COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-17-657
Date: MAY 27 2020

Roberto Carcamo-Sanabria, M.D.,
Respondent

Appearance for Petitioner:

Lisa L. Fuccione, Esq.
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Paul Cirel, Esq.
Todd & Weld
One Federal Street
Boston, MA 02110

Administrative Magistrate:

James P. Rooney

Summary of Recommended Decision

Board allegations that a doctor was disruptive toward patients and staff and had falsified medical records are recommended to be dismissed. The evidence failed to show that he disrespected two patients or that his conduct toward a nurse practitioner was disruptive. The only allegation regarding two allegedly false medical records that was proved was that he appeared to have once failed to document that he had performed a breast exam, but the Board failed to show grounds to discipline him for this.

RECOMMENDED DECISION

On August 3, 2017, the Board of Registration in Medicine (the "Board") issued a Statement of Allegations ordering Roberto Carcamo-Sanabria, M.D., to show cause why he should not be disciplined. The Board referred the matter to the Division of Administrative Law Appeals for findings of fact and conclusions of law.

Although the Statement of Allegations initially charged numerous violations, they were boiled down considerably after revisions occasioned by the doctor's motion for a more definite statement. At the hearing, The Board proceeded on the charges stated in a Revised More Definite Statement dated March 6, 2109, as further limited by my ruling on the doctor's motion in limine, and the failure of one of the Board's witnesses to appear at the hearing. The charges that were tried were that Dr. Carcamo-Sanabria was rude and demeaning to two patients (Patients B and I) and one staff member (Nurse Practitioner A) at Community Health Connections where he worked and that he drafted two fraudulent medical records.

I held a hearing, which was transcribed, on May 14, 15, and 17, 2019 at the Division of Administrative Law Appeals, 14 Summer Street, 4th floor, Malden, MA 02148. I admitted 30 exhibits into evidence. The Board called Susan Dye, an investigator for the Board, Dr. Carcamo-Sanabria, and five staff members of Community Health Connections, several of whom were assigned pseudonyms: Medical Assistant B; Nurse Practitioner A; Jacqueline Buckley, Chief Operating Officer; Lisa Paquet, Patient Record Manager; Susan Lowe, Director of Patient Services and Community Outreach; and Dr. Kathleen Sweeney, now the Chief Medical Officer. Dr. Carcamo-Sanabria testified on his own behalf. The parties submitted closing briefs by September 6, 2019.

Findings of Fact

Based on the testimony and exhibits presented at the hearing and the reasonable inferences I draw from them, I make the following findings of fact:

Background

1. Dr. Carcamo-Sanabria graduated from the University of California, Davis School of Medicine in 1999 and completed his residency in Louisiana. He has been licensed to practice medicine in Massachusetts since 2004, and worked as a staff physician at Massachusetts General Hospital from 2004 until 2008. From September 2008 until 2015, Dr. Carcamo-Sanabria worked on public health and community projects in Nicaragua. (Carcamo-Sanabria Testimony, Tr. 440: 13 – 22; Tr. 441: 24 – 442: 5; Tr. 442: 24 – 443; Tr. 556:1 – 4; Ex. 12, page 000004.)

2. Dr. Carcamo-Sanabria was hired as the chief medical officer for Community Health Connections (CHC) in January 2015. He had no prior experience running a medical office. (Sweeney Testimony, Tr. 317: 12-16; Carcamo-Sanabria Testimony, Tr. 442: 24 – 443: 5; Ex. 22.)

3. CHC provides health care in four locations across North Worcester County. The largest of CHC's practices is located on Nichols Road in Fitchburg. (Buckley Testimony, Tr. 123: 2-5 and 16-23.)

4. About 75% of CHC patients fall below 200% of the poverty level. Close to 3,000 of CHC's approximately 24,000 patients are homeless or publicly housed. (Buckley Testimony, Tr. 123: 16 – 17; Tr. 126: 23 – 127: 2.)

5. CHC had gone through a period of turmoil just before Dr. Carcamo-Sanabria was hired. A review of CHC by one of its primary funders found CHC in dire financial straits. The CHC Board of Directors fired its corporate officers and hired a consulting group to operate CHC until new ones were hired. John DeMalia was hired as chief executive officer. He then hired Jacqueline Buckley as chief operating officer. Dr. Kathleen Sweeney, who had been working there since 2006, agreed to serve as interim chief medical officer. (Buckley Testimony, Tr. 126: 17 – 19; Tr. 128: 9-19; Sweeney Testimony, Tr. 295: 1-4; Tr. 296: 11 – 297: 18; Tr. 298: 14 – 16.)

6. CHC set about seeking a permanent chief medical officer. The chief medical officer had to be a board-certified or board-eligible doctor. About half of the chief medical officer's responsibilities were clinical; the other half were administrative and managerial. (Sweeney Testimony, Tr. 299: 17 – 20; Tr. 305: 18 – 306: 4; Ex. 13.)

7. Dr. Carcamo-Sanabria interviewed for a staff physician position in the fall or winter of 2014. After another candidate for chief medical officer fell through, Mr. DeMalia suggested that CHC offer Dr. Carcamo-Sanabria the chief medical officer position. Dr. Carcamo-Sanabria accepted the position. His tenure began January 2015. His contract provided that, for the first year of his employment, he would be paid a fixed salary regardless of how many patients he saw. (Buckley Testimony, Tr. 132: 10 – 16; Sweeney Testimony, Tr. 302: 9-16; Tr. 308: 2 – 5; Tr. 309: 12 – 22; Tr. 317: 12 – 16; Ex. 22.)

8. In 2015, CHC's Fitchburg facility, where Dr. Carcamo-Sanabria practiced, had three to four physicians and four to five nurse practitioners. (Buckley Testimony, Tr.

124: 21 – 125: 1.) Two people in the office were responsible for receiving patient complaints, Lisa Paquet, the patient record manager, and Susan Lowe, the director of customer service. (Paquet Testimony, Tr. 241: 19 – 24; Tr. 242: 22 – 243: 10; Lowe Testimony, Tr. 273: 18 – 21; Tr. 274: 4 – 9 and 18 – 275:13.)

9. Dr. Carcamo-Sanabria saw more than 20 patients a day. Nurse Practitioner A described his interactions with patients as to the point and blunt. Dr. Carcamo-Sanabria denied that he was ever rude or condescending toward patients. He stated he was stern and thorough because patients were often uncooperative: they failed to take medications or take medications as prescribed and they did not attend appointments. (Carcamo-Sanabria Testimony, Tr. 456: 14 – 16; Tr. 580: 3 – 24.)

10. On May 14, 2015, Dr. Sweeney completed a reference for Dr. Carcamo-Sanabria to obtain privileges at HealthAlliance Hospital. In it, she indicated that his behavior toward staff and patients was professional. However, she did not consult staff members such as nurse practitioners or medical assistants before completing the reference form. (Sweeney testimony, Tr. 315: 3 – 316: 1; Tr. 322: 1-3; Ex. 24.)

11. Ms. Buckley, the chief operating officer, received more complaints about Dr. Carcamo-Sanabria in his first several months than about any other person she had worked with in her years of management experience. She estimated that between January and May 2015, she received 21 discrete complaints from patients. Patient complaints focused on Dr. Carcamo-Sanabria's manner—patients alleged that Dr. Carcamo-Sanabria did not listen, was disrespectful, and was excessively critical—and his administrative approach—he would tell patients when their appointments were and would take punitive

actions for cancellations. Several of Dr. Carcamo-Sanabria's patients requested a different provider. Some patients refused to return to CHC after interacting with Dr. Carcamo-Sanabria, despite the fact that many had no other health care options, which hurt patients and CHC's business. (Buckley Testimony, Tr. 158: 21 – 159: 15; Tr. 137: 10 – 16; Tr. 138: 17 – 139: 9; Ex. 5..)

12. Several medical assistants asked not to be paired with Dr. Carcamo-Sanabria because they felt he bullied them and treated them inappropriately. Medical Assistant B was one of them. She worked as a medical assistant at CHC from 2011 until 2016. Initially, she had a fine working relationship with Dr. Carcamo-Sanabria. However, after a time, she eventually requested to stop working with him because of his interaction with patients.[1] Ms. Buckley was often unable to accommodate these requests. In her view, Dr. Carcamo-Sanabria hurt morale at CHC, added stress to the work environment of his subordinates, and was very disruptive to the overall operation of the facility. (Buckley Testimony, Tr. 157: 14 – 158: 19; Medical Assistant B Testimony, Tr. 40: 15 – 23; Tr. 47: 12 – 48: 10.)

13. On May 15, 2015, Ms. Buckley and Kim Horn, Vice President of Human Relations, met with Dr. Carcamo-Sanabria to discuss his interactions with patients and staff. Ms. Buckley memorialized her recollection of the meeting. In a memo titled "Corrective Action Counseling," she wrote:

[1] When this occurred is not clear in the record, although it was likely in September. See Finding 19. She was still working with the doctor in early September 2015, nine months after he started working at CHC. (*See* discussion of Patient M.)

Problems Covered:

1. Micromanaging staff that are not in your line of supervision
2. Trying to consequence patients who cancel appointments
3. Patients are complaining that you are "arrogant" and not listening to them, but telling them how to behave
4. Micromanaging the appointment times of patients; taking away their self management and disempowering them

Solutions/Instructions Given

1. Must follow the chain of command. Do not assign task to phone staff, front desk. You must work with their managers. Use only YOUR MA and the Nurse assigned to you once we have teams. Do not interrupt their work.
2. Patients who cancel have that right. They had the courtesy to call rather than no show. We do not consequence patients who cancel. Their lives happen and we need to be respectful.
3. Listening and educating in a welcome tone is important. Trying to punish patients who don't meet your expectations is causing them to leave CHC
4. Patients make their own appointments. <u>Stop</u> telling them when to come in.

(Ex. 5.) Ms. Buckley thought Dr. Carcamo-Sanabria was unreceptive and argumentative during the meeting. (Buckley testimony, Tr. 14: 18 – 142: 6.)

14. Dr. Carcamo-Sanabria was not given a copy of this "Corrective Action Counseling" form. (Buckley Testimony, Tr. 143: 15 – 21; Carcamo-Sanabria Testimony, Tr. 544: 12 – 20.) He recalled that the May 15 meeting with Ms. Buckley and Ms. Horn focused on his assigning work to other staff, not on his interaction with patients. After the meeting, he stopped assigning work outside his team. (Carcamo-Sanabria Testimony, Tr. 545: 4 – 547: 18.)

15. On August 6, 2015, Dr. Carcamo-Sanabria met with Mr. DeMalia, the chief executive officer, to review his 180-day performance evaluation. In that evaluation, under the category of "Professionalism," Mr. DeMalia stated that Dr. Carcamo-

Sanabria's exceeded expectations. Mr. DeMalia wrote that Dr. Carcamo-Sanabria "can be too demanding, but ... only because he is very committed to the success of the organization." Under the category of "Initiative," Mr. DeMalia wrote that Dr. Carcamo-Sanabria "can sometimes appear to overstep in areas as he is learning the process but he is trying to do what is best for the organization." (Ex. 23.)

16. Dr. Carcamo-Sanabria does not recall that any concerns about his treatment of female staff were mentioned during his May 15, 2015 corrective action counseling with Ms. Buckley or his August 6, 2015 180-day evaluation with Mr. DeMalia. (Carcamo-Sanabria Testimony, Tr. 575: 11 – 577: 9.)

17. On September 8, 2015, Lisa Paquet met with Patient B who complained to her about an office visit with Dr. Carcamo-Sanabria in March 2015 in which he felt disrespected. She did not inform the doctor of the complaint. (Paquet Testimony, Tr. 248: 2-9; Tr. 255: 11-21; Ex. 9.)

18. On September 24, 2015, Susan Lowe spoke by phone with Patient I who complained about an office visit she had with Dr. Carcamo-Sanabria after she moved to Massachusetts. Patient I described him as rude and obnoxious, and wanted to be treated by a different doctor. Ms. Lowe wrote a memo of the conversation and forwarded it to Ms. Buckley; she did not speak to Dr. Carcamo-Sanabria about it. At some point, Ms. Lowe also wrote an email to Ms. Buckley because she had become concerned by the number of Dr. Carcamo-Sanabria's patients who requested a different provider and by the

amount of negative feedback he received in patient comment cards.[2] (Lowe Testimony, Tr. 276: 1 – 281: 22; Tr. 283: 2 – 284: 5; Tr. 285: 1-3; Ex. 11.)

19. Sometime in September Dr. Carcamo-Sanabria's interaction with two female colleagues, including Nurse Practitioner A, was brought to Dr. Sweeney's attention. They both felt uncomfortable working with the doctor. (Sweeney testimony, Tr. 237: 4 -238: 21.)

20. During the first week of November 2015, Mr. DeMalia told Dr. Carcamo-Sanabria that CHC staff did not want him as their chief medical officer. (Carcamo-Sanabria Testimony, Tr. 479: 23 – 480: 12.) CHC drafted a separation agreement, which Dr. Carcamo-Sanabria received November 11, 2015. (Ex. 14.) Mr. DeMalia and Dr. Carcamo-Sanabria signed the separation agreement on December 17, 2015. According to the agreement, Dr. Carcamo-Sanabria was paid 90 days of salary in exchange for signing the agreement and his last day of employment at CHC was November 11, 2015. (Ex. 15.) Dr. Carcamo-Sanabria and the CHC Board agreed that the doctor resigned, as opposed to being terminated, from his chief medical officer position. (Carcamo-Sanabria Testimony,Tr. 484: 14 – 15.)

21. Dr. Sweeney wrote a letter in November 2015 to the Board of Registration in Medicine relaying concerns, which staff had shared with her particularly during the prior six weeks, about Dr. Carcamo-Sanabria's interaction with female patients and staff.[3] (Sweeney Testimony, Tr. 322: 24 – 324: 18; Tr. 325: 2 – 8; Tr. 328: 1 – 6.)

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[2] Ms. Lowe's email is not in the record.

[3] This letter is not in evidence.

22. In December 2015, Susan Dye, an investigator in the Board's enforcement division, was assigned to investigate the allegations against Dr. Carcamo-Sanabria made in Dr. Sweeney's November 2015 letter. (Dye Testimony, Tr. 382: 3 – 8; Tr. 384: 5 – 8; Tr. 384: 20 – 385: 12.)

23. When Ms. Dye investigates physician misconduct, part of her investigation involves interviewing witnesses and reviewing relevant documents, including complaints that the Board receives directly from patients and reports that health care facilities are required to submit to the Board after taking disciplinary action against a physician. The Board did not receive any complaints against Dr. Carcamo-Sanabria directly from patients. The Board also did not have any record of CHC disciplining Dr. Carcamo-Sanabria. (Dye Testimony, Tr. 382: 9 – 383: 20; Tr. 417: 3 - 419:23.)

24. Shortly after the Board received Dr. Sweeney's letter, Ms. Dye went to CHC to speak with staff referred to in the letter, including Dr. Sweeney, Medical Assistant B, and Nurse Practitioner A. Ms. Dye spoke with Ms. Buckley and Dr. Sweeney again in March 2019. (Dye Testimony, Tr. 386: 14 – 387: 2; Tr. 415: 18 – 416: 12.)

25. Ms. Dye did not interview any patients during her investigation, despite having their names. Sometimes when she is investigating physician misconduct, she interviews patients, but she did not in this case. (Dye Testimony, Tr. 404: 4 – 21; Tr. 437: 17 - 438: 11.)

26. On February 17, 2016 and March 30, 2016, Ms. Dye sent letters informing Dr. Carcamo-Sanabria at his address in Massachusetts that the Board had docketed a

complaint against him and requesting an opportunity to discuss the allegations. (Exs. 16, 17.) In June 2016, Dr. Carcamo-Sanabria left a voicemail with the Board and explained that he had only just received the Board's letters because he was working at an Indian reservation in South Dakota. (Carcamo-Sanabria Testimony, Tr. 391: 15 – 392: 6.)

27. Ms. Dye spoke with Dr. Carcamo-Sanabria on June 21, 2016, and they agreed that, because Dr. Carcamo-Sanabria's current job would not permit him to leave for an in-person meeting with the Board, Dr. Carcamo-Sanabria would respond to the allegations against him in writing. Dr. Carcamo-Sanabria did so on June 22, 2016 and then subsequently supplemented his response on June 24, 2016. (Dye Testimony, Tr. 392: 10 – 393: 11; Exs. 18, 19.)

28. The Board issued its Statement of Allegations on August 3, 2017 and referred the matter to DALA.

Treatment of Staff and Patients

Patient B

29. Patient B saw Dr. Carcamo-Sanabria on March 13, 2015 for the first time for a complete physical exam. He was accompanied by his wife. The doctor's note of the visit described this patient as a "39 y/o male smoker from Ghana" whose chronic problems were "smoking ½ pack a day or less" and obesity. (Ex. 10, page 000002.)

30. Dr. Carcamo-Sanabria wrote the following comments about healthcare maintenance for Patient B:

> From Ghana Quahtiferon Gold tb tgest. Check basic labs. Pretest counseling done.
> Urged to quit smoking.
> Refuses flu shot today.

Urged to stop smoking. Says he quit before with "the power of god."

(Ex. 10, page 000004.)

31. In early September 2015, Patient B came to CHC to collect medical records from his visit with Dr. Carcamo-Sanabria on March 13, 2015. It is not clear why Patient B requested medical records for that visit. (Paquet Testimony, Tr. 268: 4 – 24; Tr. 271: 16 – 20; Ex. 9.)

32. On September 8, 2015, Patient B returned to CHC with his wife to lodge a complaint against Dr. Carcamo-Sanabria regarding his March 13, 2015 visit. (Ex. 9.) He spoke to Ms. Paquet. (Paquet Testimony, Tr. 249: 10 – 250: 23.) She wrote in a complaint form that Patient B reported that:

> Dr. Carcamo asked him if he smokes and Patient B told him that he is a Christian and he prayed about it. Patient B stated that in the notes that Dr. Carcamo wrote regarding the visit with him, that Dr. Carcamo was mocking him by putting in quotation marks, quit smoking with "the power of God." . . . Patient B stated that Dr. Carcamo wrote that he urged Patient B to stop smoking, and Patient B said he has already quit for awhile now, so he didn't urge him to do it. Patient B stated that it was written that he refused the Flu Shot and he said he didn't refuse it, he had said to Dr. Carcamo that he has never gotten a flu shot and is never sick with the flu. Both Patient B and his wife stated that Dr. Carcamo said to Patient B that because he is an immigrant that he needs to stop smoking and take care of himself so he doesn't bring diseases to America.

(Ex. 9.) Ms. Paquet wrote that Patient B felt Dr. Carcamo-Sanabria was very rude and requested a different doctor. *Id.*

33. Dr. Carcamo-Sanabria testified that he used quotations in his notes because he was using Patient B's own words about how Patient B quit smoking in the past. Dr. Carcamo-Sanabria stated that his use of quotation marks was not meant to denigrate Patient B's religion, noting that he himself is religious. He explained that

knowing what efforts a person who smokes has tried to quit is germane because he can present other options to the patient, such as nicotine replacement and gum, which were options he mentioned to Patient B. (Carcamo-Sanabria, Tr. 529: 18 - 530: 23; Tr. 532: 1 – 3.)

34. Dr. Carcamo-Sanabria denied stating that, as an immigrant, Patient B needed to take precautions against transmitting diseases. He agreed that such a comment would be offensive and he would not have made it. Dr. Carcamo-Sanabria is an immigrant and denied that he would insult someone because of his immigration status. (Carcamo-Sanabria Testimony, Tr. 553: 12 – 19; Tr. 554: 5 – 18.) Dr. Carcamo-Sanabria discusses immigration status during a physical examination because it is medically relevant. While he did not recall his conversation with Patient B, he usually would have explained why he was administering a tuberculosis test: because Patient B came from a place where, according to the Center for Disease Control, tuberculosis is prevalent and because tuberculosis can be a deadly infection with serious public health ramifications. (Carcamo-Sanabria Testimony, Tr. 553: 12 – 19; Tr. 571: 5 – 10; Tr. 614: 6 – 19.) The Center for Disease Control recommends that people from countries where tuberculosis is common, including "most countries in Africa," should be tested for tuberculosis. (Ex. 30.)

Patient I

35. Ms. Lowe called Patient I on September 24, 2015 to discuss the patient's request to transfer her primary care to a doctor other than Dr. Carcamo-Sanabria. (Ex. 11.) During the call with Patient I she took notes and then wrote a memo to the file

summarizing the conversation. (Lowe Testimony, Tr. 277: 10 – 278: 3; Ex. 11.) Patient I stated that she had recently moved to Massachusetts and had been assigned Dr. Carcamo-Sanabria as her primary care physician. In the memo, Ms. Lowe quoted Patient I as saying, "He is rude, obnoxious and made stupid comments while in the exam room." Patient I said that, after Dr. Carcamo-Sanabria learned Patient I was a Christian and did not drink alcohol, the doctor stated, "Jesus drank wine, really?" Ms. Lowe also quoted Patient I as saying, "[E]veryone who goes to the health center is not a druggy, he treats me as if I am, I do not use narcotics – he treats me like I am a stupid Hispanic." (Ex. 11.)

36. Ms. Lowe did not speak to Dr. Carcamo-Sanabria about his version of the interaction with Patient I nor did she review Patient I's medical records to see what medical issues Dr. Carcamo-Sanabria may have been addressing during the appointment. (Lowe Testimony, Tr. 285: 1 – 24.)

37. Dr. Carcamo-Sanabria did not remember his interaction with Patient I. He testified that he asks all patients about their alcohol use. He did not understand why a person would be offended by an observation that Jesus Christ drank alcohol, but he stated that he would never introduce Jesus Christ into a conversation with a patient. He noted that he is a Catholic. (Carcamo-Sanabria Testimony, Tr. 536: 5 – 537: 7.)

38. Dr. Carcamo-Sanabria testified that he was never informed of any patient complaints about his alleged comments related to religion. (Carcamo-Sanabria Testimony, Tr. 538: 6 – 16.)

39. The Board subpoenaed medical records for Patient I from September 1 through October 14, 2015, which produced records for two visits to CHC. Dr. Carcamo-

Sanabria did not see Patient I during either of those visits. (Dye Testimony, Tr. 409: 15 – 410: 19; Ex. 27.) The only visit noted before Patient I spoke to Ms. Lowe was on September 22, 2015. She was seen on that date by Physician's Assistant Sarita Fage. (Ex. 27.)

Nurse Practitioner A

40. Nurse Practitioner A began working at CHC full-time as a mental health counselor in 2008. In 2010, she went to nursing school and, during that period, she worked intermittently on a part-time basis at CHC as a mental health counselor. CHC hired her as a nurse practitioner in May 2014 and she remained in that position until December 2018. (Nurse Practitioner A Testimony, Tr. 203: 12 – 204: 5.)

41. Nurse Practitioner A thought that Dr. Carcamo-Sanabria was condescending, rigid, and not collegial. She stated that his approach conflicted with the culture of CHC and that she found it unpleasant. Dr. Carcamo-Sanabria was Nurse Practitioner A's direct supervisor. (Nurse Practitioner A Testimony, Tr. 205: 13-16; Tr. 207: 1 – 15.)

42. Nurse Practitioner A recalled that early in Dr. Carcamo-Sanabria's tenure, she came to work wearing red, high heeled shoes. Later that day, she changed out of her high-heeled shoes and put on flats. Dr. Carcamo-Sanabria saw this and asked, "Ah, where did the red shoes go?" Nurse Practitioner A did not respond. She got the impression that Dr. Carcamo-Sanabria was disappointed by the fact that she had changed shoes. The question made her feel uncomfortable and flustered in the middle of a very busy work day. Nurse Practitioner A and Dr. Carcamo-Sanabria did not have a

relationship in which commenting on attire was typical. As she described it, "he and I didn't have a kind of rapport at all where his mentioning my physical appearance would have been commonplace or welcome." (Nurse Practitioner A Testimony, 208: 15 – 24; Tr. 209: 1 – 23;Tr. 210: 6 – 13, 21 – 23; Tr. 211: 1 – 10; Tr. 212: 3 – 12.)

43. Dr. Carcamo-Sanabria did not remember making any comment about Nurse Practitioner A's shoes. (Carcamo-Sanabria Testimony, Tr. 542: 17 – 20; Tr. 574: 15 – 18.)

44. Later in the spring of 2015, Dr. Carcamo-Sanabria commented on a sweater worn by Nurse Practitioner A. When interviewed by Board investigator Dye, in December 2015, Nurse Practitioner A told her that Dr. Carcamo-Sanabria's comment about her sweater was that it was very pretty and that the doctor's comment did not make her feel uncomfortable until another person told her that the sweater accentuated her chest. (Dye Testimony, Tr. 414: 2 – 23.) At the hearing, Nurse Practitioner A stated that while she was standing in the staff office, Dr. Carcamo-Sanabria said that he liked the way her sweater fit. Nurse Practitioner could not recall if anyone else was present. Nurse Practitioner A did not respond to the doctor's comment. However, the comment made her uncomfortable and she later told Dr. Sweeney or Ms. Buckley about it. (Nurse Practitioner A Testimony, 212: 11 – 13; Tr. 213: 2 – 6, 21 – 22; Tr. 214: 4 – 5; Tr. 216: 6 – 10, 14 – 21.)

45. Dr. Carcamo-Sanabria did not initially recall commenting on Nurse Practitioner A's sweater. However, he did remember that Dr. Sweeney or Mr. DeMalia discussed the incident with him. Dr. Carcamo-Sanabria stated that he may have

commented on the color of Nurse Practitioner A's sweater and that after he learned his remark was unwelcome, he no longer attempted to engage in casual conversation with colleagues. (Carcamo-Sanabria Testimony, Tr. 542: 6 – 14; Tr. 574: 19 – 575: 16.)

46. Nurse Practitioner A also recalled that during the spring or summer of 2015, Dr. Carcamo-Sanabria talked to her about hiking. She believes he overheard her talking about hiking and that he subsequently asked her between three and five times whether she would like to go hiking with him. After the second time, she told the doctor that she hiked alone, hoping to communicate that she did not want to hike with him. (Nurse Practitioner A Testimony, Tr. 218: 8 – Tr. 219: 7.)

47. Nurse Practitioner A told Dr. Sweeney and Ms. Buckley about Dr. Carcamo-Sanabria's repeated requests to go hiking. Nurse Practitioner A was motivated to do this because she was concerned, not only by how Dr. Carcamo-Sanabria was treating her, but by how he interacted with other female colleagues. She may have spoken with Dr. Sweeney and Ms. Buckley about the hiking issue at the same time she brought up the doctor's comment about her sweater. (Nurse Practitioner A Testimony, Tr. 219: 8 – 220: 6.)

48. Dr. Carcamo-Sanabria did not recall asking to go hiking with Nurse Practitioner A. However, one morning after Nurse Practitioner A arrived late to work wearing hiking boots, Dr. Carcamo-Sanabria remembered telling her that he said he wished he had time to go hiking as a way of subtly informing her that her attire was not appropriate for a medical office. (Carcamo-Sanabria Testimony, Tr. 542: 21 – 543: 4; Tr. 578: 2 – 14.)

Medical Records

Patient N

49. Patient N had an ophthalmology appointment at CHC on August 5, 2015. (Ex. 2.) The fire alarm went off in CHC between 9:40 a.m. and 10:10 a.m.; CHC staff and patients left the building and congregated in the parking lot. Patient N approached Dr. Carcamo-Sanabria. The doctor recognized him as a patient he had treated a few times before and knew what his medical issues were. (Carcamo-Sanabria Testimony, Tr. 453: 14 – 16; Tr. 454: 16 – 23; Tr. 456: 20 – 457: 1; Tr. 589: 8 – 590.) The patient's medical records show that the doctor had treated Patient N for back pain. (Ex. 2.)

50. Patient N asked Dr. Carcamo-Sanabria to write a letter certifying that he was unable to work. Dr. Carcamo-Sanabria told Patient N to make an appointment. However, Dr. Carcamo-Sanabria agreed to examine Patient N immediately to verify that Patient N was unable to work, which would allow the doctor to write the requested letter. (Carcamo-Sanabria Testimony, Tr. 589: 17 – 590: 2.)

51. Dr. Carcamo-Sanabria and Patient N talked for 10 or 15 minutes in the parking lot. After they were allowed to return to the building, the doctor brought Patient N into an unused examination room, where he conducted a five-minute physical exam, which included examining Patient N's lungs, heart, abdomen and back. Patient N's vitals were not taken because no medical assistants were available to perform that task. (Carcamo-Sanabria Testimony, Tr. 453: 21 – 23; Tr. 458: 16 – 459: 4; Tr. 466: 1 – 18; Tr. 590: 6 – 12 and 16 – 591: 1.)

52. Dr. Carcamo-Sanabria did not document Patient N's visit on August 5, 2015 until the following day. He could not figure out how to do so because CHC's electronic medical record system allowed doctors to add records of a patient evaluation only in connection with a visit, which he could not do in this instance because he had no open appointments and the system would not allow him to double book. Furthermore, the patient's vitals had not been taken. (Carcamo-Sanabria Testimony, Tr. 463: 21 – 464: 5; Tr. 465: 2 – 14; Tr. 591: 2 – 19.)

53. Dr. Carcamo-Sanabria told Patient N to return to CHC the next day to have his vitals checked and to answer additional questions, which was necessary to complete the examination. Patient N could then collect the letter certifying that he was unable to work. (Carcamo-Sanabria Testimony, Tr. 465: 9 – 20; Tr. 589: 20 – 591: 1.)

54. On August 6, 2015, Patient N was scheduled for a 9:00 a.m. appointment with Dr. Carcamo-Sanabria. He missed the appointment. (Carcamo-Sanabria Testimony, Tr. 591: 22 – 592: 1; Ex. 1.) He was rescheduled to come in at 2:00 p.m. on the same day for his appointment. (Medical Assistant B testimony, Tr. 113: 14 – 20.)

55. Patient N returned to see Dr. Carcamo-Sanabria around 2:00 p.m. Medical Assistant B took his vitals at 2:23 p.m. (Exs. 1 and 2, page 000006.)

56. Dr. Carcamo-Sanabria was busy seeing other patients. At 3:00 p.m., Patient N left because he had another appointment. Although the doctor had not seen Patient N on August 6, he decided to generate a note that day to capture his examination of the previous day and the vitals recorded by Medical Assistant B and to provide a basis for drafting a letter for Patient B regarding his ability to work. (Carcamo-Sanabria

testimony, Tr. 464: 13-18; Tr. 470: 21-24.) Dr. Carcamo-Sanabria documented the August 5 examination of Patient N on August 6. In the physical exam portion of Patient N's medical records, the doctor wrote that he conducted respiratory, cardiovascular, abdomen, musculoskeletal, extremity, neurological, and psychiatric exams. He noted that Patient N was able to walk heel-to-toe and on his tiptoes. He prepared a letter for the patient excusing him from work. (Ex. 2, pages 000006 and 000007.)

57. As initially drafted, this note did not indicate that the vitals were taken on a different day from the physical examination. Dr. Carcamo-Sanabria sought advice from the front desk on how to put this note in properly, but did not get a straight answer. (Carcamo-Sanabria testimony, Tr. 449: 2 – 15; Tr. 470: 1-3; Tr. 620: 14 – 23.)

58. When Dr. Carcamo-Sanabria completed the note, he was not thinking about billing. He understood that billing was dependent on what he had done for a patient. He thought he had a day or two to make changes to any note he prepared. Since he had not received a satisfactory answer from the front desk on how to complete the note, his next resort was to speak to Mr. DeMalia. He did not seek out Mr. DeMalia on Friday, August 7, 2015, the day after the note was drafted because Mr. DeMalia was not scheduled to be in the office on Fridays. (Carcamo-Sanabria testimony, Tr. 469: 19; Tr. 621: 7 – 624:8.)

59. When Medical Assistant B told Dr. Carcamo-Sanabria that Patient N had left, she heard him say, "I'm going to bill him anyway." At first, she did not think he was serious, but when she checked the patient's chart later that date, she found an office note had been entered for that day. (Medical Assistant B Testimony, Tr. 50: 1-24.)

60. On August 7, 2015, Medical Assistant B wrote an email to her supervisors expressing concern about the note the doctor had prepared on August 6 regarding Patient N. She did not discuss her concerns with Dr. Carcamo-Sanabria because she was afraid. She was unaware that Dr. Carcamo-Sanabria had examined the patient the previous day. (Medical Assistant B Testimony, Tr. 99: 19-24; Tr. 100: 1-2; Tr. 115: 3 – 19; Ex. 1.)

61. In her August 7 email, Medical Assistant B wrote that Dr. Carcamo-Sanabria knew that Patient N was waiting to see him, but, because Patient N had missed his morning appointment, the doctor stated, "[H]e can wait." Dr. Carcamo-Sanabria elected to take his 2:45 p.m. appointment before attending to Patient N. Medical Assistant B wrote that, at 3:00 p.m., Patient N informed her that he had to go to a different medical appointment and left. Medical Assistant B wrote that when Dr. Carcamo-Sanabria learned of Patient N's departure, he stated, "Well, he's going to get billed anyway." She concluded by saying that she thought she had a duty to report something illegal. (Ex. 1.)

62. Dr. Carcamo-Sanabria did not remember making a statement about billing. He thought he may have said something to the effect of, "I am going to complete the note." (Carcamo-Sanabria Testimony, Tr. 471: 20 – 472: 1.)

63. Medical Assistant B's email was passed on to Ms. Buckley. She reviewed Patient N's records with CHC's expert on electronic medical records, and thereafter concluded that Dr. Carcamo-Sanabria had submitted a record of Patient N's visit for billing. She told the billing department not to bill for Patient N's August 6, 2015 visit. She reported her concerns to Mr. DeMalia later that day, and passed on her concern that

the doctor was attempting to bill for a visit that did not happen, without first speaking to Dr. Carcamo-Sanabria. She was unaware at the time that the doctor had seen Patient N. on August 5. (Buckley Testimony, Tr. 146: 3 – 148: 21; Tr. 171: 24; Tr. 172: 1-24; Tr. 173: 1-21; Ex. 6.)

64. Mr. DeMalia met with Dr. Caracamo-Sanabria on Monday, August 10, 2015. He documented the ensuing interaction in a memo-to-file.[4] Mr. DeMalia wrote that he discussed Patient N's August 6 medical record with Dr. Carcamo-Sanabria and that the doctor reported that he had seen Patient N on August 5, "the morning of the fire alarm going off while in the parking lot ... between 9:40 – 10:10 ... and they had discussed at length his situation." Mr. DeMalia told Dr. Carcamo-Sanabria that recording a medical visit on a day that it did not occur could be considered fraud and instructed Dr. Carcamo-Sanabria to amend the notes for the visit and not to bill for it. Mr. DeMalia reported that Dr. Carcamo-Sanabria said "he had never done this before and would not do this again. He stated that he realizes that he should not have filled out the encounter the way he did." (Ex. 7.)

65. Dr. Carcamo-Sanabria amended Patient N's medical records to include that "[m]ost of the encounter-evaluation besides vitals was conducted yesterday 8/5/15 (fire alarms went off) and today's encounter was [not] completed due to patient having to leave for another appointment. ENCOUNTER NOT BILLED." (Ex. 2, page 000006.)

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[4] The memo is drafted in the third person for reasons unknown. (Ex. 7.)

66. Dr. Carcamo-Sanabria recalled that Mr. DeMalia decided Patient N's visit should not be billed because he worried doing so would give the appearance of impropriety. (Carcamo-Sanabria Testimony, Tr. 618: 10 – 15.)

67. Mr. DeMalia wrote, "[T]he incident is to be considered a verbal counseling." (Ex.7.) Verbal counseling is not a penalty in CHC's Discipline/Corrective Action Policy. The policy provides that employees may not falsify records and that doing so is a violation of a Level III rule, which may result in immediate suspension without pay and/or termination. (Ex. 8.)

68. Dr. Carcamo-Sanabria did not have a financial incentive to bill for patients he did not see. (Ex. 22.)

Patient M

69. On September 10, 2015, Patient M was scheduled to have a complete physical exam with Dr. Carcamo-Sanabria. (Ex. 4, page 000002.) Medical Assistant B assisted Dr. Carcamo-Sanabria with this visit. She was in the examining room with the doctor only when she was acting as a chaperone if he was performing a breast exam or a Pap smear. Patient M's primary language was Spanish and Dr. Carcamo-Sanabria and Patient M spoke in Spanish during the appointment. Medical Assistant B does not speak Spanish and did not understand what was being said between Dr. Carcamo-Sanabria and Patient M. (Medical Assistant B Testimony, Tr. 108: 18 – 109: 2; Carcamo-Sanabria Testimony, Tr. 520: 8 – 22.)

70. Dr. Carcamo-Sanabria does not recall that he knew why the patient was visiting him. He asked her and she told him she was concerned about recent heart

palpitations, and wanted him to address this problem.[5] She asked him not to perform a complete physical during this visit. He evaluated her for her concern about heart palpitations. He had an electrocardiogram performed, which is a standard test for someone experiencing heart palpitations but is not necessarily part of a typical physical. He checked for edema (swelling) in her legs, which is typical of a heart-related examination.[6] He checked her lungs, abdomen and her other systems, which he usually does during any patient examination, but not at the level of detail that he would have had he performed a complete physical.[7] (Carcamo-Sanabria Testimony, Tr. 500: 6 – 17Tr. 582: 17 – 21Tr. 582: 8 – 10.) For all of these physical exams, the notation in the medical records he prepared was less than a line. (Ex. 4, page 000003 – 000004.) Had he been more thorough, the documentation on his findings would have been more expansive. (Carcamo-Sanabria Testimony, Tr. 497: 4 – 498: 5.)

71. The note Dr. Carcamo-Sanabria prepared reflects Patient M's concerns. It begins by stating that she "presents for evaluation of persistent episodes of palpitations and associated chest discomfort." (Ex. 4, p. 000002.) In the Assessment/Plan section, of

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[5] Prior to her September 10, 2015 visit with Dr. Carcamo-Sanabria, on May 23, 2015, Patient M visited CHC complaining of heart palpitations, and was seen by Physician Assistant Edith Skelly. (Ex. 4, page 000011-000012.)

[6] Dr. Sweeney confirmed that if she were treating a patient with heart palpitations, she would listen to her heart, measure her blood pressure and pulse, and check for peripheral edema or soft swelling in the lower body. (Sweeney Testimony, Tr. 340: 5 – 24.)

[7] When Dr. Carcamo-Sanabria saw Patient M on May 26, 2015 for neck pain, not a complete physical examination, he examined beyond her neck. He made notations for the following physical exams: constitutional, head/face, nose/mouth/throat, neck/thyroid, respiratory, cardiovascular, vascular, abdomen, integumentary, back/spine, musculoskeletal, extremities, neurological, and psychiatric. For all of these physical exams, the notation was less than a line. (Ex. 4, page 000018 – 000019.)

the five items listed, three pertain to the patient's concern: arrhythmia, intermittent palpitations and chest discomfort. Regarding the arrhythmia, Dr. Carcamo-Sanabria wrote:

> Episodes last 5-10 min. No identified triggers or maneuvers which reproduce sxs. No excess caffeine or other substances. Unclear etiology. TSH, echo order by previous provider wnl.
>
> We'll order an event monitor which will be better suited for capturing and characterizing the nature of her arrhythmia. Pending results we'll refer pt. to cardiology-electrophysiology.
>
> EKG today without worrisome features or evidence of arrhythmia.

(Ex. 4, p. 000004.) The Assessment also addresses health maintenance. There, the doctor wrote, "No CPE done today. Per pt. request." *Id.* It was not the doctor's practice to perform physical exams and not document them in a patient's medical record. (Carcamo-Sanabria Testimony, Tr. 503: 5 – 7.)

72. The note Dr. Carcamo-Sanabria prepared does not mention a breast exam of Patient M. (Ex. 4.) On September 11, 2015, Medical Assistant B wrote an email to her supervisor stating that Dr. Carcamo-Sanabria conducted a 10-minute breast exam, which she witnessed because she served as a chaperone, but did not record that breast exam in Patient M's medical records. She also wrote he spent 45 minutes with the patient then told the front desk to "change the visit type to follow up palpitations," although she thought that he had performed a complete physical. (Medical Assistant B Testimony, Tr. 66: 7 – 17; Tr. 116: 17 – 117: 3; Ex. 3.)

73. At the hearing, Medical Assistant B could not remember whether Dr. Carcamo-Sanabria performed a breast exam on Patient M, but stated that she would not

have written to her supervisor that Dr. Carcamo-Sanabria performed a breast exam unless it occurred. (Medical Assistant B Testimony, Tr. 74: 15 – 76: 2.) Dr. Carcamo-Sanabria did not remember whether Patient M declined a breast exam, but stated that the only reason he could think of why a breast exam would not have been documented was because it did not occur. (Carcamo-Sanabria Testimony, Tr. 522: 15 – 18; Tr. 584: 16 – 20.)

Discussion

The Board of Registration in Medicine has the burden of proving the allegations against Dr. Carcamo-Sanbria by a preponderance of the evidence. *Board of Registration in Medicine v. Perrone*, Recommended Decision, Docket No. RM-14-311 (Mass. Div. of Admin. Law App., July 1, 2016). Because the allegations against the doctor went through a number of iterations from the initial Statement of Allegations, through two versions of a more definite statement, up until changes made on the date of the hearing itself, I will focus on the charges Board counsel addressed in her post-hearing brief. These charges were that the doctor had "drafted fraudulent medical records, was rude and demeaning to both patients and staff, and engaged in conduct that undermines the public's confidence in the integrity of the medical profession." The latter charge does not involve a separate factual allegation, but is a summation of the import of the other allegations.

A. Interactions with Patients

I turn first to the allegations that Dr. Carcamo-Sanabria was rude and demeaning to Patients B and I. Although not made explicit, the Board appears to contend that the doctor's actions violate Board Policy 01-01, which concerns disruptive physician behavior. The policy does not define disruptive behavior, *per se*. Rather, it states that "[b]ehaviors such as foul language; rude, loud or offensive comments; intimidation of staff, patients and family members are now recognized as detrimental to patient care." Ex. 20.

1. Patient B

The Board contends that Dr. Carcamo-Sanabria was disrespectful to Patient B and failed to listen to him by mocking his religious commitment and writing in his note of Patient B's visit that the patient was still smoking and that he had rejected a flu shot, both of which the patient denied.

It is difficult to determine what exactly was said between Dr. Carcamo-Sanabria at their one encounter in March 2015 because Patient B did not testify and the only record of his complaint comes from a report of a conversation he had with Ms. Paquet six months later. It is particularly difficult because the complaints the patient discussed with Ms. Paquet seem directed more to the doctor's note of the visit that he had just received than whatever was said at the visit. He told Ms. Paquet that he was incensed that the doctor wrote in quotations that the patient had once quit smoking due to the "power of God." Why this offended him is hard to fathom because that is more or less what he told Ms. Paquet, namely that "Dr. Carcamo asked him if he smokes and Patient B told him that he is a Christian and he prayed about it." Dr. Carcamo-Sanabria testified that he used quotes because he was quoting what he remembered the patient saying. Given that the note was made contemporaneously and given the patient's own description of how he quit smoking, I have no reason to doubt this. Moreover, the doctor adequately explained that this was pertinent to treatment because it informs him what methods a patient had tried when attempting to quit smoking, and thus what additional options a doctor can discuss with a patient, options which the Dr. Carcamo-Sanabria testified that he suggested to Patient B.

As for the allegations that the doctor failed to listen to Patient B when he said he had quit smoking and when he claimed he did not refuse a flu shot, there is precious little evidence about this in the record. Board counsel did not ask Dr. Carcamo-Sanabria about these two matters, which I would have expected if the Board thought them significant. The doctor's notes show that he identified only two chronic health problems Patient B had, and one of them was smoking. Although he heard the patient say he had quit smoking, he got the impression that this was some time in the past and that the patient had resumed smoking. Given the absence of any questioning of the doctor on what basis he believed the patient was still smoking, there is simply insufficient evidence that he failed to listen to the patient. As for the flu shot, Ms. Paquet recorded that Patient B told the doctor that "he has never gotten a flu shot and is never sick with the flu." While such a statement is not an abject rejection of a flu shot, it could reasonably be taken as a refusal to have one. Again, this is insufficient evidence of failure to listen.

There was examination at the hearing of Patient B's complaint that the doctor had treated him as an immigrant bringing disease to America. Ms. Paquet's memo does not spell out in detail what it was that the doctor had said that caused Patient B to get this impression. The doctor assumes it has something to do with his decision to have the patient undergo a tuberculosis test. He had a valid basis for determining that an immigrant from Ghana should undergo such a test because tuberculosis is prevalent in that country and the Center for Disease Control recommends that persons coming to the United States from countries where that disease is prevalent should be tested for tuberculosis. Because the doctor had a valid basis to consider the patient's immigrant status and to call for a TB test, his actions were appropriate. Whether he said something offensive in doing so, I cannot tell given the absence of evidence on the question.

2. Patient I

Regarding Patient I, she had two basic complaints: that Dr. Carcamo-Sanabria disrespected her religion and that he treated her as a stupid Hispanic drug user. The Board counsel pursues only his comments about religion, having not asked the doctor about drug use comments at the hearing or mentioning it in her closing brief.

It is difficult to determine what was said the one time Dr. Carcamo-Sanabria met the patient. The Board subpoenaed medical records from what it thought was the time period that would capture this visit, but it did not. The Board did not seek earlier medical records, and so whatever note the doctor created in connection with his one and only visit with Patient I is not in the hearing record. The doctor does not remember meeting this patient, and thus could offer little useful testimony as to what occurred. This lack of memory is not entirely surprising. Patient I's visit with the doctor must have occurred before September 1, 2015, which is the earliest date for which the Board sought medical records. The doctor was not informed while he worked at CHC of this complaint and the

Statement of Allegations did not mention it until it was revised by a more definite statement on November 17, 2017, more than two years after this office visit.

The doctor acknowledged that he discusses alcohol consumption with his patients, but denied that he would ever bring religion into the discussion. But even if he does not bring up religion when he meets with patients, as was seen with Patient B, sometimes patients will mention religion when answering his questions. It is conceivable that when he asked Patient I whether she drank alcohol, she responded that she is a Christian and did not drink alcohol, to which he replied, "Jesus drank wine." Nothing in the Board's policy about disruptive behavior suggests that a doctor is obligated to believe at face value everything a patient tells him and may not inquire further. Just because Patient I may have taken offense at this does not mean such a statement would have been objectively offensive.[8] But absent testimony from the patient or any memory of Dr. Carcamo-Sanabria, I am left to speculate about what might have happened. This simply cannot constitute sufficient proof that the doctor acted in a disrespectful manner toward Patient I.

[8] If indeed the doctor said this, it was most likely a reference to the Wedding Feast at Cana, *see* John 2: 1-11, a miracle Christians attribute to Christ in which he turned water into wine, an unlikely act if Christ expected his followers to be teetotalers.. Or it could refer to the Last Supper, in which Christ commanded his apostles to drink wine saying "This cup that is poured for you is the new covenant in my blood." Luke 22: 20, The New Oxford Annotated Bible (4th Ed.)

B. Interactions with Staff

Turning to Dr. Carcamo-Sanabria's treatment of Nurse Practitioner A,[9] she complained of three incidents: the doctor's comment about her shoes, his comment about her sweater, and his comments about hiking. No doubt a male boss's comments about a female subordinate's attire can in some circumstances be objectionable and disruptive, but it is difficult to say that is the case here. The Board has cited no instances in which it has disciplined a doctor for similar behavior, nor any instances in sexual harassment law that might be analogous.

There is no question from Nurse Practitioner A's testimony that she was offended by the doctor's comment about her changing from high heels to flats or his comment about her sweater, whether it was the version of that comment she told to Investigator Dye (the sweater was pretty) or the one she testified to at the hearing (he liked the way the sweater fit). However, she also testified that she would not have been offended had she had better rapport with Dr. Carcamo-Sanabria. Her dislike of the doctor does not change what would have been innocuous comments from someone else into objectionable disruptive behavior. Furthermore, once she complained to CHC management about his comments about her attire, he stopped. This circumstance does not constitute a disciplinable offense.

The other comments dealt with hiking. Nurse Practitioner A thought Dr. Carcamo-Sanabria was asking to go hiking with her. The doctor thought he was subtly

[9] The Board's closing brief also refers to Dr. Carcamo-Sanabria's treatment of Medical Assistant A. I will not address Medical Assistant A because, when she declined to testify at the hearing, the Board dropped the allegations related to her.

telling her not to wear hiking gear to the office. Too subtle, evidently, because Nurse Practitioner A received a completely different message. But whatever actually was said, whether it was a hiking request or a hiking attire criticism, these comments do not seem disrespectful or disruptive.

C. *Medical Records*

It is difficult to determine what violations the Board tried to prove in connection with the medical records of Patients M and N. It has sometimes referred to the records written by Dr. Carcamo-Sanabria as fraudulent, other times as simply false. The Board has not spelled out its legal theory in any detail whatsoever. Because it has not given an explanation of what was fraudulent about these records, I will address them to attempt to determine whether the records were incorrect and whether that is because of a knowing falsehood on the part of the doctor.

1. Patient N

With regard to Patient N, the patient who left before being seen by Dr. Carcamo-Sanabria on Thursday, August 6, 2015, this matter came to the attention of CHC management and ultimately to the Board because Medical Assistant B noticed later that afternoon that the doctor had written a medical record that day for a visit that did not occur. If that were all there were to it, and as Medical Assistant B seems to have thought, the doctor was angry at the patient for skipping out on the appointment and chose to bill him for a visit that did not occur, then the medical record would be false.

But there is more to it. Medical Assistant B was unaware that the doctor had spoken to the patient the day before, when the patient was at CHC for another reason. He told the doctor he needed a note to excuse him from work because of his bad back. That is the only reason he came to CHC the following day. Nor was Medical Assistant B aware that the doctor had conducted a brief examination of the patient the day before, and it was this that he was recording.

Even so, the note as originally written by Dr. Carcamo-Sanabria would have seemed to a neutral observer to have reflected an examination that occurred on August 6, rather than a partial examination on August 5 followed by the taking of vitals by Medical Assistant B on August 6. The only evidence on this is that the doctor recognized the problem and sought help from the front desk to figure out how to enter these events properly, but did not obtain a satisfactory answer as to how to do it. He also claims he intended to follow up with Mr. DeMalia, the chief executive officer, but could not do so on Friday, August 7 because Mr. DeMalia did not usually work Fridays (although evidently he did that Friday because Ms. Buckley spoke to him that day).

The matter came to a head on Monday, August 10, 2015, when Mr. DeMalia met with the doctor. Ms. Buckley had already met with Medical Assistant B on August 7 and told Mr. DeMalia that afternoon about the complaint that the doctor was attempting to bill for a visit that had not happened. Thus, prior to speaking to Dr. Carcamo-Sanabria, Mr. DeMalia was undoubtedly under the impression that the doctor had not seen Patient N at all. But the doctor told him during their meeting that he had seen the patient on August 5. The matter was resolved by having Dr. Carcamo-Sanabria amend his note to reflect that it was in part based on his observations on August 5 and by adding that the patient was not going to be billed for a visit.

The falsehood that the Board finds in all this is its doubt that the doctor really examined the patient on August 5 and its contention that the doctor was deliberately attempting to bill based on false information. Dr. Carcamo-Sanabria testified that he did conduct a five minute examination of the patient on August 5, and it is the results of this examination that are reflected in the note he made the following day. There is no contrary evidence. Patient N might have been able to provide evidence on whether the doctor had examined him that day, but he was not called as a witness and not even interviewed by the Board. The Board doubts the doctor's story that he did not enter notes about the August 5 examination on that day because he could not do so in CHC's computer system because it was not connected with a visit (but could on August 6 when the patient was on the calendar). It called no witness with knowledge of CHC's system to dispute this, however. It claimed that Mr. DeMalia would have mentioned such an August 5 examination of the patient in his notes of his meeting with Dr. Carcamo-Sanabria on August 10 if the doctor had mentioned that to him. But it did not call Mr. DeMalia to testify to his recollection of what Dr. Carcamo-Sanabria told him. And, in any event, whatever was said at that meeting, the doctor changed his note to reflect that he had examined the patient on August 5. If Mr. DeMalia thought at the time that this was inaccurate, I would have expected further follow-up by him. Consequently, I do not find substantial the Board's efforts to discredit the doctor.

I found Dr. Carcamo-Sanabria gave credible testimony that he had performed a five-minute examination of Patient N on August 5 and that his notes of August 6 reflect this examination. The circumstance in which the patient approached him to get a note excusing him from work gave him reason to attempt to conduct an examination sufficient to write such a note. The only plausible reason Patient N was asked to come in the next day was to complete the process. If the doctor had simply wished to charge the patient for skipping out on his appointment, the note would doubtless have looked very different.

If Dr. Carcamo-Sanabria examined Patient N on August 5, Medical Assistant B took his vitals on August 6, and the doctor's note of August 6 reflects these things, plus the doctor prepared a letter for Patient N excusing him from work, what is left of the Board's claim that it was a false record on which to base a billing? I note that the doctor denied thinking about billing when he prepared the note and that he claims to have sought advice on how to prepare it properly – and in the end agreed to correct the one inaccuracy, namely the failure to note that some of the events recorded occurred the previous day. But whether the doctor is believed about this or not, there is precious little evidence that this would have been an improper billing if CHC had actually billed for it. The only person who testified that it looked false, Ms. Buckley, was under the impression that the doctor had not seen or examined the patient at all. What exactly Mr. DeMalia thought is not altogether clear. He had at least been told that the doctor had spoken to the patient on August 5, but he still chose not to issue a bill. According to Dr. Carcamo-Sanabria, this was because Mr. DeMalia thought there would be an appearance of impropriety if CHC issued a bill. That is not exactly the same thing as saying that the multi-day encounters with a patient in which the patient received what he was looking for cannot be billed. Whether Dr. Carcamo-Sanabria's note before or after it was corrected could have been billed legitimately is a matter beyond common knowledge and would have required expert testimony. None was offered. I therefore have no basis to find Dr. Carcamo-Sanabria's note regarding Patient N to be false, let along knowingly false.

2. *Patient M*

The Board contends that Dr. Carcamo-Sanabria's record of Patient M's visit of September 10, 2015 was false in two ways: he failed to document a breast exam that he performed and he falsely wrote that he had not performed a complete physical exam. The Board at other times had also raised allegations that the Doctor had falsely changed a "pink slip" listing the patient's last Pap smear in order to give her an unnecessary Pap smear[10] and that the breast exam he conducted was too long to be for legitimate medical

[10] Medical Assistant B had looked-up Patient M's last Pap smear, which was on September 9, 2014. (Ex. 3.) In addition to its electronic medical records, CHC in 2015 used paper "pink slips" as an efficient way to determine when female patients last had, and were in need of, screening exams. (Medical Assistant B Testimony, Tr. 68: 17 – 69: 23; Sweeney Testimony, Tr. 337: 1 – 9; Tr. 338: 15 – 24; Tr. 339: 8 – 340: 5.) Medical Assistant B wrote in her email about the doctor's exam that she told him that Patient M was not due for a Pap smear exam and referred him to Patient M's medical records to support her position. She then stated that she saw Dr. Carcamo-Sanabria writing on Patient M's pink slip. Medical Assistant B believed that, before he was told when Patient M's last Pap smear exam was, Dr. Carcamo-Sanabria had altered Patient M's pink slip to show that her last Pap smear exam was on September 9, 2011 not September 9, 2014. When she saw Dr. Carcamo-Sanabria writing on Patient M's pink slip, she thought he was changing the date back to September 9, 2014. (Ex. 3.) Dr. Carcamo-Sanabria denied that he changed the date of Patient M's last Pap smear exam on her pink slip. (Carcamo-Sanabria Testimony, Tr. 518: 14 – 519: 7.)

There is no support for Medical Assistant B's supposition nor any apparent reason for the doctor to alter a pink slip, which would not have changed the electronic medical record, and then alter it back. While there was some disagreement among the witnesses as to how often a woman should have a Pap smear, Dr. Carcamo-Sanabria testified that one factor was whether she had a history of a sexually transmitted disease. The patient had a history of HPV (Human Papilloma virus), in which case the doctor said she would be due for a Pap smear in one to three years. (Carcamo-Sanabria testimony, 218:3-7; Ex. 4, 000019.) By this standard, the doctor could legitimately have had the patient undergo another Pap smear as it was one year since her last one. But, in any event, he did not purposes. The Board did not contend in its closing brief that it had proved these charges, and hence I have not made findings of fact about them and will address them only in footnotes. [11]

Patient M was scheduled for a complete physical exam on September 15, 2015. Dr. Carcamo-Sanabria wrote in his notes that she requested not to have a physical; instead, she wanted the visit to focus on the heart palpitations she was experiencing. The doctor's note focuses on this more than anything else. He had her undergo an EKG, which is not necessarily part of a routine physical. He also checked her legs for swelling, which would be relevant to her cardiac concerns.

The only evidence that he did perform a complete physical is Medical Assistant B's belief that in a 45-minute exam the doctor must have performed the complete physical that was scheduled. But Medical Assistant B was not in the room during most of the doctor's examination of a patient, except for breast exams and Pap smears, thus she could not have firsthand knowledge of what went on during most of this examination.

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perform a Pap smear, as far as I can tell. None is reflected in the medical record and Medical Assistant B did not complain that he failed to note one.

[11] The Statement of Allegations charged Dr. Carcamo-Sanabria with conducting breast exams that took longer than other practitioners at CHC. The Board later revised the allegations to charge simply that he had failed to document the ten-minute breast exam that he performed on Patient M.

Nonetheless, there was considerable testimony about breast exams at the hearing. The doctor agreed that the breast exams he performs take around ten minutes, which he says is consistent with the way he was taught. He introduced portions of *Bates' Guide to Physical Examination and History Taking*, 11th Edition (2013) and 12th Edition (2017). The latest edition states that the length of time spent palpating the patient's breasts "is one of the most important factors in detecting suspicious changes." Examiners can detect suspicious changes with highest sensitivity when they spend five to 10 minutes examining both breasts. (Ex. 28, page 434.)

And, if the patient communicated to Dr. Carcamo-Sanabria that she did not want a physical that day, even if within Medical Assistant B's earshot, she would not have understood it because the patient spoke Spanish exclusively, and consequently the doctor-patient conversation was in a language Medical Assistant B does not comprehend.

The Board also asserted that the medical record reflects that the doctor examined Patient M's lungs, and numerous other physical systems, which is what he would do during a complete physical. This just is not telling, however, because he also examines a patient's physical systems in office visits that are not complete physical examinations.

That leaves the one remaining charge, that Dr. Carcamo-Sanabria failed to document a breast exam he performed on Patient M. Precious little evidence about this came out at the hearing. Medical Assistant B, whose email alleged a breast exam was not documented, could no longer remember the doctor's examination of Patient M. The doctor had no real memory of this particular detail either. Again, it is worth noting that this lack of memory must in part relate to how long it took for anyone to inform the doctor of the charge that he'd failed to document a breast exam. No one at CHC mentioned it to him, and the Board did not allege it until its More Definite Statement in November 2017, more than two years after Patient M's office visit.

Thus, I am left with only Medical Assistant B's contemporaneous email about a ten-minute breast exam that was not noted. I have no reason to doubt the veracity of an email written one day after the office visit, but whether any failure by Dr. Carcamo-Sanabria to note it should be the subject of discipline is another matter. The Board would have it that this was a deliberate falsehood. But there is no evidence to establish that any failure to document a breast exam was anything more than an oversight. And the Board submitted no evidence relating to any Board practice regarding potential discipline for failure of a doctor to note a breast exam in the medical record. I have found only one. It involved a doctor who was charged with making a patient undergo an unnecessary breast exam and failing to document it. The Board declined to discipline him saying that it "has concerns about the Respondent's examination techniques, and notes that he failed to record the examination in Patient A's medical record, but the Board had determined that there was no sexual boundary violation during the course of the examination." *In the Matter of Dhirendra Mohan, M.D.*, Docket No. RM-09-908, Final Decision at 1 (Bd. of Registration in Medicine, Jan. 4, 2012). If Dr. Mohan was not subject to discipline, I fail to see how Dr. Carcamo-Sanabria can be subject to discipline for one failure to note a breast exam in a medical record.

Conclusion

Accordingly, I recommend that the allegations against Dr. Carcamo-Sanabria be dismissed.

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: MAY 27 2020