

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA STATE MEDICAL BOARD**

In the Matter of)	
)	OAH No. 22-0613-MED
JOHN PAPPENHEIM)	Agency No. 2017-000838, 2019-
)	000532, 2019-000585, 2019-001436
_____)	

DECISION AND ORDER OF REVOCATION

I. Introduction

In 2017, psychiatrist John Pappenheim had a drunk driving arrest that, along with unrelated violations, led to disciplinary proceedings before the Alaska State Medical Board. These culminated in a June 2017 consent agreement with a five-year term of probation. In February 2019, he violated the terms of probation imposed by the consent agreement. Because the terms of the agreement provided that violations would result in a license suspension, the Division of Corporations, Business and Professional Licensing (“Division”) summarily suspended his license to practice medicine in October 2019. Dr. Pappenheim appealed the summary suspension, and after a hearing the Board affirmed suspension of his license “through the probationary term” described in the consent agreement, *i.e.*, through August 3, 2022.¹ At that time, the Division did not seek to impose discipline in connection with his violations of the consent agreement, electing to defer that matter to a later proceeding.

In early June 2022, the Division filed an accusation against Dr. Pappenheim seeking to impose discipline and new conditions on his license should it be reinstated, and he filed a timely notice of defense to the accusation. Dr. Pappenheim also subsequently applied for reinstatement of his license. A hearing was held on November 17-18 and December 13, 2022 before then-Administrative Law Judge Andrew Lebo.

As a result of this history, there have been three distinct elements to Dr. Pappenheim’s case:

- *Consent Agreement/Summary Suspension:* This aspect of the case related solely to completion of discipline for the 2017 drunk driving event, and to safety to practice. Having violated the terms of his probation, Dr. Pappenheim had to complete his probationary term without the right to practice medicine. The original probationary term having been completed, this aspect of the case is beginning to draw to a close.

¹ Dr. Pappenheim apparently filed an appeal of the decision in Superior Court and then withdrew it.

However, because probation is tolled while a license is suspended, if Dr. Pappenheim returns to practice he still has more than two years of probation to serve, and in this proceeding he sought to relax the terms of that probation.

- *Reinstatement:* Having been excluded from practice for a number of years, Dr. Pappenheim needed to show that he is safe to practice today in order to be returned to active licensure. This aspect of the case did not directly relate to any new violations by Dr. Pappenheim since 2017; it was fundamentally about his sobriety and reliability today. The Division conceded that, with certain conditions, Dr. Pappenheim could safely and reliably practice today. Those conditions were a substance abuse assessment and continuing substance abuse therapy. Subject to those conditions—and provided the license was not revoked—reinstatement following completion of probation was not contested.
- *Discipline for Post-2017 Violations:* As will be seen, the Division has established each of the violations noted in the ten counts of its accusation, showing that since 2017 Dr. Pappenheim has committed a series of extraordinary violations. These include pressuring one of his own substance abuse patients to join with him in a scheme to defraud the Board and evade his own substance abuse restrictions, and then lying repeatedly and systematically to the Board’s investigator about what he did. No discipline has ever been imposed for any of these violations (the summary suspension was a safety measure in connection with the agreed discipline for the 2017 violation, not discipline for any later behavior). According to the Board’s precedents, the post-2017 violations support revocation. Revocation moots the first two aspects of this case.

The handling of the discipline portion of the case was complicated by an apparent agreement between the Division and Dr. Pappenheim—not binding on the Board and, indeed, in spite of the Board’s 2020 instructions—that led the Division initially to present this matter in the late 2022 hearing without putting on a meaningful discipline case. In May of 2023 the Board largely adopted a proposed decision by Judge Lebo but remanded the matter with instructions to the Division to present such a case for the ten violations proven. That has now been done.

This decision, which incorporates relevant portions of the May 2023 decision, closes all outstanding aspects of Dr. Pappenheim’s case. Judge Lebo’s retirement caused the final, post-remand portion of the case to be transferred to Administrative Law Judge Kennedy.

II. Procedural History and Facts

The vast majority of the factual allegations and issues pertinent to this matter were fully litigated in Dr. Pappenheim’s previous appeal of the summary suspension, OAH Case No. 19-1016-MED, and were thoroughly addressed in the final decision entered in that case, adopted by the Board on June 15, 2020 (“June 2020 decision”).² Accordingly, in the interests of brevity, this decision will incorporate by reference the findings and conclusions of that decision. As most of the pertinent facts occurred prior to the previous hearing and are discussed in great detail in the June 2020 decision, this decision will primarily present a summary of the key facts, with references to the more detailed discussion in specific portions of the June 2020 decision. Additional factual findings herein are based on testimony and exhibits presented at the hearing held in this case in November and December 2022, as specifically noted.

A. *The 2017 Consent Agreement*

Dr. Pappenheim was first licensed as a physician in 1986, and first licensed in Alaska in 2010. After working for Bartlett Regional Hospital and Alaska Psychiatric Institute, he transitioned to practicing as a sole practitioner psychiatrist. Quite soon after making this transition, Dr. Pappenheim was arrested for driving under the influence of alcohol in early February 2017.³ The Board required him to undergo an evaluation for alcohol use disorder, which resulted in a diagnosis of “severe alcohol use disorder.”⁴ He began attending counseling and AA meetings.⁵

In June 2017, Dr. Pappenheim and the Division entered into a consent agreement addressing the February 2017 DUI charge and two other unrelated licensing violations. The unrelated violations related to failure to report that he had been disciplined by Alaska Psychiatric Institute in 2015 for misrepresenting his hours in connection with billings to the hospital, and for practicing for a period of two months with a lapsed license.⁶ The agreement placed his license on probation for five years; required, in pertinent part, abstinence from alcohol, periodic drug testing (including random urinalysis (UA) tests), psychological therapy, AA meetings, and participation in the Physicians Health Committee (“PHC”); and imposed a civil fine and a public

² At the hearing in this case, the Board’s June 2020 decision and the audio record of the hearing in that case were admitted into evidence, over Dr. Pappenheim’s objection. The June 2020 decision is located at Division’s Ex. 1, pp. 1544-1565.

³ June 2020 Decision at 2.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ Administrative Record, pp. 11-12.

reprimand for the two non-alcohol related licensing violations.⁷ The agreement included a provision that any failure to comply with the terms of the agreement would be grounds for the Division to enforce the agreement through an immediate suspension of his license.⁸ It also included a provision explicitly stating that “[t]he five (5) year probationary period will not be reduced by ... any period in which Respondent’s license is suspended.”⁹ The Board adopted the consent agreement on August 3, 2017.¹⁰ This meant that the term of probation would run until at least August 3, 2022.

B. The Probationary Period and Violations of the Consent Agreement

In a December 2018 license renewal application, Dr. Pappenheim characterized his alcohol use disorder as “in sustained remission.”¹¹ Subsequently, in a February 2019 interview with the Board, he requested a modification to the consent agreement to remove Provision K, the requirement of psychotherapy counseling; the Board voted to grant his request.¹² He would later admit in his testimony during the December 2020 hearing that he secretly began drinking again later that month of February 2019.¹³ Two months after he had started drinking again, Dr. Pappenheim requested that the Board reduce the frequency of his random UAs to no more than fourteen per year.¹⁴

During his probationary period, Dr. Pappenheim was required to undergo random UAs on weekdays, as well as “Soberlink” breathalyzer tests (through the PHC), so he developed a practice of drinking on Friday nights, which would allow the alcohol to exit his system before the first possible test on Mondays. He also checked in for UAs later in the day on Mondays, increasing the chances that he would have a negative UA despite having consumed alcohol on Friday evening.¹⁵ He started doing this in February 2019 at the latest, within a few weeks of persuading the Board to relieve him of the consent agreement’s requirement that he engage in psychotherapy.

On June 1, 2019, however, Dr. Pappenheim had a positive breathalyzer test – caused, he asserted, by a “menthol cough drop.” As a result the PHC directed him to take a

⁷ *Id.*
⁸ *Id.* (quoting Provision B of the agreement).
⁹ Division’s Ex. 2, pp. 40-41 (Provision A of the agreement).
¹⁰ June 2020 Decision at. 3.
¹¹ *Id.* at 4.
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.*
¹⁵ *Id.*

Phosphatidylethanol (“PEth”) test, which detects alcohol use over the previous three to four weeks, as compared to the two to three day period covered by the combination of UAs and Soberlink testing. He knew that the PEth test would show that he had been drinking over the past three to four weeks and that this would confirm that he was in violation of the consent agreement, which would probably lead to suspension of his medical license. Panicked about this possibility, Dr. Pappenheim made a series of highly unethical choices.¹⁶

Dr. Pappenheim contacted one of his patients, T.P., by telephone on June 6, 2019. Dr. Pappenheim explained that he needed to take a drug test that he knew he could not pass, that if he failed the test his medical license would be suspended, and he asked T.P. to “do him a favor” and take the test for him. T.P. himself was a recovering alcoholic and had an opiate use disorder, and Dr. Pappenheim had been treating him for about a year and prescribing him suboxone. Dr. Pappenheim told T.P. that if his medical license were suspended, he would be unable to continue prescribing suboxone to T.P.¹⁷

After additional conversations over the next few days, T.P. agreed to meet Dr. Pappenheim at Bartlett Regional Hospital (BRH) to take the PEth test. On June 10, 2019 Dr. Pappenheim went to the hospital, registered for the test, was given an identification wristband, and went into the bathroom and cut it off. He met T.P. in a hallway, affixed the wristband to his wrist and told him his birthdate. While Dr. Pappenheim waited, T.P. went to the hospital’s lab, then came out 20 minutes later and told him he had taken the test. They both then left the hospital. The following day, Dr. Pappenheim assisted T.P. with a problem with his suboxone prescription.¹⁸

At some point later in the day on June 10, 2019, T.P. contacted the Division. In a recorded interview with Investigator Billy Homestead, T.P. reported his contacts and interactions with Dr. Pappenheim, including the scheme proposed by Dr. Pappenheim to have T.P. take the drug test for him (but leaving out the fact that he had met Dr. Pappenheim at the hospital earlier that day and had at least pretended to take the test for him). Investigator Homestead asked T.P. to submit a written complaint, and then conducted a recorded phone call with Dr. Pappenheim to

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5-6. Dr. Pappenheim also told T.P. that suspension of his license would hurt his other patients and that T.P. would be helping others who depended on him for medical care by taking the test for him. *Id.*

¹⁸ *Id.* at 6-7.

remind him of a scheduled UA test. Dr. Pappenheim informed Homestead that he would be sending a letter to the Board seeking a reduction in frequency of his UAs.¹⁹

Mr. Homestead then contacted a PHC representative, Dr. MaryAnn Foland. She informed him of Dr. Pappenheim's recent positive Soberlink breathalyzer test (which he blamed on a menthol cough drop) and of the PHC's requirement that he complete the PEth test at BRH.²⁰

Mr. Homestead then contacted BRH to look into the BRH lab intake procedures, setting off a series of inquiries that are described in great detail on page 8 of the Board's June 2020 decision. The net result was that BRH had no record of a urine sample being collected from T.P. (or Dr. Pappenheim) on the morning of June 10, 2019. Dr. Pappenheim eventually submitted a urine sample a few days later, and the PEth test showed the alcohol use he had been attempting to hide.²¹

The Division received T.P.'s written complaint on June 19, 2019. On that date Investigator Homestead contacted Dr. Pappenheim, who denied consuming alcohol at all while subject to the consent agreement. When he was directly asked whether he had asked a patient to take a drug test for him, he denied having done so. But when confronted with the possible existence of credible evidence to the contrary, Dr. Pappenheim admitted having consumed alcohol and having solicited someone – not a patient, but someone he knew from AA meetings – to take the PEth test for him.²²

After his positive PEth test result, a PHC representative strongly advised Dr. Pappenheim to seek an evaluation from the Center for Professional Recovery (CPR), an addiction center that works closely with the PHC and specializes in the treatment of licensed professionals. Although initially resistant, he eventually participated in a three-day evaluation with CPR in early July 2019. During the CPR evaluation interview, Dr. Pappenheim continued to deny having relapsed, even when confronted with the fact of his positive PEth test. He also engaged in other deceptive behavior during the evaluation process, detailed on pages 9-10 of the Board's June 2020 decision. The CPR evaluation team found Dr. Pappenheim to be "in significant denial," and recommended that he promptly enter a residential substance abuse treatment program.²³

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.* at 8.

²² *Id.* at 9.

²³ *Id.* at 9-10.

Notwithstanding the evaluation results, Dr. Pappenheim continued to attempt to deceive the Board. He admitted in a July 15, 2019 quarterly report that he had not “complied with every term and condition of [his] probation,” but he explained that “[i]nadvertent ingestion and exposure (through skin absorption) of ETOH led to a positive PEth test, reported to AK State Medical Board by PHC.” He at least admitted that due to the positive PEth test, he had “agreed to enter treatment.”²⁴

Dr. Pappenheim entered the CPR residential treatment program in August 2019. Details regarding this intensive program and Dr. Pappenheim’s participation and treatment are found at pages 10-11 of the Board’s June 2020 decision. It is noted that CPR staff found that during the course of his treatment, Dr. Pappenheim’s “biggest barrier was honesty;” however, he eventually “readily admitted his drinking and unethical behaviors.”²⁵

Dr. Pappenheim was discharged from the CPR program after a 30-day stay. CPR’s discharge summary described him as having been “forthright and honest about dynamics of his alcohol use, open and engaged throughout the treatment process, and [having] made significant progress.” The summary included a lengthy list of continuing care recommendations. The summary concluded that Dr. Pappenheim was “safe to return to the practice of medicine without other restrictions, as long as he complies with all of the above aftercare recommendations.”²⁶

In the meantime, Division Investigator Homestead had been unable to conclude his interview with Dr. Pappenheim and his counsel for several months, but he was finally able to conduct the interview on September 16, 2019, with Dr. Pappenheim accompanied by his attorney. Dr. Pappenheim admitted in the interview that he had been violating the consent agreement by drinking wine on Friday nights. However, when he was directly questioned about any further violations, and specifically about falsifying test results, while he admitted to having asked a patient to take a test for him, he minimized his own involvement by falsely and deceptively claiming that this occurred in the context of an offer by an AA acquaintance. Dr. Pappenheim said that he was distressed upon learning he would need to take a test that he knew he would fail; that he expressed his concern at an AA meeting; an attendee “who also happened to be a patient” had approached him and volunteered to take the test for him; and he had “regrettably agreed to have him do that.”²⁷ He repeated this false story to Investigator

²⁴ *Id.* at 10.

²⁵ *Id.*

²⁶ June 2020 Decision, 11.

²⁷ *Id.*

Homestead several times, *after* having completed a month of inpatient substance abuse treatment at CPR.²⁸

During the interview with Investigator Homestead, Dr. Pappenheim denied having solicited T.P. to take the test, denied having offered him any benefit for taking the test, and denied having told T.P. that taking the test was in his best interest over having his doctor lose his license.²⁹ While he did acknowledge having committed a boundary violation, he continued to be dishonest about his role in these events and, consequently, the extent of the boundary violation.³⁰

Dr. Pappenheim followed the interview with an email, sent four days later, expressing shame and regret for his “deceptive and dishonest behavior,” expressing his optimism at having completed the “transformative” CPR program, and describing his recovery program to include “accountability through a monitoring schedule that leaves no room for deceit.” He did not, however, acknowledge having lied to investigators only days earlier about the circumstances under which he solicited his patient to take a drug test for him.³¹

C. Suspension of Dr. Pappenheim’s License and Subsequent Hearing

Pursuant to paragraph B of the consent agreement, the Division sent Dr. Pappenheim a letter on October 24, 2019 summarily suspending his license to practice medicine. Noting that he had violated the consent agreement both by consuming alcohol and by soliciting a patient to complete the PEth test, the letter further provided:

Prior to petitioning for reinstatement of your license, you must prove to the Board that you are currently in compliance with all conditions imposed by your 2017-000838 Consent Agreement and other statutes and regulations governed by the Board, and fit to practice in a manner consistent with public safety. This does not mean that your Alaska license will automatically be reinstated, as the Board will consider your violation of your 2017-000838 Consent Agreement and other statutes and regulations governed by the Board and determine the appropriate action if any at that time.³²

Dr. Pappenheim requested a hearing regarding the suspension of his license. The issues to be decided were: (1) Did Dr. Pappenheim violate the consent agreement? (2) If so, was summary suspension warranted? (3) If so, what terms of suspension were appropriate? Both then and subsequently (until the June 2022 filing of the Accusation for this proceeding), the Division declined to expand the case to include direct disciplinary sanctions for Dr.

²⁸ *Id.* at 11-12.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 12-13.

³² *Id.* at 13.

Pappenheim’s alleged violations of statutes, Board regulations, or Board orders, electing to leave those matters to another proceeding.

The summary suspension hearing was held on three days in December 2019 and was conducted by Administrative Law Judge Cheryl Mandala on behalf of the Board. Dr. Pappenheim was represented by counsel and testified in his own defense. When confronted about having lied to investigators even after completing treatment – specifically, about the “AA meeting attendee” cover story he had invented – he insisted that he had stuck to this story with Division investigators because he believed it was important to “maintain fidelity to what [he] understood the patient and [he] had agreed to.”³³ While he appeared earnest in his testimony regarding his concern for his patients, his desire to return to practice, and his belief that he was ready to do so, he also continued to understate the impact of his ethical violations on his patients. When asked how his patients were harmed by his violations of the consent agreement, the first harm he was able to identify was that, because his license was suspended, he could no longer treat them. He later acknowledged the particular harm he caused to T.P. by his improper request to take the PEth test for him.³⁴

The Board’s June 2020 decision specifically noted that Dr. Pappenheim continued to display distorted thinking by assessing as equally damaging the choices of (a) getting caught drinking (through the PEth test) and having his license suspended, and (b) coercing a psychiatric/substance abuse patient to impersonate him for a drug test. The Board’s decision further commented that Dr. Pappenheim did not appear to have “truly come to grips with the enormity of the boundary violation he committed, or the profound impropriety of lying repeatedly to Division investigators—and thus indirectly to the Medical Board—both before and after he was caught, and even after completing treatment.”³⁵

At the December 2019 hearing, Dr. Pappenheim presented expert testimony from Dr. Gregory Skipper, the Medical Director at CPR. Dr. Skipper’s testimony is discussed in detail at page 15 of the Board’s June 2020 decision. What is important to note is that he emphasized the CPR discharge summary’s conclusion that Dr. Pappenheim was clinically fit to return to practice was distinct from finding him “fit to practice, writ large.” The June 2020 decision found that Dr. Skipper “took pains to not opine that the suspension of Dr. Pappenheim’s license should be

³³ *Id.* at 14.

³⁴ *Id.*

³⁵ *Id.*

lifted,” and he noted that sometimes a sanction is needed to “impress upon a practitioner the seriousness of their misconduct.”³⁶

The Division presented expert testimony at the December 2019 hearing from Dr. Aryeh Levenson, an Anchorage-based psychiatrist who is board certified in general, child, and adolescent psychiatry. Dr. Levenson testified about the special fiduciary relationship between doctors and patients, and the ethical duties that come with that relationship, including to do no harm, to act in the patient’s best interests, and to avoid conflicts of interest, and he described trust as “the glue that holds the patient relationship together.” In this context, he described Dr. Pappenheim’s conduct with his patient T.P. as a gross violation of the standard of care, “a clear boundary crossing,” and “an egregious violation.”³⁷ Dr. Levenson explained that the ethical boundaries of the profession preclude doctors from asking favors of their patients in general, let alone illegal favors, and he was particularly concerned with the implications of asking this “favor” of a suboxone patient. These concerns include the vulnerability of suboxone patients, the inherently coercive and exploitative nature of the request, and the idea of asking a patient in a 12-step program to violate one of that program’s most important principles – namely, honesty. This behavior by Dr. Pappenheim, he concluded, wholly “undermines the sanctity of the patient relationship.”³⁸

Although Dr. Levenson acknowledged that the CPR records showed some positive changes by Dr. Pappenheim, he expressed concerns about what he saw as a history of deceit by Dr. Pappenheim, including manipulating the timing of his UA and Soberlink testing so tests would be negative; trying to get the Board to reduce frequency of UAs; and lying to investigators even after treatment, as well as trying to manipulate the PEth test to achieve a negative result. Dr. Levenson expressed grave concern about the boundary violation committed in this case, with its potentially devastating effect on Dr. Pappenheim’s patient, T.P.

D. The Board’s June 2020 Decision

On June 15, 2020, the Board issued a decision finding that Dr. Pappenheim had violated the 2017 consent agreement (he had expressly admitted as much), and that he did so both by drinking alcohol and by committing multiple violations of the statutes and regulations governing the practice of medicine.³⁹ As to the latter, the Board found that Dr. Pappenheim, by soliciting

³⁶ *Id.* at 15.

³⁷ *Id.* at 16.

³⁸ *Id.*

³⁹ *Id.* at 18.

T.P. to help him deceive the BRH lab for purposes of deceiving the PHC and the Board, violated the principles of professionalism and honesty of the AMA Code of Medical Ethics (which have been adopted by Board regulation at 12 AAC 40.955(a) and thus have the force of law).⁴⁰ The Board found that his dishonesty with investigators, even after completing treatment, violated the same principles. The Board also found that Dr. Pappenheim committed additional violations of the AMA Code of Medical Ethics when he failed to protect the rights and privacy of his patient T.P. “by asking T.P. to engage in this fraud with him,” and by doing so he failed to regard his responsibility to the patient as paramount.⁴¹ The Board held that Dr. Pappenheim violated AS 08.64.326(a)(9) by soliciting T.P. to engage in fraud, and that he violated the same statute by lying to and failing to cooperate with investigations by the Board and its representative (Investigator Homestead). The Board’s decision also found that Dr. Pappenheim’s “continuing attempts to justify this dishonesty at hearing were very troubling.”⁴²

Lastly, the Board’s decision found that Dr. Pappenheim violated the consent agreement’s requirement that he participate in the physician’s health committee, in that the agreement included the implicit requirement that he participate in good faith. Deceiving the PHC by consuming alcohol, manipulating his testing schedule, and attempting to alter the outcome of the PEth test was a violation of that agreement.⁴³

The Board found Dr. Pappenheim’s behavior and violations of the consent agreement to be egregious and held that these violations of the consent agreement clearly justified the termination of his probationary right to practice and suspension of his license by the terms of that agreement. As to how long the suspension imposed by the consent agreement should continue,

⁴⁰ At page 18, the June 2020 decision quoted these pertinent sections of the AMA’s Principles of Medical Ethics:

II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.

...

IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.

...

VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.

(Available on the AMA’s website at <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/principles-of-medical-ethics.pdf>) (last accessed March 8, 2023).) The Board has adopted the AMA Code of Medical Ethics as the code applicable to physicians in Alaska. 12 AAC 40.955(a).

⁴¹ June 2020 Decision, pp. 18-19.

⁴² *Id.* at p. 19.

⁴³ *Id.*

the Board noted that not only had Dr. Pappenheim repeatedly violated the consent agreement “through a calculated scheme to deceive the testing requirements, but, having done so, he then attempted to cover it up with a further violation that was far more egregious than the initial violation.”⁴⁴ The Board also noted that Dr. Pappenheim had failed to acknowledge his continued duplicity with investigators even after he had completed treatment at CPR. The Board found Dr. Pappenheim’s drinking in violation of the agreement to be “by far the least concerning part of this story.” Focusing on his abuse of his patient’s trust, his multiple ethical violations, his violations of the consent agreement numbering at least a dozen, and the fact that he continued his violations even after treatment, the Board maintained the suspension of Dr. Pappenheim’s license *through the probationary term* set by the 2017 consent agreement.⁴⁵ Importantly, this was not a disciplinary suspension, but simply an imposition of the agreed consequence for a violation of probation for the remainder of the probationary term.

At the time his license was suspended, Dr. Pappenheim’s license had been on probation for two years, two months, and 21 days. This meant that at that point in time, there were two years, nine months, and 10 days of probation remaining to be served pursuant to the 2017 consent agreement.⁴⁶

The Board’s June 2020 decision concluded with the following language: “The Board believes [that] Dr. Pappenheim’s actions should be evaluated for discipline. The Division is directed to review the case for disciplinary sanctions, and, if warranted, to bring an Accusation as permitted by AS [08.64.326].”⁴⁷

E. Subsequent Events and the November – December 2022 Hearing

As mentioned above, Dr. Pappenheim filed an appeal of the Board’s decision in the Superior Court, but withdrew his appeal. He then served out his suspension and, as further discussed below, continued to comply with the terms of his probation under the consent agreement. In early summer of 2022, anticipating the end of the term of suspension of his license under the Board’s July 2020 decision, Dr. Pappenheim contacted the Division to inquire about the potential reinstatement of his license.⁴⁸

⁴⁴ *Id.* at p. 20.

⁴⁵ *Id.* at p. 21.

⁴⁶ *See* Amended Accusation at p. 7. Dr. Pappenheim did not dispute this calculation; he argued instead that he should not have to serve any further probation at all.

⁴⁷ June 2020 Decision, p. 21.

⁴⁸ Pappenheim testimony.

The Division appeared to have evaluated Dr. Pappenheim’s case and come to the conclusion that his license could be reinstated if Dr. Pappenheim could prove his ability to practice with reasonable skill and safety,⁴⁹ and if two additional conditions were imposed on the license, together with a suspended fine to give him a financial incentive for compliance. The Division indicated that it believed that the following new measures would help ensure that Dr. Pappenheim would practice with reasonable skill and safety: a substance abuse assessment conducted by an expert approved by the Board (to be obtained by Dr. Pappenheim at his expense); substance abuse counseling by a licensed professional approved by the Board; and a \$5,000 fine (the full amount of which would be suspended). Although the Division has characterized these three measures as conditions, the latter suspended fine is in fact a measure of discipline. In any event, as a matter of procedure, a hearing would be required under AS 44.62.360 in order to impose conditions and discipline on the license. According to subsequent explanations, the Division’s subsequent filing of its Accusation was meant to be a vehicle to add these conditions.

The Division filed the ten-count Accusation against Dr. Pappenheim on June 8, 2022, based largely on the findings made by the Board in its June 2020 decision.⁵⁰ Although it was explained—and subsequently litigated—as merely a vehicle to add conditions to the license, it contained a prayer for relief seeking discipline up to the level of revocation.⁵¹ Dr. Pappenheim filed a notice of defense to the accusation, leading to the instant case.

The following month, Dr. Pappenheim submitted a formal request for reinstatement of his license. In his email conveying that request, he characterized the Division’s accusation as “based entirely upon events that you have already addressed” in the June 2020 decision. He stated “[f]urther action upon events that you have already dealt with is unwarranted, legally indefensible and not in the public interest.”⁵²

The hearing initiated by Dr. Pappenheim’s notice of defense was held on November 17-18 and December 13, 2022. The Division was represented by counsel and presented sworn testimony from Dr. Mary Ann Foland, Medical Director of the PHC; Division Investigator William Homestead; Division Investigator Karina Medina; and PHC Coordinator Pam Ventgen.

⁴⁹ AS 08.64.331(d).

⁵⁰ As further discussed below, the Division filed an Amended Accusation on November 16, 2022, which clarified that each of its 10 counts are based on the record and findings in the Board’s June 2020 decision.

⁵¹ June 8, 2022 Accusation at p. 10; November 16, 2022 Amended Accusation at p. 15.

⁵² Division Ex. 2 at p. 244.

Dr. Pappenheim was represented by counsel and testified under oath on his own behalf. The following exhibits were admitted into evidence: Dr. Pappenheim's Exhibits A through J; selected portions of the Division's Exhibit 1, as specified on the Division's Updated Exhibit List of November 30, 2022,⁵³ and the Division's Exhibits 2 through 5.

F. The Amended Accusation

The Division's November 16, 2022 Amended Accusation summarized the facts and proceedings discussed above, and then set forth the following ten counts, describing the basis of each count as established by the Board's June 2020 decision:

Count 1: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(2) (engaging in deceit, fraud, or intentional misrepresentation) because he solicited a patient to submit a false blood test on his behalf in order to deceive the PHC and Board about his alcohol use.

Count 2: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(7) (failure to comply with AS 08.64, a regulation adopted under that chapter, or an order of the Board) because he violated his 2017 consent agreement.

Count 3: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(8)(B) (addiction to, severe dependency on, or habitual use of alcohol or other drugs that impairs the licensee's ability to practice safely) because his addiction to alcohol so impaired his judgment that he pursued a course of deceitful and abusive conduct and became unfit to practice safely.

Count 4: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(9) (engaging in unprofessional conduct, defined under 12 AAC 40.967(5) to include committing or attempting to commit fraud or deception, or attempting to subvert the process relating to an examination required under AS 08.64) because he attempted to submit another person's sample as his own in order to avoid detection from alcohol testing.

Count 5: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(9) (engaging in unprofessional conduct, defined under 12 AAC 40.967(14) to include a licensee's harassing, disruptive, or abusive behavior directed at staff or a patient) because he solicited his patient to take a drug test on his behalf, using his knowledge of the patient's vulnerabilities gained in the context of the doctor-patient relationship to pressure the patient; such harassing, disruptive, or abusive behavior constituted unprofessional conduct.

Count 6: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(9) (engaging in unprofessional conduct, defined under 12 AAC 40.967(18)(A) to include a licensee's use of alcohol or other drugs to the extent that it interferes with professional practice functions of the licensee or endangers the safety of patients) because in order to pursue his abuse of alcohol, Dr. Pappenheim

⁵³ These portions of the Division's Exhibit 1 include the Board's June 2020 decision, the audio record of the December 2019 hearing, and audio records of Investigator Homestead's interviews of T.P. and Dr. Pappenheim.

manipulated professional regulators and subjugated the wellbeing of his psychiatry patients to his own ends.

Count 7: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(9) (engaging in unprofessional conduct, defined under 12 AAC 40.967(23) to include violating provisions of any disciplinary sanction issued under AS 08.64) because he violated his 2017 consent agreement.

Count 8: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(11) (violating any code of ethics adopted by Board regulation – the AMA’s Code of Medical Ethics is adopted by 12 AAC 40.955(a) and applies to all physicians in Alaska) because he violated Principle II of the AMA Code when he represented that he was in compliance with the Consent Agreement though he continued to drink, he attempted to submit a fraudulent biological sample, and he misstated facts.

Count 9: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(11) (violating any code of ethics adopted by Board regulation – the AMA’s Code of Medical Ethics is adopted by 12 AAC 40.955(a) and applies to all physicians in Alaska) because he violated Principle IV of the AMA Code by using his patient’s confidential information to cover up his own fraud.

Count 10: Dr. Pappenheim may be sanctioned under AS 08.64.326(a)(11) (violating any code of ethics adopted by Board regulation – the AMA’s Code of Medical Ethics is adopted by 12 AAC 40.955(a) and applies to all physicians in Alaska) because he violated Principle VII of the AMA Code by failing to “regard responsibility to his patient as paramount” when he exploited his patient’s vulnerabilities to induce the patient to participate in a scheme to perpetrate a fraud on the Board.^{54]}

The Amended Accusation concluded by requesting that, if Dr. Pappenheim’s license is reinstated, it be subject to the terms of the 2017 consent agreement and to the three new measures discussed above, and further that the Board “may impose other discipline to include revocation, continued suspension or other sanctions ... as deemed just and proper.”⁵⁵

G. Additional Facts Found at the November – December 2022 Hearing

The vast majority of the relevant facts in this case were fully litigated and set out in detail in the Board’s June 2020 decision, as discussed above. The limited additional facts developed at the November/December 2022 hearing are as follows.

All of the evidence presented at the November/December 2022 hearing in this matter indicates that Dr. Pappenheim has not had a drink of alcohol since just prior to his June 2019

⁵⁴ November 16, 2022 Amended Accusation at pp. 10-14. As previously noted, these ten counts were also set forth in the Division’s original June 8, 2022 Accusation; the Amended Accusation clarifies that the ten counts are based on the Board’s June 2020 decision.

⁵⁵ November 16, 2022 Amended Accusation at p. 15.

positive breath test. In his testimony, Dr. Pappenheim acknowledged his diagnosis of “alcohol use disorder-severe.” He provided credible testimony regarding his abstinence from drinking, marking his “date of sobriety” as June 1, 2019. Dr. Pappenheim’s testimony on this specific issue has been deemed more likely credible than not credible, notwithstanding his history of deception with the Division and the Board, because (a) there is no evidence contradicting it, and (b) it was corroborated by his Soberlink and random UA test results over the three years of his suspension – he has had no positive tests. While Dr. Pappenheim testified—also credibly—that in 2019 he figured out how to evade random UAs and therefore they are “not . . . effective” for him, the lack of positive tests is evidence of truthfulness on the issue of sobriety.

Since June 2019, Dr. Pappenheim has regularly attended AA meetings, and has completed the steps of a 12-step program with a sponsor. He testified about the growth he has experienced through his participation in AA, and he explicitly stated that he “has personally committed to abstinence from using alcohol or any other psychoactive substances.”

The Division’s witnesses confirmed that since June 2019, Dr. Pappenheim has not had a positive breath test, UA result, or PEth result, and to the best of their knowledge, he has been in compliance with the substance-abuse-related terms and conditions of the consent agreement. The Division’s witnesses also noted, however, that Dr. Pappenheim has not been participating in therapy since the Board released him from that condition of the consent agreement in February 2019, just a few weeks before he resumed drinking.

When asked about his relapse, Dr. Pappenheim testified that he could not put into words what prompted him in February 2019 to start drinking again by assiduously evading the monitoring in place under the consent agreement, after being sober for a year and a half. He simply attributed it to being an alcoholic: “I did it because that’s the nature of the illness.”

Dr. Pappenheim was also questioned regarding T.P. He acknowledged that T.P. was a patient with an opiate addiction who was taking the medication suboxone or buprenorphine, and that a person taking this medication faces the specter of withdrawal if their supply is curtailed. On the subject of making amends to T.P. for the events discussed in the Board’s June 2020 decision, Dr. Pappenheim noted that he can’t see T.P. professionally while his license is suspended. Dr. Pappenheim agreed that he probably owes T.P. an apology or some form of amends, but added that “it’s a complicated situation.”

H. Limitation on Board's Freedom of Action Caused by Division's Presentation

Although the Division's Amended Accusation had nominally sought discipline up to revocation, the Division subsequently created circumstances under which there was, effectively, a much lower ceiling on the discipline the Board could impose based solely on the 2022 hearing. The manner in which these circumstances arose was not made entirely clear on the record. However, it is clear that the parties engaged in mediation in September 2022 and failed to reach a resolution of the case. Subsequently, the Division stated in a written pre-hearing filing, under the heading "Post-Mediation Position," the following:

The Division agreed to recommend to the Board that Dr. Pappenheim's license be reinstated subject to the terms of the 2017 Consent Agreement – with 2 years, 9 months, and 10 days remaining on probation – with the following additional conditions: 1) that he obtain a substance abuse assessment within 90 days to confirm that he is in sustained remission from alcohol dependency, 2) that he satisfy the requirement of provision K [psychotherapy] with a substance abuse counselor approved by the board, with 3) a civil fine of \$5,000 with \$5,000 suspended.^[56]

Note that this statement by the Division refers to the suspended fine as one of three proposed conditions on the license, rather than as proposed discipline. This pattern was consistently followed by the Division throughout the hearing – its representatives and counsel never referred to the proposed fine as "discipline." In any event, by taking this position prior to the hearing, the Division effectively set a small fine as the maximum discipline that the Board may impose. The Division did this without explaining the basis for \$5,000 being the recommended amount of the fine, and without addressing AS 08.64.331(a)(7), under which the Board is authorized to impose fines of up to \$25,000 per violation for each of the ten violations in the Amended Accusation.

By taking this approach, the Division also limited the type of discipline that could be imposed. This is because Dr. Pappenheim and his counsel were led by the Division to believe that (a) the upper limit on the Division's discipline case was a \$5,000 suspended fine, and (b) no other possible discipline was at issue in the hearing. They prepared for the hearing and litigated the case based on that understanding, and Dr. Pappenheim would have been prejudiced if after litigating in reliance on the Division's stated position, a much more severe level of discipline were to be imposed by the Board. Yet, under the precedents of the Board and other professional licensing boards, Dr. Pappenheim's post-2017 violations could support revocation.

⁵⁶ Division's October 7, 2022 "Clarification of Procedural Posture, Notice of Intent to Rely on Prior Record, Statement of Position Post-Mediation, Response to Respondent's Omnibus Filing, and Scope of Hearing," p. 6.

I. Board's May 19, 2023 Decision

Following the second hearing, the Board on May 19, 2023 adopted a “Decision and Order of Remand.” The Board found all ten counts of the Accusation to have been proven. The Board addressed Dr. Pappenheim’s contention that the terms of his probation should be relaxed and addressed the parties’ contentions about reinstatement with conditions (a safety-to-practice issue), but noted that these aspects of the case could be mooted once discipline was evaluated.

Regarding discipline, the Board found:

[T]he Board cannot now impose discipline that was wholly unaddressed in the case that was put on at hearing. The Division’s approach in this case effectively hamstrung the Board’s ability to impose appropriate discipline for Dr. Pappenheim’s coercion of a substance abuse patient to participate in a fraud regarding the doctor’s substance abuse testing, and his serial dishonesty to the Board regarding both his substance abuse and the fraudulent scheme to evade Board monitoring. The Board finds that there is a substantial probability that the violations proven by the Division in this case warrant more discipline than a suspended \$5,000 fine. In order to give Dr. Pappenheim a reasonable opportunity to respond, as required by basic principles of due process, to this potential, the Board remands the case back to the Office of Administrative Hearings with instructions to conduct a prompt proceeding solely addressing the appropriate discipline for the ten post-2017 violations that have been proven in this case.⁵⁷

The Board asked the “the Office of Administrative Hearings to conduct a proceeding to address the appropriate discipline to be imposed, up to and including license revocation, for Dr. Pappenheim’s ten violations that have been proven in this case,” and directed that a proposed decision on discipline be returned to the Board within 60 days.

J. Proceeding on Remand

Because of unforeseen commitments of the attorneys for both sides, it was not possible to complete the disciplinary remand proceeding in 60 days. The two sides agreed on a simple submission of one brief from each side. The final brief was submitted on August 25, 2023.

III. Establishment of Violations and Authority to Discipline

A. Burden of Proof

Both sides agree that the Division has the burden of proof regarding establishment of violations and imposition of discipline.

The standard of proof on each issue in this matter is the preponderance of the evidence.

⁵⁷ Board’s Decision & Order of Remand at 33. In connection with this discussion, the Decision & Order of Remand cited *In re Meyers*, OAH No. 12-0042-MED (Med. Bd. 2013) (discussing at p. 16 the possibility of a remand to examine discipline options other than those addressed at hearing).

B. Standards of Professional Licensing

It is well established that a professional license is a valuable property right protected by the constitutional requirements of due process of law.⁵⁸ However, the United States Supreme Court has also “recognize[d] that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.”⁵⁹

Courts in Alaska and elsewhere have recognized that “[f]itness to practice a regulated profession demands more than the professional’s capacity to perfunctorily complete required activities.”⁶⁰ Professional licensing boards, including this one, have adopted codes of ethics recognizing the profession’s special position of trust within society, and acknowledging the heightened ethical obligations that accompany this trust.⁶¹

Decisions applying professional licensing statutes often reference the need for professions to ensure “reliability and honesty” of their members.⁶² Professional licensing schemes typically include measures of honesty and forthrightness among the requirements for licensure, as well as including dishonest and morally turpitudinous conduct amongst the bases for disciplinary sanctions.

C. The Board’s Disciplinary Authority

Alaska Statute 08.64.326 sets forth the bases upon which the Board may exercise the disciplinary powers provided by Alaska’s centralized licensing statutes at AS 08.01.075. Of relevance to the facts of this case, the Board may impose disciplinary sanctions if it finds, after a hearing, that the physician has engaged in any of the following: “(2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;... (7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;... (8) has demonstrated ... (B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee’s ability to practice safely; ... (9) engaged in unprofessional conduct ... in connection with the delivery of professional services

⁵⁸ *Dent v. West Virginia*, 219 U.S. 114, 121 (1889); *Herscher v. State*, 568 P.2d 996, 1002-1003 (Alaska 1977).

⁵⁹ *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975).

⁶⁰ *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1093 (Alaska 2003).

⁶¹ As previously mentioned, this Board has adopted the American Medical Association’s Code of Medical Ethics as the ethical standard applicable to all physicians in the state. 12 AAC 40.955(a).

⁶² *Wendte*, 70 P.3d at 1093.

to patients; ... (11) has violated any code of ethics adopted by regulation by the board... .”⁶³ If violations of the foregoing sections are found, the Board may exercise its discretionary authority to impose sanctions. Under AS 08.36.315, the Board may consider the nature and circumstances of the conduct at issue, community reaction to conduct, the licensee’s experience and professional record, any other relevant information, and its actions in comparable prior cases.⁶⁴

D. The Division Established That Dr. Pappenheim May Be Sanctioned Under Each of the Ten Counts of the Amended Accusation

Notwithstanding the Board’s directive in its June 2020 decision, *no discipline* has been imposed on Dr. Pappenheim for his actions that led to that decision. He was simply suspended summarily as a result of his violations of the 2017 consent agreement. As much as Dr. Pappenheim has tried to characterize that summary suspension as discipline for his more recent violations, it was not. It was the natural result of violating a consent agreement that explicitly provided for that outcome as part of the 2017 discipline, coupled with an exercise of the Board’s authority to protect patients. The Board should bear this in mind as it evaluates the measures sought by the Division and Dr. Pappenheim’s arguments regarding those measures.

The Division met its burden of substantiating Dr. Pappenheim’s violations alleged in each of the ten counts of the Amended Accusation, through the record established in this case, including the Board’s findings in the June 2020 decision, as discussed above and in the May 2023 decision.

IV. Appropriate Discipline

The legislature has directed that the Board apply disciplinary sanctions consistently, and explain significant departures from prior decisions in factually comparable cases that the same Board has issued.⁶⁵ Where helpful, Alaska professional licensing boards frequently looks to decisions of other licensing boards for guidance.⁶⁶

On remand, Dr. Pappenheim has argued that, with respect to his violation of his 2017 consent agreement by starting to drink again, he has been amply punished through the revocation of probationary status and the resulting suspension of his license until the end of the probationary term. He notes that addiction issues are normally addressed through probation and remedial measures. With respect to his boundary violations with patient T.P.—entangling T.P., a

⁶³ AS 08.64.326.

⁶⁴ *Wendte*, 70 P.3d at 1095 n.33; *Matter of Gerlay*, OAH No. 05-0321-MED (Med. Bd. 2008).

⁶⁵ AS 08.64.331(f).

⁶⁶ *See, e.g., In re Lookhart*, OAH No. 17-0607-DEN (Board of Dental Examiners 2020), at 26-29.

substance abuse patient, in a scheme to defraud the Medical Board regarding substance abuse—he again argues that the October 2019 revocation of his probation was punishment enough. With respect to his repeated deception of the Board’s investigator, he contends that the untrue statements are outweighed by the large number of statements he made that were true and by his subsequent good conduct. He has not attempted to put his conduct into the context of discipline applied to other practitioners.⁶⁷ He emphasizes, however, that his proven misconduct was several years ago, with no new violations since the 2019 summary suspension. He also argues that the principle of double jeopardy precludes the Board from revisiting conduct that was explored in the first hearing.

Double jeopardy is a constitutional limitation that applies to criminal prosecutions and, very occasionally, to nominally civil proceedings ancillary to criminal prosecutions.⁶⁸ It has no role in a case such as this one, where no criminal case has occurred at all and no civil consequence has been imposed other than the enforcement, by its own terms, of the 2017 consent agreement’s provisions growing out of the 2015-2017 violations. As to the passage of time since the 2019 violations, Dr. Pappenheim has cited no principle that absolves a practitioner of discipline simply because he has committed no new violations while his license was in a state of summary suspension. The hearing to establish whether the violations took place was very prompt, occurring in 2020, and there is no evidence that Dr. Pappenheim has been prejudiced in his defense on the issue of consequences by the slower progress of the disciplinary case. Finally, while one must recognize that the summary suspension imposed a cost on Dr. Pappenheim for his misconduct, it was not imposed as a disciplinary sanction, and it could not moot or obviate a disciplinary sanction if the appropriate sanction were a longer suspension or a revocation.

The Division’s remand arguments have focused more conventionally on prior disciplinary dispositions. The Division observes that the violations support strong discipline, including revocation.

With these arguments in mind, let us review the prior disciplinary matters that most closely align with this case.

⁶⁷ In prior phases of the case, he likewise did not attempt this task, except to observe that the physician in *In re Osterbauer*, OAH Case No. 18-0846-MED (Med. Bd. 20219) had violated three consent agreements yet was suspended for less time than Dr. Pappenheim. Dr. Pappenheim’s Exhibit A, pp. 99-100. However, Dr. Osterbauer’s case revolved around substance abuse relapses, without the additional dimensions of Dr. Pappenheim’s case.

⁶⁸ *Cf., e.g., Waiste v. State*, 10 P.3d 1141, 1153-54 (Alaska 2000).

In re Jensen – In a case involving allegations that the physician abused alcohol and other substances, the Board imposed a total of six years of probation, required the physician to engage in psychotherapy/counseling, and imposed a \$10,000 fine, with \$9,000 suspended, after he admitted to, among other things, falsifying AA attendance logs (required under a prior consent agreement).⁶⁹ While clearly there is dishonesty inherent in falsification of AA attendance logs, the physician’s actions did not involve his patients, still less involving one of them in a scheme to defraud the Board, and it did not involve systematic dishonesty in direct interactions with Board personnel over a period of many months. It rises to nowhere near the level of egregious deceit alleged against Dr. Pappenheim in this matter.

In re Osterbauer – In a case involving allegations of alcohol abuse, after the physician violated the third of three consent agreements entered and approved by the Board, the Board imposed an additional 18 months of suspension, ten years of probation, daily UAs, and a \$25,000 fine on top of a previous \$10,000 fine. There were no allegations of dishonesty or deceit with the Division or the Board comparable to those alleged against Dr. Pappenheim, and no allegations of manipulating or exploiting a patient.⁷⁰

In re Gerlay – This case has some procedural similarities to the present case, in that the physician’s license was summarily suspended (for posing a clear and immediate danger to public health and safety rather than for violating a consent agreement), followed by the Division filing an accusation seeking disciplinary sanctions. Allegations against the physician included inappropriate prescription practices, woefully inadequate medical recordkeeping, sexual misconduct with a patient, allegations of physician impairment, and failure to follow an order of the Board. After the physician stopped complying with interim orders of the Board while the matter was pending, the Board ultimately revoked his license.⁷¹

In re Ilardi – Though not technically a discipline case, this was another Alaska psychiatrist case. The facts assumed for purposes of the decision were that, on the patient’s initiative, the respondent engaged in sexual relations with a patient who was experiencing “serious depression.” The decision noted the special obligation psychiatrists have to avoid exploiting clients. Dr. Ilardi applied for re-licensure after a voluntary license surrender. The Board denied his request due to a statutory bar, but also addressed whether he would have been

⁶⁹ *In re Jensen*, OAH Nos. 17-0205-MED (Med. Bd. 2017), 18-0567-MED (Med. Bd. 2018), and 20-0088-MED (Med. Bd. 2020).

⁷⁰ *In re Osterbauer*, OAH No. 18-0846-MED (Med. Bd. 2019).

⁷¹ *In re Gerlay*, OAH No. 05-0321-MED (Med. Bd. 2008).

able to demonstrate that he was competent to practice such that his license should or could have been restored absent this bar. It concluded that because his poor professional judgment was likely to endanger the health of his patients, his license would not have been reinstated even if the statutory bar did not exist.⁷²

In re Lookhart – This was a case before a sister board, the Alaska Board of Dental Examiners. The dentist was convicted of numerous felony charges of Medicaid fraud and other fraudulent conduct, and the Board made additional findings of violations of ethical standards and gross malpractice including repeated, unnecessary sedation of patients, reckless endangerment of patients, and failure to meet minimal dentistry standards (e.g., tooth extraction while hoverboarding). The conduct was undoubtedly more serious than Dr. Pappenheim’s; the relevance of this case is that the dentist argued that his three years of suspension pending his criminal trial sufficed as discipline. However, the Board revoked the license notwithstanding the prior suspension.⁷³

In addition to these licensing board decisions, several consent agreements shed light on the range of discipline for some of the violations in this case. Sanctions imposed by memoranda of agreement in cases involving similar facts are not directly comparable to decisions from contested cases, because many extraneous factors (including such issues as unavailability of witnesses or resources to complete a prosecution) may have influenced the settlement, but they may be reviewed by the Board as a general guide.⁷⁴

In *In re Bote*, this Board publicly reprimanded a physician (not a mental health practitioner) for “unwelcome and inappropriate physical contact with female patients and . . . personal conversations with female patients that had not relation to the care being provided.” For this boundary violation, the Board imposed a three-month suspension and a \$25,000 fine, with \$15,000 suspended, as well as probation. At the time, there was no prior misconduct, no coverup, and no dishonesty with the Board.⁷⁵

A consent agreement recently approved by the Board of Social Work Examiners (BSWE) also bears some relevance to the issues presented in this case regarding the licensee’s violations of doctor-patient boundaries. In the BSWE case, the *In re Green*, a young applicant for a master

⁷² *In Re Ilardi*, OAH No. 10-0114-MED (Med. Bd. 2010).

⁷³ *In re Lookhart*, OAH No. 17-0607-DEN (Board of Dental Examiners 2020).

⁷⁴ *In re Gerlay*, OAH No. 05-0321-MED (2008) at p. 16 (citing *Hawthorne v. State*, No. 3AN-04-10154 CI (Superior Court, December 5, 2006)).

⁷⁵ *In re Bote*, 2015-001299 (Med. Bd. Consent Agreement 2016),

social worker's license had previous discipline for an intimate sexual relationship with a former patient a few weeks after the patient left the licensee's care. While on probation, the licensee committed a new, lesser violation involving failure to disclose her disciplinary status to an employer. The case did not present the extraordinary and repetitive issues of dishonesty with the Board that are seen in Dr. Pappenheim's case, but the second violation led two of five Board members to vote for a career-ending result. The Board as a whole, however, voted give the practitioner another chance through extended probation.⁷⁶

A case that sets a useful benchmark, with close parallels to the boundary violation aspect of this case, comes from the New York Board of Professional Medical Conduct. There, a psychiatrist had initially rejected a patient's sexual advances, but eventually engaged in a sexual relationship with the patient while in his care (he had treated the patient for migraines and depression, and knew she was experiencing marital difficulties). The treatment and the boundary violation occurred in Kentucky. The psychiatrist recognized that the conduct was wrong and had later taken steps to prevent it from being repeated. Upon discovery, the psychiatrist's conduct led, five years later, to two licensing actions. In Kentucky, the practitioner's license was revoked but the revocation was stayed, replaced by a period of suspension and probation. The New York board took a less lenient approach, finding that "no tolerance" should be accorded such conduct, and it fully revoked the New York license.⁷⁷

This Board, like the New York board, has recognized the "essentially private, highly personal, and sometimes intensely emotional nature of the relationship established with [a] psychiatrist," a relationship that makes boundary violations by psychiatrists especially problematic.⁷⁸ Like the psychiatrist in the New York case, Dr. Pappenheim was a highly experienced practitioner who knew his conduct was wrong. But Dr. Pappenheim's case presents a constellation of surrounding circumstances that render his boundary violation substantially more troubling than the one the New York board addressed:

- Prior to his central misconduct in this case, Dr. Pappenheim was already on probation for both substance abuse and for an honesty-related violation.
- Many of Dr. Pappenheim's violations in this case directly violated a prior Board disciplinary order.

⁷⁶ Consent Agreement, *In re Green*, Board of Social Work Examiners, OAH Case No. 22-0463-CSW.

⁷⁷ *In Re Rank*, New York Board for Professional Medical Conduct 2001 (2001 WL 35733007).

⁷⁸ *In re Ilardi*, *supra*, Decision at 9 (quoting American Psychiatric Ass'n, *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* (2001), Section 1-1).

- Dr. Pappenheim’s boundary violation with patient T.P. was a carefully premeditated attempt to defraud this Board.
- Dr. Pappenheim’s boundary violation with patient T.P. involved the patient in a scheme to undermine the integrity of treatment for the very medical condition for which Dr. Pappenheim was treating the patient.
- Dr. Pappenheim’s coerced his patient to engage in the boundary violation by suggesting that the patient’s access to suboxone would be impaired if the patient did not participate.
- Dr. Pappenheim followed his boundary violation with a sustained period of cover-up and deception spanning several months.

No statute, regulation, or history of prior disciplinary actions compels the Board to reach a particular result in this case. The present case presents a new combination of misconduct that this Board has not previously encountered. Evaluating the circumstances in totality, the Board holds that this combination of violations is not consistent with licensure as a physician in Alaska.⁷⁹

V. Conclusion and Order

The Division met its burden of establishing that Dr. Pappenheim committed the acts described in the ten counts of the Amended Accusation. In the context of a repeat offender, the acts are severe enough to merit a potentially career-ending sanction. Dr. Pappenheim’s license to practice medicine is revoked.

Because the license is revoked, the remaining aspects of the case are moot.

Dated: September 18, 2023



Christopher Kennedy
Administrative Law Judge

⁷⁹ In Alaska, revocations are indefinite. They can be, but are not necessarily, permanent. After a suitable time, and with an appropriate showing, a former licensee can seek reinstatement. AS 44.62.550.

Adoption

The Alaska State Medical Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 21st day of September, 2023.

By:


Signature

Richard Wein, M.D.

Name

Chairman, ASMB

Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]