

IN THE MATTER OF * BEFORE THE MARYLAND
HUGO BENALCAZAR, M.D. * STATE BOARD OF
Respondent * PHYSICIANS

License Number: D56356 * Case Number: 2221-0051

**AMENDED CHARGES UNDER
THE MARYLAND MEDICAL PRACTICE ACT**

Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) hereby files amended charges HUGO BENALCAZAR, M.D., (“the Respondent”), License Number D56356, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.). The Respondent is charged under the following provisions of Health Occ. § 14-404:

(a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

...

- (3) Is guilty of:
 - (i) Immoral conduct in the practice of medicine; or
 - (ii) Unprofessional conduct in the practice of medicine[.]

§ 1-212. Health occupations boards; regulations.

Regulations

- (a) Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:

- (1) Prohibit sexual misconduct; and
- (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.

Sexual Misconduct Defined

- (b) For the purposes of the regulations adopted in accordance with subsection (a) of this section, “sexual misconduct” shall be construed to include, at a minimum, behavior where a health care provider:
 - (1) Has engaged in sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or other service to the client or patient regardless of the setting in which professional service is provided;
 - (2) Has engaged in sexual behavior with a client or patient under the pretense of diagnostic or therapeutic intent or benefit; or
 - (3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupations board under this article.

Consequences of violations

- (c) Subject to the provisions of the law governing contested cases, if an applicant, licensee, or certificate holder violates a regulation adopted under subsection (a) of this section a board may:

...

- (2) Reprimand the licensee or certificate holder;
- (3) Place the licensee or certificate holder on probation; or
- (4) Suspend or revoke the license or certificate.

The pertinent provisions of the Board’s regulations, **COMAR 10.32.17** provide:

.01 Scope

This chapter prohibits sexual misconduct by health care practitioners.

.02 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined

(1) “Health care practitioner” means an individual licensed under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

...

(3) Sexual contact

(a) “Sexual contact” means the knowing touching directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the health care practitioner’s own prurient interest or for sexual arousal or gratification.

(b) “Sexual contact” includes, but is not limited to:

...

(v) Nonclinical touching of breasts, genitals, or any other sexualized body part.

(4) “Sexual harassment” means an unwelcome sexual advance, request for sexual favor, or other verbal or physical conduct of a sexual nature.

.03 Sexual Misconduct

A. Health care practitioners may not engage in sexual misconduct.

...

C. Sexual misconduct includes, but is not limited to:

(1) Engaging in sexual harassment of a patient, key third party, employee, student, or coworker regardless of whether the

sexual harassment occurs inside or outside of a professional setting;

...

(4) Discussing the health care practitioner's sexual problems, sexual likes or dislikes, or fantasies;

(5) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship;

...

(7) Participating in any form of sexual contact with a patient or key third party;

(8) Having nonconsensual contact with a coworker or employee[.]

ALLEGATIONS OF FACT¹

These Amended Charges supersede any previously filed Charges against the Respondent in Case Number 2221-0051 under the Act. Disciplinary Panel A of the Board bases its amended charges on the following facts that it has cause to believe are true:

I. BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on August 3, 2000, under License Number D56356. The Respondent's license is current through September 30, 2022.
2. The Respondent is board-certified in neurological surgery.

¹ The allegations set forth in this document are intended to provide the Respondent with reasonable notice of the alleged facts. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with these charges.

3. The Respondent is the proprietor and sole practitioner of a neurosurgery, physical therapy and pain management practice in Harford County, Maryland. The Respondent also holds privileges at four hospitals in the Baltimore metropolitan area.²

II. THE COMPLAINTS

4. On or about September 3, 2020, the Board received a complaint (“Complaint 1”) from a surgical nurse and former colleague of the Respondent (“Complainant 1”). In her complaint, Complainant 1 alleged that when she worked with the Respondent at a hospital in Harford County, Maryland (the “Hospital”) the Respondent behaved inappropriately, both verbally and physically, with herself and other female staff members. Complainant 1 stated that the Respondent would touch her on a daily basis, which included rubbing her shoulders and back, and that he would often comment on her undergarments. She complained that the Respondent once touched her “skin at the V-neck in her scrub shirt while looking her in the eyes.” Complainant 1 detailed an incident in the operating room (the “O.R.”) when some ball-shaped instrumentation fell to the floor and the Respondent stated to her “why don’t you put them in your mouth.” Complainant 1 stated that she reported some of her concerns about the Respondent through to Hospital authorities, but no disciplinary action was taken.

² To ensure confidentiality and privacy, the names of individuals and entities involved in this case, other than the Respondent, are not disclosed in this document. The Respondent may obtain the identity of all individuals/entities referenced in this document by contacting the Administrative Prosecutor.

5. On or about November 30, 2020, Board staff received a complaint (“Complaint 2”) from a surgical technologist (“Complainant 2”) who previously worked with the Respondent at the Hospital. Complainant 2 described an incident taking place on April 19, 2017, when she was working with the Respondent in the operating room with a patient anesthetized and lying face-down on the operating table. The Respondent came into the O.R. and began making “extremely unprofessional and inappropriate remarks” about the patient’s body. The Respondent commented on “her butt shape saying how round it was, how nice it looked for her age,” then forcefully smacked the patient’s backside.
6. Complainant 2 went on to describe an incident wherein she was experiencing severe lower back pain while she was assisting the Respondent in performing a procedure. The Respondent asked Complainant 2 if she would like him to “check [her] out in between cases.” Complainant 2 stated that she would, and the Respondent later escorted her into an empty office and began to examine her. Complainant 2 stated that while touching her lower back and “without permission or hesitation he lifts up [her] scrub shirt and tells [her] to loosen [her] pants.” Complainant 2 stated that because she trusted the Respondent to behave like a professional, she complied and loosened her pants. She further stated that “without warning he pulled [her] underwear down...he then started commenting on how “cute” [her] underwear was and how “nice” [she] looked from where he was standing. The entire time still touching [her] lower back and butt.”

Complainant 2 stated that she felt “mortified,” pulled herself together and left the room.

7. On or about December 29, 2020, Board staff received another complaint (“Complaint 3”) from Complainant 2. In Complaint 3, she stated that, among other things, the Respondent has a reputation of “being very flirtatious and very forward with ‘pretty girls.’” Complainant 2 stated that the Respondent touches her “multiple times a day every time [she is] with him but [she doesn’t] know what to do about it.” Complainant 2 also stated that she had previously heard the Respondent threaten nurses before saying that he “all he has to do is say the word and he will have them fired.”

III. BOARD INVESTIGATION

8. The Board conducted an investigation of the Respondent’s conduct, and as part of its investigation, Board staff conducted under-oath interviews with numerous current and former colleagues of the Respondent. In addition, Board staff subpoenaed the Respondent’s personnel records from the various institutions at which he has worked and conducted an under-oath interview with the Respondent.
9. The Board’s investigation determined that for a period of several years, the Respondent engaged in a pattern of unprofessional conduct that included, but was not limited to, sexual harassment of hospital staff, both verbal and physical, sexual propositioning, and unconsented-to physical contact of at least one patient. The Respondent’s conduct proceeded largely unchecked over a period

of time due in-part to staff members' perceptions that any complaints about his conduct would not be acted upon at the organizational level.

10. The investigation of the Respondent's conduct is set forth in pertinent part below.

Complainant 1

11. On or about January 20, 2021, Board staff conducted an interview with Complainant 1, a surgical nurse who worked at the Hospital from 2004 through 2018. In the under-oath interview, Complainant 1 stated:

- a. For a while her working relationship with the Respondent was unremarkable. Eventually the Respondent began to make comments about her underwear saying, "sometimes you just lean down, your scrubs are loose and say whoa, I see your pink underwear, your black underwear or whatever it is...it was never really any more than that until the one day."
- b. She described an incident during a procedure where they were using a piece of equipment that "has all these silver balls on it." She stated that at the end of the case the balls fell on the floor, so she picked one of them up and put it in the Respondent's pocket. The Respondent then asks Complainant 1 "why don't you put them in your mouth?" Complainant 1 responded by telling the Respondent, "that's gross." After that exchange, Complainant 2 went over to the computer to finish her paperwork when the Respondent approached her and put his hand in the V-neck area of her scrub shirt and "touched the top of [her] chest in the cleavage area."
- c. She reported the incident to the Nursing Director and the two of them had a meeting with the Respondent. During the meeting, Complainant 1 told the Respondent that he was inappropriate and unprofessional and asked him not to touch her again. Complainant 1 stated that during the meeting the Respondent "just kind of blew [her] off."
- d. Complainant 1 stated that after the meeting with the Nursing Director, the Respondent did not speak to her very much.

Complainant 2

12. On or about December 28, 2020, Board staff conducted an interview with Complainant 2, a nurse technologist who worked with the Respondent at the Hospital. In her under-oath interview, Complainant 2 stated:

- a. She previously worked in the O.R. with the Respondent exclusively two days per week, and that “he just had a way of commanding the room and making people feel incompetent.” She described the Respondent’s conduct as “disrespectful” and “extremely degrading towards others.”
- b. In or around 2016, she was pregnant and suffering from severe lower back pain while she was in the O.R. with the Respondent. While she was discussing her pain with one of her colleagues, the Respondent overheard and interjected, offering to examine her. The Respondent took her into an empty room and grabbed her lower back. He told her that he needed to get a better feel, so she needed to lift her scrub shirt up. She lifted her shirt “about midway to [her] back.” He then told her that “in order to really see where [her] pain was coming from [she] needed to lower [her] pants.” She described lowering her pants midway down and holding them because she did not want to lower them all the way. The Respondent then put his hands around her waist and used his thumbs to pinpoint on her lower back, “he was touching [her] butt...pushing on my underwear and that’s when he made the comments about how nice everything looked and how he liked [her underwear].” At this point she pulled her pants up, the Respondent started giggling, and she left the room.
- c. The Respondent would ask her about her sex life with her fiancée. He would talk to her about the size of his genitals and offer comparisons of his genitals to surgical instruments.
- d. The Respondent would look down her shirt and other staff member’s shirts and comment on their undergarments. He would state to her, “You’re wearing my favorite bra.” She stated she would offer only short responses or state that she was not in the mood for his behavior.
- e. During Halloween season the Respondent would show her pictures of provocative costumes on his phone suggesting that she should wear them. She stated that there were multiple times when the Respondent would

take pictures of her with his phone. He would remove her eyewear and photograph her eyes. He said he wanted to “stare at them later.”

- f. On April 19, 2017, she witnessed the Respondent hit a patient’s buttocks after making inappropriate comments about the patient’s body while the patient was anesthetized and lying face down on the operating table. “He just started commenting about how nice her butt looked, especially in this position that we had her in for surgery...he proceeded to say her butt looked so good I just needed to be smacked...and before we knew it, he did it. He smacked her butt. Started giggling.”
- g. The Respondent would talk about getting people fired which caused Complainant 2 to be afraid to report him. She stated that she asked her supervisors to change her schedule but did not state that it was because of the Respondent. She believed that her supervisors knew the reason that she wanted to change because she had told them many times before about how uncomfortable she was, but they would never ask why.

Individual 3

13. On or about February 5, 2021, Board staff conducted an interview with Individual 3, an administrative assistant, who had worked with the Respondent since he started practicing at the Hospital. In her under-oath interview, Individual 3 stated:

- a. The Respondent behaves in a manner that is very arrogant, very pompous and womanizing. Multiple staff members reported to her that they were uncomfortable working with him.
- b. Complainant 2 expressed to her multiple times that she did not like the Respondent and did not want to work with him but was initially wary of reporting him out of fear of losing her job.
- c. She observed once instance where the Respondent was interacting with Complainant 2 and said to her, “I’d like to put you over my knee and spank you, spank you, spank you...and she just rolled her eyes and walked away.”

Individual 4

14. On or about February 11, 2021, Board staff conducted an under-oath interview with Individual 4, an Operating Room Secretary who previously worked with the Respondent. In her interview, Individual 4 stated:

- a. She changed her work schedule to avoid the Respondent after his interactions with her started to become “eerie.” The Respondent would call her by a nickname “Strawberry” and began bringing her coffee without her asking him to do so. He began calling her frequently when she was working and texting her personal cell phone. The Respondent would make comments about her body and her attire. In one instance he stated, “for a skinny girl, you have a nice butt.”
- b. The Respondent once telephoned her at work while he was sitting a short distance away from her and asked her to come sit on his lap.
- c. While she was walking down a hallway, the Respondent grabbed her and pulled her into an office and closed the door. “I said no, eight times super loud before he let me out of that room.” She stated that the Respondent had an erection and was trying to get her to sit on his lap and touch it.
- d. The Respondent once followed her to her car while screaming her name. She ran to her car and called a friend who worked in security and asked him to meet her at her car so that she could hide for a few minutes.

Individual 5

15. On or about March 5, 2021, Board staff conducted an under-oath interview with Individual 5, a nurse who previously worked with the Respondent. In her interview, Individual 5 stated:

- a. She worked in the O.R. with the Respondent and found him to be disrespectful, inappropriate, and unprofessional.

- b. In 2017 she was present in the O.R. when the Respondent slapped the buttocks of the anesthetized patient referenced above. She reported the incident because “that’s not typical behavior of a surgeon.”
- c. Working in the O.R. with the Respondent made her feel “impaired” because in addition to her responsibilities to the patient she had to worry about avoiding conversations with the Respondent, which is impossible in a surgical area, but the Respondent’s conduct made it a very difficult working environment.

Individual 6

16. On or about February 2, 2021, Board staff conducted an under-oath interview with Individual 6, a technologist who previously worked with the Respondent.

In her interview, Individual 6 stated:

- a. At the beginning of her time working with the Respondent she was told by colleagues “you’ll be fine” working with the Respondent because “he just likes being around pretty women.” Individual 6 stated that she understood that to mean that she should be “on guard” while working with the Respondent.
- b. She described the Respondent as “very touchy,” and stated that he attempted to massage her neck on multiple occasions. The Respondent would touch other staff members on their lower backs and would make inappropriate comments about patients’ bodies.
- c. She observed the Respondent getting “really close” and whispering to Complainant 2. Individual 6 stated that this made her feel uncomfortable, so she looked away and started working on her computer. After the Respondent left the room Complainant 2 approached her and asked, “did you see that?” Individual 6 responded that she did not because she was looking away. Complainant 2 told Individual 6 that the Respondent “got in [her] face,” and asked that in the future “please don’t turn around when he gets this close to me.”

Individual 7

17. On or about March 4, 2021, Board staff conducted an under-oath interview with Individual 7, a Hospital staff member who worked in the Respondent's O.R. In her interview, Individual 7 stated:

- a. She knew the Respondent as a surgeon in the O.R. who made her feel uncomfortable.
- b. On one occasion, the Respondent remarked to her that she had a "cute little butt that could squeeze through the doorway."
- c. Individual 4 told Individual 7 that the Respondent also made her feel uncomfortable calling her by the nickname "Strawberry," and on one occasion had followed her into the parking garage.

Individual 8

18. On or about February 24, 2021, Board staff conducted an under-oath interview with Individual 8, a nurse who worked with the Respondent. In her interview, Individual 8 stated:

- a. Many of her colleagues expressed a reluctance to work in the Respondent's O.R., and that she sometimes felt uncomfortable for others because the Respondent tends to be very flirtatious.
- b. She observed the Respondent asking Complainant 2 to go to the movies with him and commenting on her body.
- c. The last time she remembers working with Complainant 2 was when Complainant 2 asked that Individual 8 not leave her alone in the O.R. with the Respondent.

Individual 9

19. On or about January 11, 2021, Board staff conducted an under-oath interview with Individual 9, a Physician Assistant who worked with the Respondent. In his interview, Individual 9 stated:

- a. They had a patient in the O.R. prepared for a surgical procedure when the Respondent came into the room and did not like how Individual 9 had prepared the patient's buttocks area. The Respondent "starts slapping her rear end and dancing around and...singing the butt song... 'Baby's Got Back', or something like that."
- b. He observed the Respondent constantly hugging staff, massaging their necks, and asking them about their sex lives.

20. Board staff interviewed other current or former colleagues of the Respondent who corroborated the Respondent's reputation for being touchy with staff members, and/or making inappropriate comments to staff members.

Individual 10

21. On or about July 22, 2021, Board staff conducted an under-oath interview with Individual 10, a nurse and former patient of the Respondent who, prior to becoming a patient, was also a colleague of the Respondent. Individual 10 stated:

- a. That she previously worked with the Respondent approximately nine years prior to her becoming his patient in March 2017. She sought treatment from the Respondent because she trusted him and knew him to be a good physician. Individual 10 stated that the Respondent entered the examination room and she reminded him of who she was due to the length of time that had passed since they worked together. She testified that the Respondent became very jovial, sat down on a chair, rolled over to her and reached his hands out and "placed them directly onto [her] breasts and squeezed them. He said, 'I've always wanted to do this.'" The Respondent then asked her to stand up to examine her back and told her "how nice [her] ass was." After that they talked about the surgery that she would need.
- b. Later that month, she reported as scheduled for her surgical procedure with the Respondent. Individual 10 testified that the Respondent entered the operating room, and while she was laying on her back on the stretcher, "he lifted the covers and placed his two fingers on [her] vagina." She stated that she hit his hand away and said, "stop it, what are you doing?"

Individual 10 stated that she told the Respondent that she was very nervous, and he was making it worse and the Respondent laughed.

The Respondent

22. On or about May 21, 2021, Board staff conducted an under-oath interview with the Respondent. In the interview, the Respondent stated:

- a. He would typically greet staff when he arrived at the O.R. by touching their cap or their neck and expected that staff would be comfortable expressing their discomfort if they were so inclined.
- b. There was non-sexual touching from both sides in his interactions with Complainant 1. He denied making unprofessional comments toward her or telling her to put any surgical instruments into her mouth.
- c. He acknowledged touching Complainant 2's hands and neck at her request because "touch is a calming thing." He stated that none of his comments to Complainant 2 were meant in a sexual way, and if they talked about sex, it was primarily in the context of her pregnancy.
- d. Complainant 2 asked him to examine her for joint dysfunction and he did so to be courteous but will not ever do so again. He took her into a room to examine her because it was not appropriate to do it in the hallway. He asked her to loosen her waistband and pull it down a little bit. Afterwards, Complainant 2 seemed to be thankful, not offended.
- e. He denied pulling Individual 4 into an empty office and trying to make her touch his erection.
- f. In April 2017 he did not slap the patient's buttocks but was illustrating to staff that they had placed a frame in an incorrect position. "I said look, the buttock tissue moves like this...you have to touch the tissue...it's moving here. Here it's not moving." He denied making any inappropriate comments about the patient's body.
- g. He denied any inappropriate touching of Individual 10.

23. Following this interview, Respondent's counsel informed Board staff that the Respondent had recalled additional information. A second under-oath interview

of the Respondent was conducted on May 25, 2021. In this interview, the Respondent stated:

- a. That he initially did not recall Individual 4 because he called her by her nickname "Strawberry." He acknowledged bringing her coffee and stated that the two of them began a romantic relationship outside of work. He recalled an occasion wherein he invited her into his administrative office, and she drove there specifically to have an encounter with him. The Respondent stated that he ended the relationship after Individual 4 demanded money from him.
- b. He could not tell Board staff the whole truth in the first interview not because he could not remember, but because he had to "put some type of coherent thing together."

IV. GROUNDS FOR DISCIPLINE

The Respondent's actions as outlined in pertinent part above constitute immoral conduct in the practice of medicine, and unprofessional conduct in the practice of medicine in violation of Health Occ. §14-404(a)(3)(i)(ii), as well as violations of the Board's sexual misconduct regulations promulgated under Health Occ. § 1-212.

V. NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, a Disciplinary Panel of the Board finds that there are grounds for action under Health Occ. § 1-212, § 14-404(a)(3)(i) and/or (ii), it may impose disciplinary sanctions against the Respondent's license in accordance with the Board's regulations under COMAR 10.32.02.09 and/or 10.32.02.10, including revocation, suspension, or reprimand and may place the Respondent on probation. The panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent.

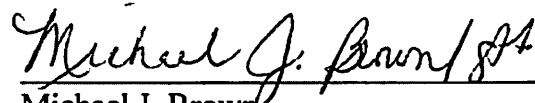
**NOTICE OF DISCIPLINARY COMMITTEE FOR CASE
RESOLUTION CONFERENCE, PREHEARING CONFERENCE AND HEARING**

A conference before the Disciplinary Committee for Case Resolution (“DCCR”) in this matter is scheduled for **Wednesday, September 1, 2021, at 9:00am.**, at the Board’s office, **4201 Patterson Avenue, Baltimore, Maryland 21215**. The Respondent must confirm in writing his intention to attend the DCCR. The Respondent should send written confirmation of his intention to participate in the DCCR to: **Christine Farrelly, Executive Director, Maryland State Board of Physicians, 4201 Patterson Avenue, 4th Floor, Baltimore, Maryland 21215**. The nature and purpose of the DCCR is described in the attached letter to the Respondent. If the case cannot be resolved at the DCCR, a pre-hearing conference and a hearing in this matter will be scheduled at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley Maryland, 21031. The hearing will be conducted in accordance with Md. Code Ann., Health Occ. § 14-405, and Md. Code Ann., State Gov’t §§ 10-201 et seq. (2014 Repl. Vol.).

**BRIAN E. FROSH
ATTORNEY GENERAL**

8/27/21

Date



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