[Cite as *Harris v. State Med. Bd.*, 2012-Ohio-4019.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Roy William Harris, D.O.,	:	
Appellant-Appellant,	:	
		No. 11AP-671
v.	:	(C.P.C. No. 10CVF-12344)
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on September 4, 2012

Brouse Law Office, and *Karen H. Brouse*, for appellant.

Michael DeWine, Attorney General, and *Kyle C. Wilcox*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶1} Roy William Harris, D.O., appellant, appeals a July 29, 2011 judgment of the Franklin County Court of Common Pleas, in which the court affirmed the August 13, 2010 order of the State Medical Board of Ohio ("board"), appellee.

{¶2} Appellant obtained his osteopathic medical degree in 1992 and completed his residency in internal medicine in 1995. At all times relevant, appellant maintained his own internal medicine practice in Bucyrus, Ohio, and also provided various services to a local hospital, including emergency room services and electrocardiogram ("EKG") readings. He also served as the medical director of several local nursing homes.

{¶3} The present matter pertains to allegations against appellant relating to two persons, referred to by the board as "Patient 1" and "Patient 2." Patient 1, a female born in 1983, saw appellant for medical care once in December 2000 and once in January 2001. When she became pregnant, she began seeing another doctor. In the fall of 2003, appellant asked Patient 1 if she was interested in cleaning his medical office, as she also cleaned at the local hospital, and she agreed to do so. In September 2003, appellant and Patient 1 began a sexual relationship. On October 7 and 21, 2003, appellant saw Patient 1 in his office for complaints regarding a sore throat and chest congestion, after which he prescribed her medications and gave her a birth-control injection on both occasions. On November 24, 2003, appellant ordered a pregnancy test for Patient 1, the results of which were negative. Sometime in 2004, Patient 1 told appellant that she had been his patient in 2000 and 2001, and appellant testified he had not remembered treating her. Appellant next saw Patient 1 in his office on February 25, 2005, because Patient 1 needed a physical examination to enter nursing school in a few days, and her primary-care physician was out of town. Appellant performed a physical examination and ordered a blood test. On February 27, 2005, appellant saw the test results indicated Patient 1 was anemic, and he wrote her two prescriptions to treat such. Appellant also ordered a pregnancy test for Patient 1 on February 27, 2005, the results of which showed her to be pregnant. Appellant was found to be the father of that child in September 2006. Appellant and Patient 1's sexual relationship ended in February 2005.

{¶4} Patient 2 is a female born in 1966. In 2000, appellant read Patient 2's EKG when she went to the emergency room at a local hospital, and he billed her for the service. Appellant never saw Patient 2 at that time but only read her EKG as part of his duties at

the hospital. Appellant first met Patient 2 sometime in early 2001 because she was a nurse at a nursing home for which he was the medical director. Appellant and Patient 2 began a sexual relationship sometime between February and April 2002, and appellant testified he did not remember that he had read her EKG in 2000 until the board subpoenaed his records in November 2005. On February 16, February 25, and July 1, 2003, appellant prescribed Prozac for Patient 2 for anxiety, Diovan HCT for hypertension, and Zyprexa for bipolar disorder, respectively, with each prescription being for 90 days with three refills. The medications were originally prescribed by Patient 2's primary physician, but Patient 2 had been unable to see her primary physician to get new prescriptions so appellant continued the medications without any examination or diagnoses. Appellant and Patient 2 ended their sexual relationship sometime in February 2005. On March 11, 2005, Patient 2 called the local hospital because she was having anxiety over her father's recent death. The hospital directed her to another doctor in the same building where appellant was working. That doctor was busy but suggested to appellant that Patient 2 be prescribed Xanax so appellant wrote a prescription for Xanax for Patient 2 without ever speaking directly to her.

{¶5} After an anonymous tip, the board began investigating appellant regarding his care of Patients 1 and 2. The board's investigator interviewed appellant, during which appellant denied he had ever engaged in sexual activity with "Patient 1." On May 13, 2009, the board notified appellant that it proposed to take disciplinary action against him based upon the allegations that he had sexual contact with Patients 1 and 2 while they were involved in a physician-patient relationship, and that appellant gave deceptive information to the board during its investigation when he said he never had sexual contact with

"Patient 1." Specifically, the board alleged claims for: (1) false, fraudulent, deceptive, or misleading statements in the solicitation or advertising for patients or in securing or attempting to secure any certificate issued by the board pursuant to R.C. 4731.22(B)(5), (2) commission of an act that constitutes a felony, pursuant to R.C. 4731.22(B)(10), to wit: perjury pursuant to R.C. 2921.11, (3) departure from the minimal standards of care pursuant to R.C. 4731.22(B)(6), (4) violation of any provision of a code of ethics, pursuant to R.C. 4731.22(B)(18), to wit: American Osteopathic Associates ("AOA"), Code of Ethics, Section 15, and/or (5) failure to cooperate in an investigation conducted by the board pursuant to R.C. 4731.22(B)(34). On June 8, 2009, the board received appellant's request for a hearing on the matter.

{¶6} A hearing was held before the board's hearing examiner on November 9 and 10, 2009. On July 28, 2010, the hearing examiner issued a report and recommendation. The hearing examiner found appellant had violated R.C. 4731.22(B)(5), (6), (10), (18), and (34). Specifically, the hearing examiner found a physician-patient relationship was formed with Patient 1 in 2001, and there had been a physician-patient relationship when the sexual relationship began in 2003; even if no physician-patient relationship was formed with Patient 1 in 2001, a physician-patient relationship was established by the medical services appellant provided in 2003 and 2005, while appellant and Patient 1 were involved in a sexual relationship; no physician-patient relationship was established between appellant and Patient 2 when appellant read Patient 2's EKG in 2000; appellant and Patient 2 established a physician-patient relationship in February and July 2003, while appellant and Patient 2 were involved in a sexual relationship; and appellant's

denial that he never had sexual contact with Patient 1 was misleading, dishonest, and not reasonable.

{¶7} On August 11, 2010, the board issued an order adopting the report and recommendation of the hearing examiner. The board indefinitely suspended appellant's medical license for a minimum of six months, with conditions for reinstatement and probation for three years. On August 20, 2010, appellant appealed the order to the common pleas court. On July 29, 2011, the common pleas court affirmed the board's order. Appellant has appealed the decision of the common pleas court, and we have stayed the board's order pending appeal. In his appeal, appellant asserts the following assignments of error:

> [I.] The Franklin County Court of Common Pleas committed err[or] in upholding the decision of State Medical Board of Ohio (hereinafter "OSMB"). The OSMB, in the Entry of Order, Case No. 09-CRF-059, indefinitely suspended Dr. Harris' license to practice medicine based upon the findings that Dr. Harris' acts or conduct departed from, or failed to conform to, the minimum standard of care in that Dr. Harris had engaged in sexual contact with two women despite an "ongoing physician/patient relations during the time of sexual contact" in violation of R.C. § 4731.22(B)(6) and § 4731.22[B](18).
>
> [II.] The Franklin County Court of Common Pleas committed err[or] in upholding the decision of the OSMB to suspend Dr. Harris' license to practice medicine based upon a finding that Dr. Harris had provided deceptive information during the OSMB investigation. The OSMB specifically said Dr. Harris' actions violated several sections of the Ohio Revised Code, to wit: R.C. § 4731.22(B)(5), R.C. § 4731.22(B)(10), R.C. § 4731.22(B)(34), and R.C. § 2921.11.

{¶8} Appellant argues in his assignments of error that the common pleas court erred when it affirmed the board's order. In an appeal from a board order, a reviewing trial court is bound to uphold the order if it is supported by reliable, probative, and substantial

evidence, and is in accordance with law. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993); R.C. 119.12. On questions of law, however, the common pleas court does not exercise discretion and this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339 (1992), paragraph one of the syllabus. Reliable, probative, and substantial evidence has been defined as follows:

> (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St.3d 570, 571 (1992). Upon further appeal to this court, however, our review is more limited than that of the court of common pleas. *Pons* at 621. While it is incumbent on the court of common pleas to examine the evidence, the court of appeals must determine only if the lower court abused its discretion in finding that the board's order was supported by reliable, probative, and substantial evidence and in accordance with law. *Id.* Moreover, when reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. *Pons* at 621-22. "The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [people] equipped with the necessary knowledge and experience pertaining to a particular field." *Farrand v. State Med. Bd.*, 151 Ohio St. 222, 224 (1949). On questions of law, however, our review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine* at paragraph one of the syllabus.

{¶9} As related to the violations in this case, R.C. 4731.22(B) provides, in pertinent part:

> (B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:
>
> * * *
>
> (5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.
>
> As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
>
> (6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;
>
> * * *
>
> (10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;
>
> * * *
>
> (18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the

> American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.
>
> For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.
>
> * * *
>
> (34) Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue.

{¶10} Section 15 of the AOA Code of Ethics provides:

> It is considered sexual misconduct for a physician to have sexual contact with any current patient whom the physician has interviewed and/or upon whom a medical or surgical procedure has been performed.

{¶11} R.C. 2921.11, detailing the offense of perjury, provides:

> (A) No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.
>
> (B) A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial.
>
> (C) It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.
>
> (D) Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.
>
> (E) No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.
>
> (F) Whoever violates this section is guilty of perjury, a felony of the third degree.

{¶12} Appellant argues in his first assignment of error that the common pleas court erred when it affirmed the board's order regarding its finding that his acts or conduct departed from the minimum standard of care in that he engaged in sexual contact with two women despite an ongoing physician-patient relationship, in violation of R.C. 4731.22(B)(6) and (18).

{¶13} With regard to Patient 1, appellant asserts that, during the entire course of their sexual relationship from September 2003 to February 2005, Patient 1 was seeing a different primary-care physician; thus, she was not his current patient. Appellant also

contends that the fact that he treated Patient 1 in 2000 and 2001 did not make her a current or ongoing patient when their sexual relationship began in September 2003, especially since Patient 1 began seeing another physician when she became pregnant, and he does not treat pregnant women. He also contends his treatment of her twice in October 2003, once in November 2003, and twice in February 2005, were merely "episodic" treatments when she was unable to see her primary physician, and these did not establish her as his patient.

{¶14} We find the trial court did not abuse its discretion when it found the board's order was supported by reliable, probative, and substantial evidence and in accordance with law. Dr. Marc L. Carroll provided testimony to support violations with respect to Patient 1. Dr. Carroll opined that appellant and Patient 1 had a physician-patient relationship. Dr. Carroll testified that the first contact with someone who comes to a doctor's office for treatment establishes the physician-patient relationship; thus, a physician-patient relationship was established in 2000 and 2001 when Patient 1 consulted with appellant. Dr. Carroll stated there was no evidence that appellant had discharged Patient 1 from his practice at any time. Although appellant contends that any relationship was severed because Patient 1 became pregnant and began seeing another doctor, and any treatment or prescriptions thereafter were only "episodic" treatment, we disagree. Patient 1 did not receive patient care from appellant for over two years after the initial consultations; however, Dr. Carroll stated there was no evidence that Patient 1 intended to leave appellant's practice permanently. In fact, Patient 1 returned to appellant for treatment on October, 7 and 21, November 24, 2003, February 25 and 27, 2005. He also testified that it was not uncommon for young patients like Patient 1 to see a doctor very

infrequently, even several years between appointments; yet, these individuals would remain the doctor's patients the entire time.

{¶15} Dr. Carroll's testimony also established that appellant engaged in a sexual relationship with a current patient when Patient 1 returned to appellant for treatment on October 7 and 21, November 24, 2003, February 25, and 27, 2005, all of which established physician-patient relationships. Dr. Carroll further stated that, if a doctor prescribes a controlled substance like appellant did during these appointments, a physician-patient relationship is created. Dr. Carroll explained that a physician-patient relationship is created if an examination, treatment, and diagnosis takes place, and, here, appellant ordered a lab test, compiled a diagnosis based on the lab test, and subsequently treated Patient 1 by giving her prescriptions based upon the lab test.

{¶16} Furthermore, despite appellant's argument that Dr. Carroll admitted there is no stated period to determine when a patient is no longer a patient, and what defines a current patient varies from doctor to doctor, the board could still rely upon Dr. Carroll's expert testimony to support the conclusion that appellant's interactions with Patient 1 in this particular case placed her within the definition of a current patient. Dr. Carroll said that, in his own and most others' practices, there is no amount of time that would pass that would automatically classify someone an ex-patient, and a patient remains a patient forever, unless the patient contacts the doctor for a records transfer or the doctor discharges the patient, neither of which occurred here. This testimony adds further support to the board's conclusion that Patient 1 remained a current and ongoing patient of appellant's throughout their sexual relationship. For these reasons, we cannot disagree that appellant and Patient 1 established a physician-patient relationship in 2000 and 2001,

after which appellant began a sexual relationship with her, and continued to have a sexual relationship throughout 2003 to 2005 while still providing her medical services. The fact that Patient 1 saw another physician during this period did nothing to alter the physician-patient relationship established between her and appellant.

{¶17} Appellant also argues that, pursuant to Ohio Adm.Code 4731-27-01(B)(1), a physician providing "episodic" care is not required to provide any notice of termination; thus, when Patient 1 began seeing another doctor after having become pregnant, she ceased being his patient. Ohio Adm.Code 4731-27-01(A) indicates that, except as provided in paragraph (B), in order to terminate a physician-patient relationship, a physician must mail to the patient via regular mail and certified mail a letter stating such. Ohio Adm.Code 4731-27-01(B)(1) provides:

> (B) The requirements of paragraph (A) of this rule do not apply in the following circumstances:
>
> (1) The physician rendered medical service to the person on an episodic basis or in an emergency setting and the physician should not reasonably expect that related medical service will be rendered to the patient in the future.

{¶18} Ohio Adm.Code 4731-27-01(B)(1) does indicate that a doctor is not required to comply with the stated requirements for termination of a physician-patient relationship if the doctor renders service to the person on an episodic basis; however, this section also requires that the physician not reasonably expect that related medical service will be rendered to the patient in the future. Patient 1 saw appellant once in December 2000 and once in January 2001, thereby clearly establishing a physician-patient relationship. Although appellant argues that Patient 1 left his practice for another physician because she was pregnant, and he does not treat pregnant patients, there is nothing in the record to

indicate that she was leaving his practice for all future care, as the above rule requires. In fact, she did return for significant future care, which included tests, lab work, and prescriptions for medications, even though she had another physician she saw regularly.

{¶19} In addition, we note that appellant confuses the issue by referring to the appointments in October 2003, November 2003, and February 2005 as "episodic" care and suggesting no physician-patient relationship is established for episodic care. Insofar as Ohio Adm.Code 4731-27-01(B)(1) is concerned, whether the October 2003, November 2003, and February 2005 interactions constituted episodic care is immaterial to whether Patient 1 was a current patient at the time the sexual relationship began, as well as whether a physician-patient relationship was established by these interactions. Ohio Adm.Code 4731-27-01(B)(1) only provides that the subsection (A) notice-of-termination requirements do not apply to episodic care; the rule does not provide that no physician-patient relationship is established when episodic care has been rendered. Instead, Ohio Adm.Code 4731-27-01 clearly indicates that "[a] physician-patient relationship is established when the physician provides service to a person to address medical needs." For all of the above reasons, we find the trial court did not err when it found reliable, probative, and substantial evidence to support the board's findings relating to Patient 1.

{¶20} With regard to Patient 2, the facts reveal that, on February 16 and 25, and July 1, 2003, appellant prescribed medications to Patient 2, each being 90-day prescriptions with three refills. The medications were originally prescribed by Patient 2's primary physician, but Patient 2 had been unable to see her primary physician to obtain another prescription. It is undisputed that appellant and Patient 2 were having a sexual relationship during this time.

{¶21} Appellant counters that the three times he wrote the prescriptions in February and July 2003 were only "episodic" treatments when Patient 2 was unable to see her normal primary-care physician. Appellant also asserts that he issued the 90-day prescriptions with three refills so that Patient 2's insurance would allow her to receive them for free, and that no current physician-patient relationship was established by his doing so.

{¶22} To the contrary, Dr. Carroll testified that appellant had a physician-patient relationship with Patient 2 because he diagnosed her, prescribed medication for her, and then treated her. He opined that appellant violated Section 15 of the AOA Code of Ethics because he was sexually involved with Patient 2 at the same time he was having a physician-patient relationship. He also stated that, if appellant were merely sustaining Patient 2's prescriptions for another doctor, he would not have written one-year prescriptions.

{¶23} We agree that the record supports the board's finding that appellant was having a sexual relationship with Patient 2 while she was his current patient. Dr. Carroll testified that the first contact with someone for treatment establishes the physician-patient relationship. We agree that appellant's treating Patient 2 three times within six months and prescribing her medications during each interaction established a physician-patient relationship. Furthermore, as explained above, Ohio Adm.Code 4731-27-01(B)(1) does not provide that no physician-patient relationship is established when episodic care is rendered. Rather, Ohio Adm.Code 4731-27-01 provides that "[a] physician-patient relationship is established when the physician provides service to a person to address medical needs." Thus, even if Patient 2 was still seeing another doctor whom Patient 2

considered her primary physician during the course of the sexual relationship, such does not detract from the fact that appellant provided her services to address her medical needs, thereby establishing a physician-patient relationship. *See* Ohio Adm.Code 4731-27-01.

{¶24} As for appellant's contention that he prescribed the medication for such a long period so Patient 2's medication would be covered under her insurance, this allegation does not nullify Dr. Carroll's opinion that if a doctor prescribes a controlled substance, a physician-patient relationship is created. Because appellant could be accountable for any necessary follow-up care or problems that arose from the prescriptions he wrote for Patient 2, regardless of his underlying motivation, appellant cannot discharge his long-term physician-patient responsibilities by claiming Patient 2's other doctor is her primary physician.

{¶25} With regard to both Patients 1 and 2, appellant also argues that Ohio Adm.Code 4731-11-08(B) and (C) permitted him to treat and prescribe medications for Patients 1 and 2, as they were "family member[s]." Ohio Adm.Code 4731-11-08(B) and (C) provide:

> (B) Accepted and prevailing standards of care require that a physician maintain detached professional judgment when utilizing controlled substances in the treatment of family members. A physician shall utilize controlled substances when treating a family member only in an emergency situation which shall be documented in the patient's record.
>
> (C) For purposes of this rule, "family member" means a spouse, parent, child, sibling or other individual in relation to whom a physician's personal or emotional involvement may render that physician unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

{¶26} However, even assuming Patients 1 and 2 constituted "family member[s]" for purposes of this rule, the rule limits the use of controlled substances to "emergency"

situations. The record reveals no emergency situations here. Appellant maintains only that the patients' regular doctors were unavailable for some indeterminate amount of time. Furthermore, prescribing medications for one year goes beyond the period of any emergency. As Dr. Carroll noted, even if some of the situations could be termed "emergency," appellant could have referred the patients to an urgent care center or emergency room instead of prescribing medications to persons with which he was engaging in sexual relations. The record is devoid of evidence that the circumstances here amounted to emergency situations. In addition, despite appellant's claims that Ohio Adm.Code 4731-11-08(B) and (C) sanction his sexual relationships with Patients 1 and 2 because these sections contemplate medical treatment will be given to individuals with whom a physician has a personal or emotional involvement, because these sections pertain solely to the prescribing of controlled substances, we refuse to apply them to the present circumstances to endorse appellant's conduct.

{¶27} We also note that appellant argues it is an important distinction that he did not provide medical care to Patients 1 and 2 and then solicit a sexual relationship with them in connection with that medical care. However, that distinction only partially addresses the harm of having a sexual relationship with a patient. Here, as Dr. Carroll noted in his testimony, the danger is that appellant's care of the women would be compromised by his own self-interest. Furthermore, a danger that arises when a physician has sexual relations with a patient is that the patient may be psychologically vulnerable during times of illness, allowing for manipulation by the physician. Thus, appellant's argument, in this respect, is of little persuasion. For all of these reasons, we find the common pleas court did not abuse its discretion when it found reliable, probative, and

substantial evidence supported the board's determinations with respect to Patient 2. Therefore, appellant's first assignment of error is overruled.

{¶28} Appellant argues in his second assignment of error that the common pleas court erred when it upheld the board's finding that he provided deceptive information during the board investigation by denying that he had sex with "Patient 1," violations of R.C. 4731.22(B)(5), (10), and (34), and R.C. 2921.11. Appellant contends that he did not provide false information to the board when asked if he had sex with "Patient 1" because he did not consider the person identified as Patient 1 to be a "patient." Appellant asserts the investigator's asking whether he had sex with "Patient 1" was a "loaded" question because he would be admitting that the woman was actually a "patient." Appellant claims he was "taking care" with his answers to the board and trying to be as accurate and complete as possible in his responses. Appellant asserts the board created a "big part of the problem," and the problem would have been lessened if the board would have simply chosen a different fictitious name, and the use of "patient" to label the women was an "illogical choice." Appellant also suggests that, if he would have been represented by counsel from the outset, an experienced attorney would have recognized these misperceptions and ambiguities created by the board's questions.

{¶29} This issue centers on credibility. The board's hearing examiner found appellant's claims were not persuasive. The hearing examiner explained that, if appellant truly objected to the characterization of Patient 1 as a "patient," then he should have stated so during the interview, and to simply deny he had sexual contact with Patient 1 based upon the use of "patient" was misleading, dishonest, and not reasonable. The hearing

examiner reasoned that appellant is an intelligent and highly educated person, and he had the responsibility to provide truthful responses to the questions posed to him.

{¶30} We concur with the hearing examiner's reasoning. Appellant's explanation was not reasonable. A reasonable person facing this type of questioning under these circumstances would either explain his semantics-based objection or ask for further clarification of the wording. Although the hearing examiner was in the best position to determine appellant's credibility, as he was able to view appellant during his testimony, from the record we cannot disagree that appellant's rationalization was not credible. Therefore, appellant's second assignment of error is overruled.

{¶31} Accordingly, appellant's first and second assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and CONNOR, JJ., concur.
