> (a) Any conduct or practice contrary to recognized standards of ethics of the medical * * * profession or any conduct or practice which does or

might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might impair a physician's * * * ability safely and skillfully to practice medicine or podiatry;

(b) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards; and

(c) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies; administration of unnecessary treatment; employment of outmoded, unproved or unscientific treatments; failure to obtain consultations when failing to do so is not consistent with the standard of care; or otherwise utilizing medical service for diagnosis or treatment which is or may be considered inappropriate or unnecessary.

In addition, ORS 677.190(1) provides, in part:

(b) For purposes of this subsection, the use of an alternative medical treatment shall not by itself constitute unprofessional conduct. For purposes of this paragraph:

(A) "Alternative medical treatment" means:

(i) A treatment that the treating physician, based on the physician's professional experience, has an objective basis to believe has a reasonable probability for effectiveness in its intended use even if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a generally recognized or standard treatment or lacks the approval of the United States Food and Drug Administration;

(ii) A treatment that is supported for specific usages or outcomes by at least one other physician licensed by the Oregon Medical Board; and

(iii) A treatment that poses no greater risk to a patient than the generally recognized or standard treatment.

In the Amended Notice, the Board contended that Dr. Ogle violated professional boundaries with Sarah, improperly prescribed testosterone to patients, allowed Center employee(s) to conduct tests on patients using medications that had been previously prescribed for and in the possession of other patients, and allowed Center employee(s) to conduct testing that lacked medical efficacy and could have resulted in patient harm. If proven, such conduct would constitute unprofessional or dishonorable conduct, as defined in ORS 677.188(4).

A. Professional boundary violation

In the Amended Notice, the Board contends that Dr. Ogle "took advantage of the disparity in power between himself and [Sarah] by exploiting the trust, knowledge, emotions, social standing and influence that he held with [Sarah] and her family for the purpose of

grooming her for a personal relationship." (Amended Notice at 4.) The Board further contends that Dr. Ogle's conduct towards and relationship with Sarah during and after a physician-patient relationship existed between them constitutes sexual misconduct and was therefore contrary to recognized standards of ethics of the medical profession.

As previously noted, "unprofessional or dishonorable conduct" includes "[a]ny conduct or practice contrary to recognized standards of ethics of the medical * * * profession." ORS 677.188(4)(a). Section 8.14 of the American Medical Association's (AMA) Code of Medical Ethics is an authoritative statement for physicians practicing in the United States with regard to professional boundaries and sexual misconduct standards. It provides, in part:

> [I]f a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.
>
> Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship

(Ex. A10 at 1.) (Emphasis added.)

Because the Board has alleged that Dr. Ogle committed boundary violations both during and after the period in which a physician-patient relationship existed and because the AMA's statement on professional boundaries and sexual misconduct contains different standards for those time periods, the ALJ considered each time period distinctly.

1. During the physician-patient relationship

The evidence establishes that Sarah was Dr. Ogle's patient from December 27, 2005 to June 30, 2006.[8] The nature and extent of the treatment Dr. Ogle provided to Sarah during that time period is immaterial in determining whether Dr. Ogle violated the AMA's ethical standards pertaining to sexual misconduct and boundary violations with a current patient.

First, there is no evidence to establish that there was a sexual relationship between Dr. Ogle and Sarah from December 27, 2005, to June 30, 2006. Second, the record does not establish that there was a dating relationship during that time period. The term "date" is defined, in part, as "an appointment between two persons of the opposite sex for the mutual enjoyment of some form of social activity" or "an occasion (as an evening) of social activity arranged in advance between two persons of the opposite sex." *Webster's Third New International Dictionary* 576 (unabridged edition 2002). While it is true that Dr. Ogle participated in

[8] Although there is some evidence that Dr. Ogle may have functioned as Sarah's doctor in March 2007 (*see* Ex. A5 at 17 and 20), the analysis is confined to the physician-patient relationship that existed from December 27, 2005, to June 30, 2006.

occasional social activities with Sarah and her family, the ALJ was not persuaded that a "dating relationship" existed between Dr. Ogle and Sarah until after June 30, 2006. For these reasons, the ALJ found that Dr. Ogle did not initiate a sexual or dating relationship with Sarah while she was his patient from December 27, 2005, and June 30, 2006. The Board finds, however, that viewing the social contacts between Dr. Ogle and Sarah in the context of the e-mails that they were exchanging during the same time period constituted romantic interactions that exploited Sarah's trust and confidence.

The next question is whether Dr. Ogle initiated a romantic relationship with Sarah at any time from December 27, 2005, to June 30, 2006. The term "romantic" is defined, in part, as "characterized by a strong personal sentiment, highly individualized feelings of affection, or the idealization of the beloved or the love relationship." *Webster's Third New International Dictionary* 1970 (unabridged edition 2002). Dr. Ogle insists that he did not initiate a romantic relationship with Sarah while she was his patient. However, the greater weight of the evidence establishes that Dr. Ogle did in fact pursue and commence a romantic relationship with Sarah during the period December 27, 2005, to June 30, 2006.

At the hearing, Sarah admitted that in April 2006, she and Dr. Ogle discussed their "mutual interest" in each other, as well as their desire to postpone dating, as well as telling her parents about their mutual interest, until the Sweet Home clinic was closed. Dr. Ogle's e-mail, dated April 6, 2006, to Sarah reinforces the following sentiments: Dr. Ogle and Sarah had an interest in one another beyond that of mere friendship on or before April 2006; Dr. Ogle hoped and planned to have a deeper and more intimate relationship with Sarah at some future time; and Dr. Ogle thought it best for Sarah to wait to tell her parents about their mutual and romantic interest in one another. His e-mail provides, in part:

> [I]t would have been nice to have you along I thought in my mind dreaming of some future day when we would be together.
>
> I enjoy hearing what you say to me, Sarah. * * *. You should say what you feel especially about what "almost scares me the things I have thought about lately." I agree that you should not tell your folks yet. They are not ready. Time is needed for the relationship and understanding to develop between your family and me. That is if you want it, Sarah. I do, but you have freedom to choose. You and I have been able to interact. We get on well, and have much in common. It is expected that there might be some differences between any 2 people, but when recognized can be dealt with. * * *. The "several reasons" you mentioned need to be addressed, Sarah, so as to overcome the objections. * * *. Communication is very important in a successful relationship[.]
>
> [I]f I could find purity of heart, I would know happiness and God's greatest gift to me as a man. I see this in you, Sarah and I am not afraid to tell you[!]

(Ex. A4 at 6-7.) In the e-mail, it also appears that Dr. Ogle is attempting to alleviate some concerns Sarah had previously voiced about their relationship. Similarly, after Sarah informed Dr. Ogle that she had doubts that he was a Christian, and she told him that she was expected, and

expected herself, to never marry a non-believer. Dr. Ogle reassured her in an e-mail dated April 8, 2006, that he was indeed a Christian. It was contended at the hearing, and the ALJ agreed, that the April 6 and 8 e-mails illustrate Dr. Ogle's interest in removing potential barriers to having a more intimate and long-term relationship with Sarah.

There is no evidence that Dr. Ogle attempted to discourage Sarah from having a romantic interest in him, even when her e-mails clearly evidenced an attraction beyond mere friendship. For example, in an April 7, 2006, e-mail to Dr. Ogle, Sarah wrote: "I see in you qualities that are more precious than gold. * * * what I see is a man * * * that this girl never expects to deserve. * * * * *. [Y]ou'll be in my thoughts throughout the day." (*Id.* at 13.)

On the contrary, Dr. Ogle's e-mails to Sarah demonstrate a deep affection for her and show that he encouraged her to think of him in a romantic light, and to contemplate a long-term intimate relationship with him. For example, in an e-mail to Sarah, dated April 21, 2006, Dr. Ogle wrote, "I am sad not to hear from you and I miss you when I cannot see you." (*Id.* at 55-56.) In an e-mail to Sarah dated April 27, 2006, Dr. Ogle wrote, "You are so sweet. I am so glad I met you. You really know how to inspire. * * * * *. Sweet dreams to you[.]" (*Id.* at 52-53.) In an e-mail to Sarah dated May 2, 2006, Dr. Ogle wrote, "[K]nowing and learning your heart as I am privileged to do these past 4 months, I am sure you will share [sunshine] with everyone. You bring such warmth into my life making me feel like the sun is always shining." (*Id.* at 54.) When Sarah referenced Dr. Ogle as "Dr. Ogle" instead of "David" in an e-mail voicing her displeasure at some comments he made to her family, Dr. Ogle responded with an e-mail to Sarah that stated, in part:

> [S]o you are back to addressing me as Dr. Ogle. I somehow feel a cold wave comes over me when you do that, as if you are distancing yourself from me[.]
>
> Yours truly,
>
> Doctor David J. Ogle, MD (aka the boss, the doc, the crude and rude scientist)
>
> PS: Actually I prefer you think of me as.....?...(I leave it up to you and fate. * * *. I certainly think of you, Sarah as more than just an employee as I have told you).

(*Id.* at 36-37.) In an e-mail to Sarah dated May 25, 2006, Dr. Ogle wrote, "[I] am especially anxious about the future and what it means for you. I do not know what to say right now, just that I enjoy your company so much. In July, I shall feel free to speak my mind and heart to you." (*Id.* at 27-28.) In an e-mail to Sarah dated June 16, 2006, Dr. Ogle wrote:

> [I] wanted you to know I think about you, care about you and shall do what is necessary to re-assure your parents that I am as you know an honorable man and an appropriate man for you. You know I do need your input in this effort. The only way to do that is to send me or tell me your thoughts and ideas how we may best address John's resistance. I * * * shall honor your choice.

(*Id.* at 26-27.) In an e-mail to Sarah dated June 25, 2006, Dr. Ogle wrote:

> You inspire me to such heights I cannot conceive. * * *. It's hard to believe when we talk I feel so close to you like I have known you all my life. You keep my interest and attention with all your words.
>
> I finished the movie, but not without thinking about living in this world with you made more meaningful by your presence.

(*Id.* at 2.) In an e-mail to Dr. Ogle dated July 2, 2006, Sarah told Dr. Ogle that she could not "pursue a deeper relationship" with him. (*Id.* at 4.) In his e-mail response dated July 2, 2006, Dr. Ogle wrote "I love you (and have since I first saw you)." (*Id.*) On July 3, 2006, Dr. Ogle wrote in an e-mail to Sarah, "We could see each other and I would help you until an appropriate time to marry. * * * * *. I still [l]ove you despite the hurt this has caused." (*Id.* at 4-5.)

Based on Dr. Bloom's expert assessment, the e-mail correspondence between Dr. Ogle and Sarah, while she was his patient, far exceeds that which is typical in a physician-patient relationship and demonstrates that Dr. Ogle had a deep and intensely personal interest in Sarah. According to Dr. Bloom, the e-mails suggest that Dr. Ogle was infatuated with Sarah and had a goal of being involved with her for the long-term. The ALJ, and the Board, agree.

Despite Dr. Ogle's contention that he and Sarah were no more than friends until after June 30, 2006, the e-mails from April 6, 2006, through June 25, 2006 are replete with "strong personal sentiment, highly individualized feelings of affection, [and] the idealization of the beloved [and] the love relationship."[9] Thus, the ALJ was persuaded that Dr. Ogle and Sarah did, in fact, have a romantic relationship during that time period. Moreover, the e-mails establish that, more likely than not, Dr. Ogle initiated and cultivated that romantic relationship, with the goal of having a long-term intimate relationship with Sarah. The Board agrees with this assessment.

Because Dr. Ogle failed to terminate the physician-patient relationship with Sarah before initiating a romantic relationship with her, he violated the AMA's professional boundaries and sexual misconduct standards, as set forth in Section 8.14 of the AMA's Code of Medical Ethics. Consequently, he committed "unprofessional or dishonorable conduct," as defined in ORS 677.188(4)(a) ("[a]ny conduct or practice contrary to recognized standards of ethics of the medical * * * profession"). This constitutes a violation of ORS 677.190(1)(a).

2. After the physician-patient relationship

As previously set forth, Section 8.14 of the AMA's Code of Medical Ethics regards a sexual or romantic relationship with a former patient as unethical "if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship." Thus, it is necessary to consider the nature and extent of the physician-patient relationship that existed between Dr. Ogle and Sarah. Between December 27, 2005, and June 30, 2006, Dr. Ogle had five patient encounters with Sarah that consisted of the following: 1) a

[9] *See Webster's Third New Int'l Dictionary* 1970 (unabridged ed 2002).

physical examination and intravenous administration of vitamins and minerals; 2) a comprehensive history and physical examination, and an order to undergo food, inhalant, and blood testing; 3) a review of allergy and blood test results, and recommendations based on the results; 4) an examination of and treatment recommendation for a rash on the hands; and 5) a re-examination of the rash, and his medical suggestion to follow up with a specialist.

Dr. Bloom's expert testimony establishes that the implicit power differential that exists in all physician-patient relationships was heightened between Sarah and Dr. Ogle because Sarah had lived a sheltered life, she was only 18 years of age, her job with Dr. Ogle was her first significant job in an important setting, and Dr. Ogle bestowed a great deal of positive personal attention on her. While the record reflects a significant power imbalance between Dr. Ogle and Sarah from December 27, 2005, to June 30, 2006, the evidence does not establish that the imbalance was chiefly derived from the physician-patient relationship. Rather, Dr. Ogle would have had a position of significant power over Sarah even in the absence of any treatment provided by him because of the employer-employee relationship and Sarah's personal background. Moreover, based on the record, the ALJ found it likely that Dr. Ogle would have pursued a romantic relationship with Sarah even if he had never treated her. The ALJ found no evidence that Dr. Ogle gained any specific trust, knowledge, emotions, or influence over Sarah as a result of his status as a treating physician that would not have existed by virtue of his status as her employer. The Board disagrees with that inference. Sarah had very infrequent contact with the medical community prior to working for Dr. Ogle. Her willingness to allow Dr. Ogle to examine and treat her demonstrates that she did place trust and confidence in his abilities as a physician. It also created a duty on the part of Dr. Ogle to be a good steward of that trust and to avoid compromising the physician-patient relationship.

The Board provided expert testimony to establish that an insufficient amount of time lapsed between the termination of Dr. Ogle and Sarah's physician-patient relationship and the acceleration of their romantic relationship for Sarah to have an opportunity to objectively examine her relationship with Dr. Ogle in a neutral setting. Even Pastor Brockdorf agreed that he felt it would have been in Sarah's best interest to take her relationship with Dr. Ogle slowly after she suddenly moved to Hillsboro in early July 2006, and after her stepfather, John Bauman, was upset upon learning of their relationship. The ALJ found that regardless of the timetable involved in their dating relationship and Sarah's living arrangements and close association with the Brockdorfs upon moving to Hillsboro, there is no evidence that after June 30, 2006, Dr. Ogle used or exploited anything "specifically derived" from his physician-patient relationship with Sarah. The ALJ found that there was a lack of proof that Dr. Ogle violated the AMA's professional boundaries and sexual misconduct standards during the period following the termination of the physician-patient relationship with Sarah.

The Board disagrees, and finds that Dr. Ogle's conduct during that time period did violate ORS 677.190(1)(a). Dr. Ogle exploited his superior position relative to Sarah to ensure that he maintained control over her after she left her family. Furthermore, Dr Ogle never terminated the romantic relationship that began while Sarah was a patient and employee. Dr. Ogle's e-mail to Sarah dated July 3, 2006, makes it clear that he intended to marry Sarah. (Ex. A 4 at 20.) And Dr. Ogle took care to ensure that Sarah was in an environment where she felt safe—and where he had ready contact and access with her without any hurdles or interference by her family. Immediately after leaving home, Sarah moved in with Dr. Ogle's friends, the Brockdorfs—an arrangement orchestrated by Dr. Ogle. After a couple of weeks, Sarah rented an apartment from

the Brockdorfs. During this time, there was continued social contact while Sarah continued to work for Dr. Ogle as an independent contractor and occasionally worked as a billing clerk at the Center for Environmental Medicine. Sarah and Dr. Ogle received "couples" counseling from Pastor Brockdorf in mid-August, but rejected the pastor's advice that Sarah should be allowed to get on "her feet under herself" and "to reach a level where she could explore objectively what she wanted to do with the rest of her life." (Tr. vol. 3 at 535.) Dr. Bloom described Sarah's situation in the following terms: "It's almost to me like a cocoon kind of settled on this person that involved her life for this period of time and was very intense." Tr. vol 2 at 323.

B. Testosterone, (Schedule III) Controlled Substance

In the Amended Notice, the Board alleges that Dr. Ogle treated patients at the Center with testosterone without establishing a medical basis for such treatment, and that the treatment "caused his patients to incur unnecessary expense for a treatment that could cause harm." (Amended Notice at 6.)

The evidence establishes that testosterone treatment is an acceptable medical treatment for patients with documented testosterone deficiency, but that it should not be prescribed for patients with risk factors such as high blood pressure and obesity[10]. The Board's counsel contended at hearing that Dr. Ogle prescribed testosterone treatment for patient KB, despite the fact that KB had diabetes and obesity. However, the ALJ found that the evidence is insufficient to prove that Dr. Ogle actually prescribed testosterone treatment for KB. Dr. Ogle denies prescribing testosterone treatment for KB, and the portions of KB's medical records that were admitted into evidence do not document such treatment by Dr. Ogle. The Board will not disturb this finding.

At hearing, Dr. Ogle admitted that he had prescribed injectable testosterone for "a handful" of patients who had documented low testosterone. (Tr. at 564-565.) He also admitted that injectable testosterone, like any other medication or prescription substance, poses certain risks to a patient. However, he testified that in each case where he prescribed injectable testosterone, in his medical opinion, the benefits to the patient outweighed the risks. The ALJ found that the record contains no chart notes corresponding to patients for whom Dr. Ogle prescribed injectable testosterone. Thus, the Board has failed to provide any evidence to establish that Dr. Ogle lacked a medical basis for prescribing injectable testosterone to the patients.

The Board's witness, Dr. Nedrow, testified that she believes the current standard treatment for documented testosterone deficiency in Oregon is not injectable testosterone, but rather testosterone gels, creams, and patches. However, as noted in footnote 9, Dr. Nedrow is not an expert on testosterone, and she conceded that some Oregon practitioners do prescribe injectable testosterone treatment, albeit for anti-aging purposes, which is not the community standard. While Dr. Nedrow's testimony clearly established that she personally disagrees with the use of injectable testosterone, and the weight of the evidence suggests that the medical community has, over time, moved away from injectable testosterone in favor of gels, creams, and

[10] Although the Board's witness, Dr. Nedrow, admitted that she was not an expert on testosterone, the ALJ found her testimony regarding the appropriate uses for testosterone persuasive.

patches, the ALJ was not persuaded that treatment for low testosterone via injectable testosterone is "contrary to acceptable medical standards," as per ORS 677.188(4)(b).

In addition, there is no evidence regarding the expense incurred by Dr. Ogle's patients to whom he prescribed injectable testosterone. As a result, the ALJ found that the Board has failed to prove that Dr. Ogle caused the patients to whom he prescribed injectable testosterone treatment to incur unnecessary expense.

For the above reasons, the ALJ found that the Board failed to prove that Dr. Ogle engaged in unprofessional or dishonorable conduct, in violation of ORS 677.190(1)(a), by prescribing injectable testosterone to patients. The Board will not disturb this finding.

C. Use of returned medications on patients

In the Amended Notice, the Board contended that Center staff subjected patients to risk of harm when staff conducted testing on patients, using medication that was expired and/or medication that had previously been returned by other patients. The Board alleged that Dr. Ogle was responsible for this conduct, as the Center's medical Director.

ORS 677.188(4)(a) defines "unprofessional or dishonorable conduct" as including "any conduct or practice which does or might constitute a danger to the health or safety of a patient."

Although Ms. Wade denied at the hearing that she ever performed muscle testing on patients using medications that were returned from other patients, the preponderance of credible evidence establishes that Ms. Wade admitted such conduct to the Board and DEA investigators on or about July 1 and 2, 2008. *The ALJ was* persuaded that, more likely than not, Ms. Wade performed muscle testing on patients with returned prescription medications which were being stored at the Center, and some of these medications were expired. The next issue is what type of muscle testing Ms. Wade performed with those medications.

Ms. Wade conducted sublingual (under the tongue) testing, using returned prescription medications and dilutions in plastic syringes, in the course of her work at the Center. The ALJ found that the record is insufficient to establish that she employed this testing method on any Center patients using medications returned from other patients.[11] The Board does not adopt this finding. Board and DEA investigators found plastic syringes at the clinic that contained medications or dilutions of substances that once belonged to someone else, to include Demerol syringes, supposedly made from Ms. Wade's own Demerol, and the syringes labeled as testosterone, which supposedly contained a dilution made from the sperm of NH's husband. And Ms. Wade informed Board Investigator Mei-Mei Wang during the clinic inspection that left over controlled substances at the clinic were obtained from patients and other sources. (A8 at 2.) The Board finds that Ms. Wade did test clients using these controlled substances. The ALJ also found that there is no evidence that Ms. Wade used the Demerol syringes on anyone but herself, and there is no evidence that she used the sperm dilution syringes on anyone but NH. The ALJ believes that the record simply does not establish that, more likely than not, Ms. Wade was making and using syringes containing one or more returned medications or their dilutions on

[11] Also, the Board has not alleged, and the record does not reflect, that Ms. Wade was conducting subcutaneous testing on patients using returned or expired medications.

Center patients. Moreover, there is no evidence that Ms. Wade's use of the sperm dilution syringes on NH constituted a danger to NH's health or safety. The Board does not accept these findings and deplores the mislabeling and use of bodily fluids in the matter described in this case. As Medical Director, the responsibility for this type of conduct rests with Dr. Ogle. Furthermore, the Board notes that Ms. Wade admitted to Ms. Wang that clinic employees did employ a form of allergy testing that included squirting liquids from syringes under a patient's tongue. (Ex. A8 at 1 and Tr. vol 2 at 454.) The Board notes that this type of delivery can result in a faster delivery to the bloodstream than oral ingestion or IM injection. Furthermore, squirting expired and "turned in" medications to test for an allergic reaction lacks any foundation in medical science and subjected patients to the risk of a harmful reaction to the substances employed. Once again, as Medical Director, the responsibility for this conduct rests with Dr. Ogle.

The Board also rejects the ALJ's conclusion that the form of muscle testing, where Ms. Wade had patients hold medications returned by other patients in a container, such as a small envelope or syringe, so that Ms. Wade could observe for signs of muscle resistance, was benign. The ALJ was of the opinion that the Board provided no evidence to establish that this type of test conducted with returned and/or expired medications posed a danger to the health or safety of the patients. Thus, the ALJ concluded that there is no "unprofessional or dishonorable conduct" that can be imputed to Dr. Ogle by Ms. Wade's actions, and that the Board failed to prove that Dr. Ogle violated ORS 677.190(1)(a) in this respect. To the contrary, as Medical Director, Dr. Ogle was responsible for this conduct. Furthermore, the danger to the patients is not necessarily the act of holding an unknown substance[12] in a bottle, but rather, the fact that clinical and immediate medical decisions were being made based on this bogus procedure. Telling a patient not to take a prescribed medication based on this type of pseudo-science could have deprived a vulnerable patient of a needed prescribed medication—and without coordination with the primary health care providers for such patients.

D. *Testing conducted lacks medical efficacy*

In the Amended Notice, the Board contended that muscle testing "lacks medical efficacy and could result in patient harm." (Amended Notice at 5-6.) However, the ALJ found that the Board's own witness, Dr. Nedrow, testified that muscle testing is an accepted alternative medicine practice in Oregon. Moreover, the ALJ opined that there is no evidence that muscle testing poses a greater risk to patients than generally recognized or standard diagnostic tools. As previously set forth, ORS 677.190(1)(b) provides that the use of an alternative medical treatment cannot by itself constitute unprofessional conduct. The Board, however, does not accept the ALJ's finding that assuming that muscle testing can be properly considered a "treatment," and not merely a diagnostic tool. The Board finds that muscle testing meets the criteria set forth in ORS 677.190(1)(b)(A)(i)-(iii).

The Board finds that muscle testing was used both as a diagnostic tool and as treatment on the Center's patients. The question is whether the manner in which muscle testing was employed at the Center for Environmental Medicine posed a risk greater that the generally recognized or standard treatment. The Board finds that it did. This form of muscle testing has no

[12] It is dangerous to assume that a medication bottle turned in by a patient actually contains an uncontaminated substance that matches the label on the prescription bottle.

foundation in medical science, particularly where the substances used for testing included expired prescription medications and controlled substances, surrendered to the Center by the patient, clinic staff persons, or other patients. Dr. Ogle willingness to allow this conduct to take place at the Center and to rely on these test results to make clinical decisions potentially caused patient harm because the test results were bogus and inaccurate. That means that any medical decision that relied in any way upon these test results was invalid. As a result, the Board concludes that Dr. Ogle violated ORS 677.190(1)(a) by conducting muscle testing, or allowing Center staff or employees to conduct such testing.

2. Gross or repeated negligence

In the Amended Notice, the Board contends that Dr. Ogle committed gross negligence or repeated acts of negligence, in violation of ORS 677.190(14). While the Notice does not specify which alleged conduct by Dr. Ogle constitutes gross or repeated negligence, it does state that the Center possessed controlled substances that were not properly secured, that were expired medications, and/or that had been previously prescribed to one or more patients. The Notice further states that Dr. Ogle failed to carry out his responsibility to ensure that effective controls, procedures, and records pertaining to the controlled substances were in place at the Center.

Black's Law Dictionary defines "negligence" as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." Gross negligence is defined as "a lack of slight diligence or care." Black's Law Dictionary 1056-57 (7th ed 1999). Under ORS 677.095(1), a physician licensed by the state of Oregon "has the duty to use that degree of care, skill and diligence that is used by ordinarily careful physicians or podiatric physicians and surgeons in the same or similar circumstances in the community of the physician or podiatric physician and surgeon or a similar community."

The Board's expert, Dr. Nedrow, testified that Dr. Ogle's lack of staff oversight placed the safety of his patients at risk. In particular, she noted a lack of oversight as to expired medications, returned medications being given to other patients without proper labeling and a practice by clinic staff practice of accepting returned medications from patients.

As medical director of the Center, Dr. Ogle was responsible for supervising the quality of care delivered to patients by clinicians and staff, and he was also responsible for ensuring that clinicians and staff were aware of and adhered to applicable regulations, including state and federal regulations pertaining to controlled substances. Federal law requires that controlled substances be kept in a securely locked, substantially constructed cabinet, and that controlled substances be labeled with the correct drug name, drug strength, and drug amount. Federal law prohibits a DEA registrant from accepting returned controlled substances from any patient. Moreover, possessing or storing expired medications, accepting and storing returned medications, consciously mislabeling a medical substance, and allowing a non-licensed individual to call in a prescription for a controlled substance all fall below the standard of care for a licensed medical professional.[13]

[13] At hearing, Dr. Nedrow testified that having an unlicensed person call in a prescription for a controlled substance is "not an acceptable thing * * * to do in the care of patients." (Tr. at 178.)

There were no protocols in place at the Center with respect to controlled substances, and Ms. Wade has admitted that she was not familiar with DEA regulations pertaining to the acquisition, labeling, storage, and dispensing of controlled substances, new or returned. In fact, she was unaware that testosterone was even a controlled substance. Although Dr. Ogle claims that he may not have prescribed controlled substances to Center patients, and he may have been operating under the assumption that the Center did not possess any controlled substances, the record establishes that Ms. Wade accepted and stored multiple controlled substances at the Center. As medical director, Dr. Ogle had a duty to ensure that his staff knew of and adhered to proper DEA protocols, and he had a continuing responsibility to supervise the practices of his staff. Ms. Wade's acceptance of controlled substances on more than one occasion and her long-term unsecured storage of controlled substances on the premises was conduct of which Dr. Ogle should have been aware, especially since he worked collaboratively with Ms. Wade on patient care. Similarly, Ms. Wade's acceptance of returned medications, her deliberate mislabeling of a biological medical substance and her storage of returned and expired medications were all conduct of which Dr. Ogle should have made himself be aware of.

The ALJ was persuaded, and the Board concurs, that Dr. Ogle's lack of oversight with respect to Ms. Wade's practices at the Center posed a risk to the safety of Center patients and constitutes gross or repeated negligence. Furthermore, the Board also concurs with the ALJ's finding that Dr. Ogle's conduct in allowing Ms. Wade to call in a patient prescription for a controlled substance falls below the standard of care for a medical professional and constitutes gross negligence. Thus, Dr. Ogle violated ORS 677.190(14).

3. Willful or negligent divulging of professional secret

The Board alleged that Dr. Ogle willfully or negligently divulged professional secrets to Sarah and her family without patient consent, in violation of ORS 677.190(5).

First, it was alleged that Dr. Ogle violated ORS 677.190(5) when, during a dinner with Sarah and the Bauman family, Dr. Ogle mentioned that he had once treated a female patient with hermaphroditism. Although Dr. Ogle did not name the patient, it was argued at the hearing that there was a risk that Sarah and her family would be able to identify the patient because Sweet Home, where Sarah and her family resided and Dr. Ogle's medical practice was located, had a very small patient population. However, the ALJ found that the record does not establish that the patient Dr. Ogle referenced was, in fact, his patient at the Sweet Home clinic. Moreover, the record does not establish that Dr. Ogle provided Sarah and her family with any identifiable information about the patient, except for her gender; and there is no evidence that knowledge of the patient's gender in any way compromised her privacy. Thus, to the extent that ORS 677.190(5) prohibits a physician from divulging identifiable health information about a patient without the patient's consent, the ALJ found that there was a lack of evidence to prove a violation occurred. The Board does not adopt this conclusion. Dr. Ogle referred to this patient in the context of living and practicing medicine in the very small community of Sweet Home. It was not unlikely that Sarah and her family might be able to identify who the patient was by the specific description provided by Dr. Ogle. Furthermore, Dr. Ogle discussed the specifics of this patient's history for the purpose of titillating his audience, and to impress them with his medical knowledge.

Second, the Board also alleged that Dr. Ogle violated ORS 677.190(5) by discussing the diagnoses of two Center employees, as well as a third individual, in an August 21, 2006 e-mail to Sarah. The e-mail provided, in part:

> Cambor [Wade] is concerned over being diagnosed with Lupus especially since she has read all the negative stuff on the Internet. [Center employee] Lisa also is diagnosed with the same disorder Barb Ellison you may recall her from Sweet Home with Sjogren's syndrome which consists of a constellation of symptoms and signs which Lisa actually manifests rather well. If she is not too embarrassed, I shall explain her illness to the staff in an educational tutorial some day.

(Ex. A4 at 74.)

At the time Dr. Ogle sent the e-mail to Sarah, she was performing occasional volunteer billing work at the Center. Dr. Ogle asserts that it was allowable for him to discuss the diagnoses of his employees with Sarah because all Center employees and volunteers provided written consent to allow their medical information to be discussed with staff for educational purposes. It was argued at the hearing that Dr. Ogle nonetheless violated the employees' privacy by divulging patient diagnoses to a person not involved in patient care and who did not otherwise need to know such information to perform her job duties.

ORS 677.190(5) prohibits a physician from "divulging a professional secret without the written consent of the patient." The statute does not restrict to whom and for what purpose a physician may divulge a professional secret once the physician has obtained written patient consent. However, as Dr. Ogle testified, his staff signed written consent forms allowing their medical information to be discussed with staff for educational purposes. (Tr. at 98.) Thus, a Center employee's consent to having his or her medical information shared with staff is limited to those instances where it serves an educational purpose.

The ALJ was not persuaded that Dr. Ogle divulged the diagnoses of the two Center employees to Sarah "for educational purposes." Sarah was not involved in patient care at the Center, and there is no evidence that she needed to know those diagnoses in relation to her volunteer billing work. Rather, Dr. Ogle divulged the diagnoses in a conversational e-mail that included, such as other topics: A surprise note in Dr. Ogle's pocket; a nearly broken branch on Dr. Ogle's fig tree; and Dr. Ogle's thoughts of Sarah upon going to sleep and awakening. Since the ALJ found that Dr. Ogle divulged identifiable medical information regarding Ms. Wade and "Lisa," another Center employee, to Sarah for non-educational purposes, and because Ms. Wade and "Lisa" did not consent to the sharing of their information for such purposes, Dr. Ogle did lack consent and thus violated ORS 677.190(5). The Board agrees.

The ALJ found that the record contains no evidence to establish the identity of a patient with the initials of BE, and whether she was ever a patient of Dr. Ogle's, or whether Dr. Ogle had access to her personal medical information. The Board disagrees. The e-mail from Dr. Ogle to Sarah dated August 21, 2006, refers to BE by name as a person from the Sweet Home clinic who had a particular diagnosed condition. This communication constitutes the divulging of a professional medical secret.

4. Aiding or abetting practice of medicine by unlicensed person

In the Amended Notice, the Board contends that Dr. Ogle knew, or should have known, that Center employees were advising patients on medical treatments and offering advice to patients regarding whether the patients should continue to take specific medications, to include prescription medications. At the hearing, the Board specifically alleged that Dr. Ogle aided and abetted the practice of medicine by Ms. Wade, an unlicensed individual, in violation of ORS 677.190(11).

ORS 677.085 sets forth what constitutes the practice of medicine, as follows:

> A person is practicing medicine if the person does one or more of the following:
>
> (1) Advertise, hold out to the public or represent in any manner that the person is authorized to practice medicine in this state.
>
> (2) For compensation directly or indirectly received or to be received, offer or undertake to prescribe, give or administer any drug or medicine for the use of any other person.
>
> (3) Offer or undertake to perform any surgical operation upon any person.
>
> (4) Offer or undertake to diagnose, cure or treat in any manner, or by any means, methods, devices or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person.
>
> (5) Except as provided in ORS 677.060, append the letters "M.D." or "D.O." to the name of the person, or use the words "Doctor," "Physician," "Surgeon," or any abbreviation or combination thereof, or any letters or words of similar import in connection with the name of the person, or any trade name in which the person is interested, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions mentioned in this section.

The Board has not contended, and the evidence does not establish, that Ms. Wade advertised or represented herself as a person authorized to practice medicine, that Ms. Wade offered or undertook to perform surgery on any person, or that Ms. Wade used the terms "M.D.," "D.O.," doctor," "physician," "surgeon," or any terms of similar import in the conduct of her work at the Center.

Thus, it is necessary to determine whether Ms. Wade offered or undertook to prescribe, give, or administer any drug or medicine to Center patients, and also whether she offered or undertook to diagnose, cure or treat any disease, illness, pain, or infirmity of Center patients.

ORS 677.010(15) states that "prescribe" means to "direct, order or designate the use of or manner of using by spoken or written words or other means." ORS 677.010(4) states that

"diagnose" means to "examine another person in any manner to determine the source or nature of a disease or other physical or mental condition, or to hold oneself out or represent that a person is so examining another person."

Ms. Wade is a co-owner of the Center, and she has functioned not only as the Center's general office manager, but also as an allergy technician and nutritionist. Because Dr. Ogle served as Medical Director of the Center, Ms. Wade's work as an allergy technician and nutritionist on many joint patients was performed under his supervision. It was asserted that Dr. Ogle initially examined all patients new to the Center. Both Dr. Ogle and Ms. Wade asserted that if Dr. Ogle ordered allergy testing, then Ms. Wade would perform the allergy testing, note the results on an allergy test sheet, and report the results back to Dr. Ogle. The ALJ commented that Ms. Wade appears to have had a significant role in assisting Dr. Ogle with the coordination of patient care, and her responsibilities included collecting and documenting patient information regarding nutrition, allergies, medical histories, and lab results. Furthermore, that Dr. Ogle and Ms. Wade met each morning to discuss the patients scheduled for appointments that day, and those discussions continued on an as-needed basis throughout the day.

The Board concludes from its review of the record that the ALJ understated the role of Ms. Wade at the Center for Environmental Medicine. In fact, it was Ms. Wade that ran the clinic. It was Ms. Wade, and not Dr. Ogle, that prepared the solutions for testing (to include dilute amounts of returned prescription medications). And it was Ms. Wade that decided what type of testing to conduct, observed the patient's reaction, and proceeded with what was termed "provocative neutralization." According to Ms. Wade, Dr. Ogle made his "clinical decisions" based upon the information provided to him by Ms. Wade. This vested Ms. Wade with extraordinary discretion, as illustrated by the following response by Ms. Wade to a question: "You know, in – in the testing process, you have these – what I call harmonics. What I was taught were harmonics where there's, you know, heightening of the symptoms and then they – they wave until there – the symptom is gone. And, basically, I use the muscle testing to find those points rather than doing every single antigen there because you'd be there forever. In fact, that's why I started muscle testing was so that I could speed up the process." (Tr. vol 2 at 449 – 450.) It was Ms. Wade who selected the antigen that she wanted and interpreted the patients' reactions. Dr. Ogle's clinical decision making was basically to place a rubber stamp of approval on what Ms. Wade wanted to do.

Board Investigator Wang wrote, in her August 14, 2008, memorandum, that Ms. Wade was directing medical care, making medical decisions, and changing prescriptions and dosages for Center patients. As one example of this, Ms. Wang cites a January 3, 2007, chart note for patient KB, in which Ms. Wade writes that KB was "coming off HGH & going onto D-tropin. Adjusted dosage of D-tropin & instructed regarding reducing HGH. Pt is starting Chloreller & discussed doctors ordering for testing." (Ex. A16 at 5.) Ms. Wang noted in her memorandum that Ms. Wade signed the chart note with Dr. Ogle's initials located by her signature.

At the hearing, Dr. Ogle insisted that he supervised the delivery of all medical services provided at the Center and that he reviewed all staff protocols. Similarly, Ms. Wade has contended that Dr. Ogle was involved in all medical and treatment decisions. However, she has conceded that she and Dr. Ogle did not consistently and thoroughly chart every action taken and every matter discussed in the course of providing treatment and services to Center patients.

The January 3, 2007, chart note does not specify that KB's medication dosage was adjusted at the direction of and under the supervision of Dr. Ogle.[14] However, the ALJ was willing to believe that given Dr. Ogle's and Ms. Wade's insistence that Dr. Ogle was involved in all treatment decisions, and their admitted shortcomings in medical charting, the January 3, 2007 chart note does not establish that, more likely than not, Ms. Wade was directing KB's medical care, making medical decisions for KB, or prescribing or modifying medication for KB. Rather, the ALJ found it equally likely that Dr. Ogle was directing treatment decisions regarding KB on or about January 3, 2007, and the charting simply fails to reflect that fact. But the Board is not willing to take that leap of faith. In the Board's view, if there is no chart note to reflect Dr. Ogle's approval of this medication decision, it did not happen. Medical documentation is a critical foundation of medical care and recognized as an integral element of standard of care.

The Board also relied on a January 10, 2008, progress note for KB, signed only by Ms. Wade, as an example of Ms. Wade's directing medical care, making treatment decisions, and adjusting prescriptions. In the January 10, 2008, progress note, Ms. Wade notes that KB "stopped BP [blood pressure] med. Wonders if he hasn't been taking products with dyes in them causing symptoms." (Ex. A9 at 2.) KB's medical records do not indicate that Dr. Ogle saw, spoke with, or treated KB on or about January 10, 2008, and the records are silent as to whether Dr. Ogle, Ms. Wade, some other person, or any person at all directed KB to stop taking the medication. At hearing, Dr. Ogle testified that he recommended that KB stopped taking the medication.[15] Given Dr. Ogle's lack of credibility, his testimony is entitled to little or no weight. The lack of a chart entry confirms that Dr. Ogle did not review or approve the decision that he stop taking his blood pressure medication. The Board rejects the ALJ's conclusion that the progress note does not establish that, more likely than not, Ms. Wade directed KB to stop taking the blood pressure medication, or in any way directed his medical care or made treatment decisions for KB on or about January 10, 2008. The lack of a chart notation causes the Board to apply the long repeated medical adage in this instance—"if it was not charted, it did not happen."

The Board also rejects the ALJ's conclusion that note from the June 21, 2003, in which Dr. Ogle authorized Ms. Wade to call in a controlled substance prescription for a patient, while contrary to good medical practice, does not establish that Ms. Wade prescribed, gave, or administered medication to a patient. The Board agrees that this practice is contrary to good medical practice, but also finds that this is illustrative of how Ms. Wade ran the clinic and made treatment decisions for patients.

The Board also notes Ms. Wade's account of mislabeling the 201 syringes that supposedly contained dilute amounts of sperm for purposes of treating a patient who was having a reaction (or so she diagnosed) to her husband's sperm. This testimony of Ms. Wade is alarming to the Board. Assuming that her testimony provided at the hearing is true, it is shocking that she would be willing to mislabel syringes, store them in an unsecured and unrefrigerated location, work with biological products without regard to anything approaching

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[14] Because the Board did not offer the actual chart note as an exhibit, my conclusion is based on Ms. Wang's synopsis of the chart note.

[15] The ALJ noted that while patient charting by Ms. Wade and Dr. Ogle may have been chronically inadequate, and is likely a cause for serious concern to the Board, the Board's Amended Notice does not cite inadequate charting as a basis for any alleged violation. Thus, any issues pertaining specifically to inadequate patient charting were not properly before the ALJ. *See* ORS 183.415(3)(d) (requiring that a contested case notice include a "short and plain statement of the matters asserted or charged").

customary laboratory procedures, and purposefully subject a patient to them for treatment purposes. It also illustrates once again how accustomed she was to make diagnostic and treatment decisions on her own—because according to Ms. Wade, Dr. Ogle was never informed about this and he never bothered to inquire into the treatment of this patient or into the storage of 201 syringes labeled as "testosterone" that were stored within the clinic. (Tr. vol 2 at 478.)

The Board rejects the ALJ's conclusion that the evidence presented was insufficient to establish that, more likely than not, Ms. Wade offered or undertook to prescribe, give, or administer any drug or medicine to Center patients, or offered or undertook to diagnose, cure or treat any disease, illness, pain, or infirmity of Center patients. The Board concludes that Ms. Wade was practicing medicine at the Center and that Dr. Ogle violated ORS 677.190(11), by aiding or abetting the practice of medicine by an unlicensed person.

5. Violation of Controlled Substances Act

In its Amended Notice, the Board contends that Dr. Ogle violated the federal Controlled Substances Act, in violation of ORS 677.190(24). The ALJ's findings did not support violations of this statute, because in the ALJ's view, the notice failed to identify and cite to the particular sections of the Controlled Substances Act that the Board alleges Dr. Ogle violated. The ALJ concluded, therefore, that the Board did not comply with ORS 183.415(2)(c), which requires a notice in a contested case to include, among other things, "[a] reference to the particular sections of the statutes and rules involved." The ALJ reasoned that Oregon appellate courts have interpreted ORS 183.415 as requiring citation to all administrative rules and statutes that are substantially relevant, as well as to the statutes and rules that are allegedly violated. *See Drayton v. Department of Transportation, 186 Or App 1, 10-11 (2003); Villanueva v. Board of Psychologist Examiners, 175 Or App 345, 356 (2002) (Villanueva I).* She went on to explain that there is nothing in the Oregon Administrative Procedures Act (APA) or court cases to suggest that the "statutes and rules involved" are limited to state law. The ALJ concluded that here, the Board alleged that Dr. Ogle violated federal law pertaining to controlled substances, thereby resulting in a violation of ORS 677.190(24). To meet the requirements of the APA, the Board was required to specifically identify which federal statutes or rules Dr. Ogle allegedly violated.

The Board rejects this reasoning and the ALJ's conclusion of law. The Amended Complaint and Notice of Proposed Disciplinary Action put Dr. Ogle on notice that his conduct violated ORS 677.190(24), violation of the federal Controlled Substances Act. This is not a situation where the failed to mention the statute—ORS 677.190(24) was appropriately cited. The Board, therefore, rejects the ALJ's conclusion that in regard to the issue of whether Dr. Ogle violated ORS 677.190(24), the Board's Amended Notice is deficient.

Drug Enforcement Agency (DEA) Diversion Investigator Michelle Carroll visited the Center for Environmental Medicine with Board investigators and testified at the hearing. Diversion Investigator Carroll (together with Board Investigators Mei Mei Wang, Terry Lewis and Eric Brown) found containers labeled as containing controlled substances, to include testosterone (Schedule III), Valium (Schedule IV), Versed (Schedule IV), Demerol (Schedule II), alprazolam (Schedule IV), and clonazepam (Schedule IV) stored at the Center in unsecured locations without any records or periodic inventory, in violation of 21 USC §§ 825 and 827 (Controlled Substances Act). Receiving and using controlled substances turned-in by patients to

be used on other patients also violated the Controlled Substances Act. Ms. Wade acknowledged in her testimony that controlled substances were stored at the Center without regard (or even knowledge of) the requirements of the Controlled Substances Act. As the DEA registrant, Dr. Ogle bore the responsibility to ensure that the Center complied with this federal law. He failed to do so. His failure constitutes a violation of ORS 677.190(24).

6. Sanction

In addition to monetary penalties, the Board proposed at hearing to revoke Dr. Ogle's medical license for the violations alleged in the Amended Notice. The ALJ found that the Board established violations of ORS 677.190(1), ORS 677.190(5) and ORS 677.190(14). The Board has reviewed the ALJ's conclusions of law and found that the evidence supports a conclusion that Dr. Ogle also violated ORS 677.190(11) and ORS 677.190(24).

ORS 677.205 authorizes the Board to sanction a licensee for violations of the Medical Practice Act as follows:

> (1) The Oregon Medical Board may discipline as provided in this section any person licensed, registered or certified under this chapter who has:
>
> (b) Been found to be in violation of one or more of the grounds for disciplinary action of a licensee as set forth in this chapter;
>
> * * * * *
>
> (2) In disciplining a licensee as authorized by subsection (1) of this section, the board may use any or all of the following methods:
>
> (a) Suspend judgment.
>
> (b) Place the licensee on probation.
>
> (c) Suspend the license.
>
> (d) Revoke the license.
>
> (e) Place limitations on the license.
>
> (f) Take such other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed $10,000, or both.

It was asserted by the Board's counsel at the hearing that license revocation, the harshest penalty available, is appropriate, in part, because Dr. Ogle is not trustworthy. The Board cites to Dr. Ogle's dishonesty regarding the extent of his relationship with Sarah when the Board first questioned him in person in June 2008, and also to his continuing failure to take responsibility for his actions with respect to Sarah and the Center's operations and with respect to on-going

compliance to community medical standards and state and federal laws. In addition, the Board contends that even after issuing a Letter of Concern to Dr. Ogle on July 9, 2004, in which the Board expressed concerns about patient care and inadequate supervision of an unlicensed provider, Dr. Ogle continued to inadequately supervise Ms. Wade.

The ALJ found that the preponderance of the evidence does establish that Dr. Ogle was less than forthright about the extent of his communications and relationship with Sarah when he participated in the Board's interview in June 2008. Also, he continues to both minimize the extent of the physician-patient relationship that once existed with Sarah and to deny that his actions with respect to Sarah were ever ethically inappropriate. Moreover, he seems to believe he should shoulder no responsibility for any violations that occurred at the Center during his tenure as medical director. And, as previously discussed, the Board has proven that he continued to inadequately supervise Ms. Wade's practice at the Center after July 2004. Such factors weigh against Dr. Ogle in determining the appropriate sanction for his violations.

Nevertheless, the ALJ found that in view of Dr. Ogle's specific violations and the facts giving rise to those violations, revocation is not the appropriate penalty. While Dr. Ogle's conduct with respect to his boundary violations with Sarah, his inappropriate sharing of confidential patient information, his inadequate oversight at the Center, and his lack of full disclosure and accountability are cause for serious concern, the ALJ still was of the opinion that a lesser penalty than revocation is appropriate. To that end, the ALJ recommended that Dr. Ogle be disciplined as follows: the Board should formally reprimand Dr. Ogle by way of a written letter; the Board should suspend Dr. Ogle from the practice of medicine for a period of six months; the Board should place Dr. Ogle on probation for a period of three years; the Board should require that Dr. Ogle take continuing education courses focusing on physician-patient boundaries, medical staff management and oversight, patient confidentiality, and any other area the Board deems relevant to the violations proven herein; and the Board should impose a civil penalty of $1,000 and assess the costs of the disciplinary action to Dr. Ogle.

The Board has considered the ALJ's proposed sanction, but does not find these sanctions to be adequate in view of Dr. Ogle's conduct. The Board finds the following factors that support the full penalty proposed at the hearing:

- During his confidential interview with Board members, Dr. Ogle made several misrepresentations to the Board, to include: denying having any personal communications with Sarah until the late fall or early winter of 2006; failing to disclose that Sarah worked at the Center of Environmental Medicine; and asserting that prior to the closure of his practice, his relationship with Sarah was "strictly professional." Even after being confronted with the large packet of e-mails between him and Sarah, Dr. Ogle continued to try to dissemble the truth. In short, Dr. Ogle's statements cannot be trusted.

- Throughout the investigative process, Dr. Ogle demonstrated a remarkable lack of insight in regard to basic concepts of professional boundaries and the disparity of power that exists between a physician and a patient who was also an employee.

- Dr. Ogle's disclosure of patient confidential information in his personal e-mails to Sarah and his attempt to explain it away as "education" shows a lack of regard for professional ethics and the personal privacy of his patients.

- Despite receiving a Letter of Concern from the Board in July 2004, Dr. Ogle failed to adequately supervise the clinic's owner, Cambor Wade, and was either willfully or negligently oblivious to the ongoing violations of the federal Controlled Substances Act within the Center for Environmental Medicine.

- Dr. Ogle allowed Ms. Wade an extraordinary amount of discretion to "run" the clinic, to include testing and treating allergy patients, preparing antigens, deciding whether to subject patients to muscle testing, sublingual or intradermal testing. Dr. Ogle also authorized Ms. Wade to prepare solutions containing prescription medications turned-in by patients, to include controlled substances such as testosterone, Versed or Demerol, where according to Ms. Wade's account, she "made it work by neutralizing the excipients." (Tr. vol 2 at 514.) Ms. Wade also admitted to mislabeling 201 syringes with the name of a controlled substance, and she claimed only at the hearing that these syringes contained human sperm from a patient's husband. The manner in which Ms. Wade conducted the testing exposed patients to the risk of harm from substances that may have been contaminated, or contained unknown substances, and/or had biological degradation. In addition, Dr. Ogle made clinical decisions that relied at least in part on the information obtained from Ms. Wade (Tr. vol. 2 at 516.) Dr. Ogle failed to discharge his duty as Medical Director with diligence and made clinical decisions that were based on a medical stack of cards.

EXCEPTIONS

1. Dr. Ogle, through his counsel, submitted written exceptions to the Proposed Order on December 30, 2009. Dr. Ogle and his counsel appeared before the Board on January 14, 2010 and presented oral argument. The Board subsequently issued a Amended Proposed Final Order. The Board affirms the ALJ's evidentiary rulings in regard to Dr. Bloom and Dr. Nedrow and finds that both physicians are well qualified as medical experts to address the questions posed to them at the hearing. The Board has reviewed the curriculum vitae of both Board consultants and recognizes that the professional reputations, training and experience of these physicians are extraordinary, and that they are nationally recognized experts in their respective specialties.

2. Dr. Ogle contended in his exceptions that his professional boundary violations with Sarah were "de minimis" and that the actual interaction between them did not rise to the level of "romance." The record of communication between Dr. Ogle and Sarah were intensely personal, intimate, and seductive. Dr. Ogle exploited his position of power and trust as Sarah's physician and employer, and used her inexperience and naiveté to his advantage. After she left her home, he pressed his advantage by having her move into an environment that he had set up and allowed him continued contact and control. The Board also disagrees with Dr. Ogle's assertion that the e-mails were unlawfully obtained. Sarah went to the home of her brother, Clayton Bauman, in the Spring of 2006. She received permission to use Clayton's home computer, to access her e-mail account, to log in and to communicate on that computer. On his own initiative, Clayton used his surveillance software to later access Sarah's e-mails, download,

and print the e-mails. He subsequently provided a copy of those printed e-mails to the Board. The Board finds the record of e-mails to be admissible and reliable.

3. Dr. Ogle asserted in his exceptions that the finding of gross or repeated negligence is not supported by substantial evidence and lacks substantial reason. Dr. Ogle asserts there was no competent evidence to establish the standard of care relating to expired medication storage. Such an assertion reflects upon Dr. Ogle's incompetence. The record established, and the Board has concluded, that the federal Controlled Substances Act requires DEA registrants to carry out certain duties and to comply with all the rules, to include a duty to make a complete and accurate record of all medications on hand and to conduct a biennial inventory thereafter, 21 USC § 827. And all controlled substances are to be stored in a securely locked, substantially constructed cabinet, 21 CFR 1301.75. Specified procedures must also be followed in the disposal of controlled substances, 21 CFR 1307.21. Dr. Ogle carried out none of these duties at anytime as the Center's medical director. Such conduct reflects either a willful or reckless disregard of applicable legal standards and as such, constitutes gross negligence. Dr. Ogle also asserts that he didn't know that expired medications were being stored at the Center for Environmental Medicine. This argument merely highlights his failure to conduct an inventory, to include taking the initiative by opening cabinets in this relatively small clinic and looking. Dr. Ogle further contends that he assumed that the staff was destroying returned medications appropriately and that any risk posed to patients was purely hypothetical. Once again, making assumptions is never an acceptable excuse for being derelict in the performance of one's duty as a physician. And the risk to his patients, who were being exposed to expired medications subject to contamination, was very real.

4. In his exceptions, Dr. Ogle repeats the argument that he did not divulge professional secrets because he had the consent of the staff members to do so for educational purposes. The Board will apply its own expertise in the medical field and draw its own inferences from the record before it. The Board finds that the reason Dr. Ogle was making disclosures to Sarah had nothing to do with providing medical education to her. Sarah had no need to know this information; she worked at the Center for Environmental Medicine on a part-time basis as a billing clerk. Furthermore, imparting this "lesson" could have been readily accomplished without disclosing patient identifying information. No, the reason Dr. Ogle communicated patient specific information to her via e-mail was to share some office "inside information" with her and to impress her with his medical knowledge.

5. Dr. Ogle also contended in his exceptions that his conduct was a "minimal violation" and that all he did was to fail to "adequately monitor Ms. Wade" and to have a "non-sexual, non-dating, romantic e-mail relationship with Sarah." The Board disagrees with Dr. Ogle's characterization of the findings and conclusions from both the ALJ and the Board.

6. Dr. Ogle submitted written exceptions to the Board's Amended Proposed Final Order on March 19, 2010, in which he renewed his contention that Drs. Bloom and Nedrow were not properly qualified as experts. The Board rejects these contentions. Dr. Ogle also contends that certain findings of fact and conclusions of law contained in the Board's Amended Proposed Final Order "is not supported by clear and convincing evidence, nor a preponderance of evidence, lacks substantial evidence and lacks substantial reason." The Board has considered all of his exceptions and finds them lacking in merit. The Board notes that when it modifies a proposed order in any substantial manner, that the Board is obligated to identify the modification

and provide an explanation as to why the modification was made, ORS 183.650(2). Board modifications to a historical finding of fact rendered by an ALJ may be done only if the Board determines that the ALJ's finding of fact is not supported by a preponderance of the evidence in the record, ORS 183.650(3). Although counsel for Dr. Ogle made an oblique reference to the clear and convincing standard, that standard of evidence, which was mandated by Senate Bill 274 (2009) does not apply in this case. Senate Bill 274, section 7, provides that an agency may modify a historical finding of fact only if the agency determines that there is clear and convincing evidence in the record that the finding was wrong. This section of the bill only applies to hearings for which an ALJ is assigned by the Office of Administrative Hearings on or after the effective date of the Act, which was August 4, 2009. In this case, ALJ Rackstraw was assigned on or about March 4, 2009, months before the effective date of the bill.

FINAL ORDER

The Board issues the following order:

1. The license of Dr. Ogle to practice medicine in Oregon is revoked;

2. Dr. Ogle must pay a civil penalty of $1,000; and

3. Dr. Ogle is assessed the full costs of this disciplinary action. Costs shall be due within 90 days from the date the Board issues its Bill of Costs.

DATED this 8th day of April, 2010.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

Chair

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 *et seq.*

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of:	)	
	)	
DAVID JEFFREY OGLE, MD	)	BILL OF COSTS
License No. MD20318	)	

1.

On April 8, 2010 the Oregon Medical Board (Board) issued a Final Order in the matter of David Jeffrey Ogle, MD (Licensee). In this Order, Licensee was assessed the costs related to his Contested Case Hearing held on September 14-16, 2009. This payment is due within 90 days from the date this Bill of Costs is signed by the Board's Executive Director.

2.

The State of Oregon, by and through its Oregon Medical Board, claims costs related to the September 14-16, 2009 Contested Case Hearing in the above-captioned case as follows:

Board Counsel - Warren Foote, JD	$	15,855.08
Board Consultant/Witness -Anne Nedrow, MD	$	1,375.00
Board Consultant/Witness - Joseph Bloom, MD	$	1,125.00
Administrative Law Judge – Jennifer Rackstraw, JD	$	11,712.00
Court Reporter Appearance - Naegeli Corp.	$	3,777.85
TOTAL COSTS DUE:	**$**	**33,844.93**

The above costs are certified as a correct accounting of actual costs incurred preparing for and participating in the Contested Case Hearing in this matter.

Dated this 28th of April, 2010

OREGON MEDICAL BOARD
State of Oregon

Signature Redacted on Copies

KATHLEEN HALEY, JD
EXECUTIVE DIRECTOR