

**NOMINATION OF JAMES O'NEILL
TO SERVE AS DEPUTY SECRETARY
OF HEALTH AND HUMAN SERVICES**

HEARING
OF THE
**COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**
UNITED STATES SENATE
ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE NOMINATION OF JAMES O'NEILL, OF CALIFORNIA, TO
BE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES

MAY 8, 2025

Printed for the use of the Committee on Health, Education, Labor, and Pensions



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

60–599 PDF

WASHINGTON : 2026

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

BILL CASSIDY, M.D., Louisiana, *Chairman*

RAND PAUL, M.D., Kentucky

SUSAN M. COLLINS, Maine

LISA MURKOWSKI, Alaska

MARKWAYNE MULLIN, Oklahoma

ROGER MARSHALL, M.D., Kansas

TIM SCOTT, South Carolina

JOSH HAWLEY, Missouri

TOMMY TUBERVILLE, Alabama

JIM BANKS, Indiana

JON HUSTED, Ohio

ASHLEY MOODY, Florida

BERNIE SANDERS (I), Vermont, *Ranking Member*

PATTY MURRAY, Washington

TAMMY BALDWIN, Wisconsin

CHRISTOPHER MURPHY, Connecticut

TIM KAINE, Virginia

MAGGIE HASSAN, New Hampshire

JOHN HICKENLOOPER, Colorado

ED MARKEY, Massachusetts

ANDY KIM, New Jersey

LISA BLUNT ROCHESTER, Delaware

ANGELA ALSOBROOKS, Maryland

MATTHEW GALLIVAN, *Majority Staff Director*

DANIELLE JANOWSKI, *Majority Deputy Staff Director*

WARREN GUNNELS, *Minority Staff Director*

ZAIN RIZVI, *Minority Deputy Staff Director*

C O N T E N T S

STATEMENTS

THURSDAY, MAY 8, 2025

Page

COMMITTEE MEMBERS

Cassidy, Hon. Bill, Chairman, Committee on Health, Education, Labor, and Pensions, Opening statement	1
Baldwin, Hon. Tammy, U.S. Senator from the State of Wisconsin, statement ..	2
Alsobrooks, Hon. Angela, U.S. Senator from the State of Maryland, Opening statement	2
Thompson, Hon. Tommy G., Former Governor of the State of Wisconsin, statement	4

WITNESSES

O'Neill, James, Tiburon, CA	4
Prepared statement	6

ADDITIONAL MATERIAL

Statements, articles, publications, letters, etc.	
Hassan, Hon. Maggie	
State of Maryland's complaint against Mr. Geier	27

QUESTIONS FOR THE RECORD

Response by James O'Neill to questions of:	
Senator Cassidy	82
Senator Hawley	82

NOMINATION OF JAMES O'NEILL TO SERVE AS DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES

Thursday, May 8, 2025

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in room SD-430, Dirksen Senate Office Building, Hon. Bill Cassidy, presiding.

Present: Senators Cassidy [presiding], Marshall, Hawley, Husted, Moody, Alsobrooks, Murray, Baldwin, Kaine, Hassan, and Hickenlooper.

OPENING STATEMENT OF SENATOR CASSIDY

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will come to order. This morning, we're having a hearing on the nomination of Mr. James O'Neill to serve as the Deputy Secretary of Health and Human Services.

Actually, Senator Alsobrook, is substituting for Ranking Member Sanders, she and I will both have opening statements. Then former Wisconsin Governor and HHS Secretary Tommy Thompson, will introduce our witness, although I think we're going to have Senator Baldwin introduce Governor Thompson. Then Mr. O'Neill will have 5 minutes for his opening statements and Senators will then each have 5 minutes for questions.

Thank you, Mr. O'Neill, for being here and for your willingness to serve. The Nation faces enormous health threats, including rising healthcare costs, mental health and substance use disorder crisis, a breakdown in public trust in healthcare institutions, two high levels of chronic disease, and a preventable measles outbreak, which has taken three lives and hospitalized many others.

I will note that from 2000 to 2024, the United States saw a total of three measles death. Now we've had three measles deaths in just 4 months of this current outbreak. We should be incredibly troubled.

The American people want solutions to make their lives easier. They want results and not excuses. President Trump working with Secretary of Health and Human Services, Kennedy, has laid out a bold vision to make healthcare more affordable and to make America healthy again. To do this, he needs officials with the expertise and vision to carry out his agenda while also increasing trans-

parency, restoring trust, and ensuring that science, not politics, drives decision-making. This is why this nomination is so important.

If confirmed as Deputy HHS Secretary, Mr. O'Neill will be responsible for implementing the President's agenda at HHS, under Secretary Kennedy's leadership. He will help steer a ship going through massive changes. The Deputy Secretary needs to be someone whom Americans can trust to make science-based decisions to strengthen HHS and to make America healthier.

I look forward to hearing your plans and vision to accomplish this. Thank you for coming before this Committee and being willing to serve. I look forward to discussing how we can fulfill the vision of making America healthy again.

Senator Alsobrooks is not here, so walking in right now—I'm looking out there and I don't see him walking in right now. So, would you like to introduce the Hon. Governor?

Senator BALDWIN. I'd be honored.

The CHAIRMAN. Please.

STATEMENT OF SENATOR TAMMY BALDWIN

Senator BALDWIN. We have here today to introduce our witness, Governor Tommy G. Thompson, the longest serving Wisconsin Governor and one who prioritized the issues that this Committee focuses on: health, education, labor, and pensions.

Not only did he serve his country as the Secretary of Health and Human Services, and I remember fondly a dinner we had together with Diana DeGette when I was in the house to focus on biomedical research. But following that incredible tenure of service, Tommy G. Thompson filled in as President of our University of Wisconsin system, during a time of great challenge, the pandemic, and was a champion once again of our university system.

I'm just delighted to have you here. And would defer back to the Chairman of the Committee to introduce our Ranking Member for her opening statement.

The CHAIRMAN. Senator Alsobrooks.

OPENING STATEMENT OF SENATOR ANGELA ALSOBROOKS

Senator ALSOBROOKS. Thank you so much, Chairman Cassidy. And for those who are wondering, I am not Bernie Sanders. I am Angela Alsobrooks. Ranking Member Sanders is unable to be here this morning, but I'd like to say a few words on behalf of the Minority.

Today we are considering President Trump's nominee to be the Deputy Secretary of Health and Human Services, Jim O'Neill. We were also going to consider the President's nominee to be the next Surgeon General of the United States, Dr. Janette Nesheiwat, a Fox News medical contributor, and a graduate of medical school, but for whatever reason, President Trump abruptly withdrew her nomination yesterday afternoon.

As we all know; this is the second time that President Trump has withdrawn a nominee within our Committee's jurisdiction. In March, he withdrew the nomination of Dave Weldon, who spent

years lying about the safety and efficacy of vaccines to head the CDC about an hour before his hearing was set to begin.

At any rate, Mr. O'Neill, thank you so much, sir, for being here today. And Mr. Chairman, I'd like to say that in America today, we have a healthcare system that is broken, outrageously expensive, and horrifically cruel. We also spend twice as much per capita on healthcare as any other country on earth, over \$14,500 per year. And despite these huge expenditures, we remain the only major country on earth not to guarantee healthcare to all people as a human right.

Over 85 million Americans are still either uninsured or underinsured. The result: over 60,000 people in our Country die each year because they cannot afford to go to a doctor when they should. More than half a million Americans go bankrupt due to medically related debt, and one out of four Americans cannot afford to buy the medicine their doctors prescribe.

Sadly, as dysfunctional as our current healthcare system in America is, this Administration and many of my Republican colleagues are actively working to make it worse. As we speak, Republicans in Congress are writing a "Reconciliation bill" that would decimate Medicaid and throw millions of Americans off the healthcare that they have in order to give huge tax breaks to the wealthiest people and most profitable corporations in America.

Let's be clear, when some of our Republican colleagues talk about cutting Medicaid by up to \$880 billion dollars, they are talking about making devastating cuts to community health centers, which rely on Medicaid for 43 percent of their revenue, mostly children, and provide primary healthcare to 32 million people. They're also talking about cutting funding for nursing homes, which depend on Medicaid for some two thirds of their revenue.

Further, since the President has been in office, 20,000 employees at the Department of Health and Human Services have been terminated or forced out, threatening the healthcare and well-being of millions of Americans who rely on Head Start, the *Older Americans Act*, Medicare, Medicaid, and LIHEAP.

My home State of Maryland has been reeling from these cuts. Not only do we have over 150,000 dedicated Federal civil servants in Maryland, but we are home to Federal health agencies like NIH, FDA, SAMHSA, CMS, the Health Resources and Services Administration, and AHRQ.

We need a Deputy Secretary of Health and Human Services who will speak out against these devastating cuts and strongly oppose decimating Medicaid. All of us want to make the government more efficient, but we don't do this by slashing the agency in charge of the health and well-being of tens of millions of seniors, children, people with disabilities, working families, and the most vulnerable people in our Country.

We need a Deputy Secretary of Health and Human Services who will fight, to continue healthcare as a human right, not as a privilege, regardless of whether you are poor, working class or wealthy.

Mr. O'Neill I have carefully reviewed your record and background, and unfortunately, it is very clear to me that you, sir, are

not that person. And I'm concerned that you will be just another rubber stamp for Donald Trump's rapid movement toward the destabilization of our healthcare system. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Alsobrooks. And now I recognize Governor Thompson to introduce our nominee.

**STATEMENT OF HON. TOMMY G. THOMPSON, FORMER
GOVERNOR OF THE STATE OF WISCONSIN**

Honorable THOMPSON. Senator Cassidy, thank you very much for allowing me to speak shortly and quickly about an outstanding individual, my friend Jim O'Neill. I would like to quickly add, that thank you for the very kind words from Senator Baldwin, and I appreciate it very much. The good Senator and I go back a long time with different political parties, but we're still very close friends, and I thank you very much for your very kind words. Appreciate it.

To all the distinguished Senators, thank you for giving me this opportunity. Members of the HELP Committee, it's my pleasure to introduce Jim O'Neill, President Trump's nominee to be Deputy Secretary of the United States Department of the Health and Human Services. I had the privilege of having Jim work with me and for me when I was secretary of HHS. And based on my experience, I can tell you that he's an excellent choice to help manage this department.

He is a hard worker, a good listener, a brilliant thinker and at HHS, he took the time to really learn the department, and he gained a deep understanding of how HHS works. I can also tell you that Jim is a compassionate person who cares deeply about the mission of HHS. He's an evidence-based decision-maker, and he cares and believes in good science.

Since his time in government, Jim has become an entrepreneurial leader and a manager of complex businesses. He has worked with and learned from some of the best and brightest minds in business and in technology. He has a deep respect for innovation and new ideas. He likes to make things work.

As the distinguished Members of this Committee know all too well, our health system is broken, costs are too high, and people are too sick. We need a health system that produces better results for patients. And with all of these challenges in mind, and Jim's highly relevant experience, I can tell you and testify with great certainty that Jim O'Neill is an outstanding choice for Deputy Secretary of HHS and will do the job well, and you will all be proud of his effort.

Thank you very much, all of you.

The CHAIRMAN. Mr. O'Neill, you are recognized for your statement.

STATEMENT OF JAMES O'NEILL, TIBURON, CA

Mr. O'NEILL. Thank you so much, Governor. You've always been a wonderful mentor and role model, and if confirmed, I hope to live up to your record.

Good morning. Chairman Cassidy, Senator Alsobrooks, distinguished Members of this Committee: thank you so much for inviting me to talk with you today.

Imagine every American waking up, vibrant, energetic, and free of disease. That's President Trump's vision to make America healthy again. And I'm honored to be nominated to help turn it into reality. I'm grateful to Secretary Kennedy for his bold leadership and for his trust in my experience to deliver results. My children, Eve, Sebastian, and Cecily, are in school in California today, but they're why I'm here: I want them and every child to inherit a healthier nation.

Mr. Chairman, I believe that all Americans deserve to be healthy, happy, and prosperous. Most families try to make healthy choices, but our food system pushes ultra processed foods. Our official nutrition advice creates confusion. Our healthcare system is difficult to navigate, and it prioritizes pills over prevention.

Providers spend too much time clicking through pop-up screens and fighting with insurance companies, instead of looking patients in the eye. Federal policies can empower people to break this cycle. If confirmed, I'll help reform outdated rules, pursue transparency in gold standard science, and champion healthy lifestyles and prevention so Americans can thrive.

For three decades, I've worked to improve healthcare. As a Senate staffer in the 1990's, I helped Senators shape bipartisan reforms, including HIPAA-collaborating with lawmakers to protect patient privacy.

During the Bush administration, I had the pleasure of working at HHS for 6 years with Secretary Thompson, Secretary Mike Leavitt, and thousands of talented career and appointed colleagues. I'm proud of my work there, and I learned a great deal about the responsibility structures and dedicated professionals of each of the operating divisions of the department, and how those divisions can best serve the American people and improve their health and welfare.

At HHS, I helped Congress pass the *Medicare Modernization Act*, modernize FDA, and strengthen food safety. I improved preparedness for avian influenza and hurricanes by helping establish the Administration for Strategic Preparedness and Response after it was authorized by Congress. I conducted health diplomacy, by visiting allied countries and working with ministers of health. I served on the President's Management Council and led HHS to earn the highest possible management score.

Most recently in California, I've partnered with entrepreneurs to advance cutting edge research, technologies, and therapies. And this experience has reinforced my conviction that government must support, not hinder innovators to deliver effective and affordable results that get better every year. I've seen what happens when you pair the brightest minds with the best tools and data, and we must bring that same dynamism into government.

Sadly, America's health is in crisis. Three quarters of Americans are overweight or obese, leading to chronic diseases like diabetes, high blood pressure, and over time heart attacks and kidney fail-

ure. Diabetes alone costs us \$400 billion every year, and has exploded in prevalence tenfold since 1960.

Fentanyl ravages our cities and our countryside. Addiction and mental health are urgent unsolved problems. Since 2000, suicide has increased by 37 percent. Medicare hospital insurance is headed toward insolvency. Families struggle to afford individual insurance. We spend \$4.7 trillion on healthcare—double the OECD average, yet our life expectancy is actually shorter than it was in 2010. These aren't just numbers. There are a call to action. Overall, what we're doing is just not working.

That's why I'm so grateful to President Trump and Secretary Kennedy for taking on these challenges and promoting a vision for change. Mr. Chairman, we have a century scale opportunity to act. If confirmed, I'm eager to rejoin HHS and: reform our food system to prioritize health for our children and parents, pursue gold standard basic and translational research that replicates, use science, economics, and artificial intelligence to improve the quality and affordability of healthcare, and accelerate development and access to lifesaving and health extending treatments.

I'm ready to work with this Committee, to make a generational change in our Nation's health. For my children, for our families, and for every American, I pledge to fight for a future where everyone can enjoy a long, vigorous, and prosperous life. I look forward to your questions.

[The prepared statement of Mr. O'Neill follows.]

PREPARED STATEMENT OF JAMES O'NEILL

Good morning. Chairman Cassidy, Ranking Member Sanders, and distinguished Members of this Committee: thank you for inviting me to appear before you today.

Imagine every American waking up vibrant, energetic, and free of disease. That's President Trump's vision to make America healthy again, and I'm honored to be nominated to help turn it into reality.

I'm grateful to Secretary Kennedy for his bold leadership and for his trust in my experience to deliver results.

My children Eve, Sebastian, and Cecily are in school in California today, but they're why I'm here: I want them, and every child, to inherit a healthier nation.

Mr. Chairman, I believe that all Americans deserve to be healthy, happy, and prosperous. Most families try to make healthy choices, but our food system pushes ultra-processed foods, our official nutrition advice creates confusion, our health care system is difficult to navigate and it prioritizes pills over prevention. Providers spend too much time clicking through popup screens and fighting with insurance companies instead of looking patients in the eye. Federal policies can empower people to break this cycle. If confirmed, I'll help reform outdated rules, pursue transparency and gold standard science, and champion healthy lifestyles and prevention so Americans can thrive.

For three decades, I've worked to improve health care. As a Senate staffer in the 1990's, I helped Senators shape bipartisan reforms including HIPAA—collaborating with lawmakers to protect patient privacy.

During the Bush administration, I had the pleasure of working at HHS for 6 years with Secretary Tommy Thompson, Secretary Mike Leavitt, and thousands of talented career and appointed colleagues. I am proud of my work there, and I learned a great deal about the responsibilities, structures, and dedicated professionals of each of the operating divisions of the Department, and how those divisions can best serve the American people and improve their health and welfare.

At HHS, I helped pass the *Medicare Modernization Act*, modernize the FDA, and strengthen food safety. I improved preparedness for avian influenza and hurricanes by helping establish the Administration for Strategic Preparedness and Response after it was authorized by Congress. I conducted health diplomacy by visiting allied

countries and working with ministers of health. I served on the President's Management Council and led HHS to earn the highest possible management score.

Most recently, in California, I've partnered with entrepreneurs to advance cutting-edge research, technologies, and therapies, and this experience has reinforced my conviction that government must support, not hinder, innovators to deliver effective and affordable results that get better every year. I've seen what happens when you pair the brightest minds with the best tools and data, and we must bring that same dynamism into government.

Sadly, America's health is in crisis. Three quarters of Americans are overweight or obese, leading to chronic diseases like diabetes, high blood pressure, and over time, heart attacks and kidney failure. Diabetes alone costs us \$400 billion every year, and it has exploded in prevalence tenfold since 1960. Fentanyl ravages our cities and our countryside. Addiction and mental health are urgent unsolved problems. Since 2000, suicide has increased by 37 percent. Medicare hospital insurance is headed toward insolvency. Families struggle to afford individual insurance. We spend \$4.1 trillion on health care—double the OECD average—yet our life expectancy is actually shorter than it was in 2010. These aren't just numbers; they're a call to action. Overall, what we've been doing is just not working.

That's why I am so grateful to President Trump and Secretary Kennedy for taking on these challenges and promoting a vision for change.

Mr. Chairman, we have a century-scale opportunity to act. If confirmed, I'm eager to rejoin HHS and:

- reform our food system to prioritize health for our children and parents;
- pursue gold-standard basic and translational research that replicates;
- use science, economics, and artificial intelligence to improve the quality and affordability of health care; and
- accelerate development and access to life-saving and health-extending treatments.

I'm ready to work with this Committee to make a generational change in our Nation's health.

For my children, for our families, and for every American, I pledge to fight for a future where everyone can enjoy a long, vigorous, and prosperous life.

I look forward to your questions.

The CHAIRMAN. Thank you, sir. I'll start. You worked on HIPAA in your previous work. I think HIPAA needs to be updated. AI, I think has the ability to exploit. Can you have any thoughts on that or how would you potentially work with us—what are your thoughts along those lines, please?

Mr. O'NEILL. Yes. Thank you. So, I was at HHS during the promulgation of the HIPAA privacy rule, which was led by the Office of Civil Rights. I was not at the center of that discussion, but I was on the periphery. I definitely strongly support the principle of medical privacy. Patients' private health data needs to remain private, needs to only be shared with people that they consent to be sharing to.

AI, as I said, has tremendous potential to improve healthcare across the board and improve the functions of the department. But yes, of course, we need to periodically review the HIPAA privacy rule and make sure that it is not leaving patient data open to threats because of AI.

The CHAIRMAN. It does seem like AI could do a lot of things, for example, my search history or my watch. Because I've had legislation regarding that-bipartisan, which would be very impactful upon somebody deciding whether to hire me. Should we have a broader definition of what is protected health information?

Mr. O'NEILL. That seems like a reasonable thing to consider as we look at the privacy rule. I'm not sure the privacy rule—Well, you might know more than I do, I don't think employers have any current legal access to health records.

The CHAIRMAN. Not only health records, but I was told once by someone who is a headhunter that he can somehow access people's search history. And if someone is looking for in vitro fertilization, for example, would tell the potential employer, oh, this person's investigating IVF, she may be—you see where I'm going with that.

Mr. O'NEILL. That does sound like a significant concern. And if confirmed, I'd be happy to make sure that the HIPAA privacy rule is up to date with regard to AI and, and whatever is necessary, both legally and technologically, to ensure that patient's data is not shared anywhere without their consent, as well as search history and other related things.

The CHAIRMAN. You and I have discussed immunization mandates, and you've mentioned that you—am I correctly characterizing your view, you support immunization, but you don't think the Federal Government should mandate rather, that decision should be held to localities?

Mr. O'NEILL. Yes. Senator.

The CHAIRMAN. Right now, for someone who wishes to become a permanent resident in the United States, it is mandated that they be up to date on CDC recommended vaccines. Frankly, we don't mandate for that, for those people who come across the border illegally, and are then transmitted into the interior of the country. And I've gathered that a lot of the measles that we're seeing right now, for example, in my state in New Orleans, is coming from people coming to our Country from elsewhere and bringing measles with them.

First, do you agree that the Federal Government should mandate that if someone becomes a U.S. citizen, that they'd be up to date on their immunizations?

Mr. O'NEILL. Senator, as you know, I'm very strongly practicing pro-vaccine. I'm an advisor to a vaccine company. I support the CDC vaccine schedule. I mean, I think by definition, illegal immigrants are not passing through any kind of checkpoint that could check for their vaccine.

The CHAIRMAN. But when they're arrested, if you will, detained, they're brought to an area which HHS has a role in, and they receive medical services, screened for tuberculosis, that sort of thing, and then passed through. So, there is a role that HHS has in making sure that these folks are safe. And yet we see measles being introduced in our Country by people who are from outside our Country.

First, would you accept a mandate? Do you agree with the mandate which currently exists, that if somebody wishes to become a legal resident, that they'd be up to date on their immunizations as per recommended by CDC?

Mr. O'NEILL. I haven't looked into the immigration law aspect of this, but I do support the CDC schedule and that rule seems reasonable.

The CHAIRMAN. This is about the mandate?

Mr. O'NEILL. Yes, I understand. I said that rule seems reasonable to me.

The CHAIRMAN. Then what about those who are coming? Because frankly, since we have measles coming to our Country, from people from outside, it seems relevant to me. I would like to say, wait a second. If you're coming to our Country, we don't expect you to bring disease, and we expect you therefore to be up to date on your immunizations.

Does your opposition to mandates on a Federal level, would it extend to that sort of—would you oppose that sort of mandate? Because if you come here legally, you got to get it right. The crazy thing is if you come here illegally, you don't have to get it, which just doesn't make sense to me.

Mr. O'NEILL. Senator, I think President Trump's been very successful at controlling the border at significantly——

The CHAIRMAN. Yes. But there'll be a future President.

Mr. O'NEILL. Sure.

The CHAIRMAN. We're establishing law now for future Presidents, not just our own.

Mr. O'NEILL. Well, I think future Presidents could not only change border enforcement, they could also change the rules for naturalization and for what kind of medical requirements are put on legal and Illegal records.

The CHAIRMAN. I'll come back to that maybe at the very end.

Mr. O'NEILL. Okay. Sure. Thank You, Senator.

The CHAIRMAN. Senator Alsobrooks——

Senator Murray.

Senator MURRAY. Thank you very much, and thank you for the accommodation. And Mr. Chairman, I just want you to know, the Trump administration fired many of the CDC Port Health Station staff. In fact, at SeaTac in my state, there used to be four. They are the persons that screen travelers at the ports of any entry. So, if we don't have people there to screen, even a mandate would make it very difficult to assure that. So, I share your concern, but I also think we have to have personnel there to do it.

With that, Mr. O'Neill we know right now that at HHS, they're undertaking a massive reorganization, firing staff, canceling, and terminating thousands of grants and contracts worth billions of dollars, delaying sending that grant funding out, including, by the way, for lifesaving biomedical research.

Meanwhile, HHS is currently, and I know you're not there yet, but they're refusing to provide basic answers to many of our straightforward questions. They're canceling longstanding briefings, and they're telling Congress and virtually the American public nothing about these dramatic, unprecedented changes.

Last week, HHS submitted an operating plan for fiscal year 25 required by law, and it leaves it blank. The funding levels for 530 programs were left blank. The department is effectively telling us, it doesn't have to tell us or the American people anything, about

how it is going to spend tens of billions of dollars, taxpayer dollars across hundreds of programs. And that is really stunning to me.

In my time in Congress, I have never seen an Administration less transparent than this one. I've also never seen an Administration so insistent on pretending they are transparent while going out of their way to hide basic information that we require.

Mr. O'Neill. I want to ask you, if you are confirmed, will you commit to prioritizing real transparency and sharing information with Congress and the American public about what HHS is doing?

Mr. O'NEILL. Thank you for the questions, Senator. It's lovely to see you. I was a Senate staffer in the 1990's. We had a few pleasant interactions. I don't expect you to remember. But yes, I have a kind of visceral sense that it's Congress that authorizes all the programs at HHS, it's Congress that appropriates the money for HHS. Congress absolutely deserves to have prompt and accurate information, both proactively about future plans and also in reply to questions, whether it's testimony or written questions.

Yes, I commit if confirmed to ensure that the whole department takes seriously its obligation to provide good, transparent, accurate, prompt information to Congress.

Senator MURRAY. Well, I appreciate that answer. I'm not holding my breath because I haven't seen it happen yet. But Mr. Chairman, I want you to know I am focused on real transparency here. This department is not above Congressional oversight. And we have a responsibility and a need to hold all the agencies accountable. So, this is something I'm tracking very closely.

I wanted to ask you quickly too about women's health. The plan to gut HHS is a disaster for health and safety, but it is based, it seems to me, on a total lack of understanding about how different agencies across the department work. For example, Senator Kennedy, seems to think we shouldn't have more than one office that covers women's health. Well, women's health requires dedicated focus in different areas, for example; workforce training at HRSA, cancer prevention at CDC, scientific research at NIH. Those are separate and distinct efforts addressing women's health, which has long been underfunded. But because of Congress's dedicated bipartisan investments, we've been able to make progress.

If you are confirmed, will you commit to restoring women's health functions across HHS, and directing the department to spend appropriated funds for women's health as directed by Congress?

Mr. O'NEILL. Thank you for the question, Senator. Obviously, women's health will continue to be a critical issue. It is distinct from Men's health in many significant ways.

The principles of the secretary outlined for the proposed reorg, said that any reorg would be based on preserving all the central functions of the department, ensuring that they continue and that they're executed on well as mandated by statute, and also the principle that two functions make more sense to be conducted within the same agency or office, that could make sense. It also makes sense to me that if functions are closely similar, perhaps we should consider putting them in the same office.

Senator MURRAY. Well, I would just say, Mr. Chairman, women's health isn't just one little corner. We are affected—women are affected in many different ways, including, as I said, through workforce training, through cancer prevention, through scientific research, different agencies. Those offices all do very different things. There's a reason why Congress passed funding for each one of them. Ignoring that means ignoring the law. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moody.

Senator MOODY. Thank you, sir. Thank you for being here. And if I might just say thank you to your family. Senator Houston and I are the two newest Members of the U.S. Senate, and our families are also serving. It is certainly a family sacrifice, and I'm so grateful you're willing to come back in to public service using all that you have acquired both in your government service and your private experience to benefit Americans and their health. So, thank you very much.

As Deputy Secretary, you will oversee the operations of the department, from the FDA to Office of Refugee Resettlement, including many actions related to the regulatory side of the department. I wanted to talk to you about some issues certainly as a mother and as the former Attorney General of Florida that I saw not handled well at all in, in fact, it was a disaster under the Biden administration.

I wanted to get your take on how you might approach making sure that it can never happen again, and any regulations or oversight is considered and modified within the agency to make sure it never happens again.

Specifically, we saw that when Biden opened up the border and destroyed any semblance of security, we saw many, many young minor children smuggled into our Country, pushed into states throughout. The office of Refugee Resettlement was supposed to oversee this. It got so bad that they lost tens of thousands of children.

In Florida, we could get no information from the Biden administration on who these children were, where they were being placed, how they were being taken care of. Even though the states have a primary responsibility of dealing with neglected, abandoned, abused children, no information was shared.

In order to remedy that, we went so far as to launch a grand jury investigation. And when we asked for Administration officials to come down and testify or share information, they refused to do so, they said that it was hard to see how it would benefit the agency. When all we cared about was the interest of those children who not only were smuggled into the United States. Our grand jury report showed that they had been, some had been sent to strip clubs, empty lots next to container facilities, dozens placed with the same sponsor, many unvetted, it was inviting trafficking. In fact, many children in the United States were found to have been in trafficking that had been smuggled over the border.

I believe and I believe the Grand Jury report shows that this obfuscation, or refusal to provide information or witnesses was to

shield the fact they knew these kids were not being supervised, being put in dangerous situations, and they were, in fact, the Administration, in fact, was facilitating trafficking.

What will you do, knowing that the Office of Refugee Resettlement is going to be in terms of operations, is going to be under your purview? What will you do to ensure—Now again, we know that in the first 100 days, President Trump has basically shut down the border. We're seeing nothing like the numbers we saw last year. My hope is that this stops. The purposeful smuggling of children into our Nation being put into dangerous situations, that we shut this down.

What can you do to ensure that this never happens again? As a mother, but certainly as the Attorney General that was working with agencies desperately trying to promote safeguards for children, not getting any information, law enforcement was begging for it. Child Services was begging for it. What will you do to ensure that this can't happen again?

Mr. O'NEILL. Thank you for the excellent question, Senator Moody. So, in the Bush administration, I worked very closely with the Office of Refugee Resettlement, especially to fight human trafficking. I was the HHS representative on the government wide senior policy and operating group to fight human trafficking. I'm very proud of the work that we did with ORR at that time. The focus ORR was a little bit different then, the human trafficking fight was not as focused on the border as it obviously has been in the last 5 years.

It is absolutely a priority, and I believe the Secretary has set it as a priority for him to find all the missing children and make sure that they're safe. And if confirmed, I look forward to working with him and the Office of Refugee Resettlement, as well as other parts of government to ensure that all children are safe.

Senator MOODY. Well, again, remember, it's not just finding these children. There are regulations in place that facilitated the government basically becoming traffickers of children. Can you go in and work immediately to remedy any of those that either promoted or allowed for these children to be disseminated across the United States, many never to be heard from again, placed in incredibly dangerous situations?

Mr. O'NEILL. Yes, I can. So traditionally, the role of Deputy Secretary is heavily focused on regulations, on making sure that regulations are up to date and appropriate and making modifications when necessary. And I will absolutely review all the regulations pertaining to ORR or any other areas that could affect trafficking or missing children and make sure that they're appropriate. Thank you,

The CHAIRMAN. Senator, Alsobrooks.

Senator ALSOBROOKS. Thank you so much. Thank you so much Mr. O'Neill for being here today. And for your Interview, 20 years ago, that there were studies looking at how much lasting value Head Start gave to children. And I quote that you said you don't have an updated view on how efficacious it is. You said also that you didn't have a view on the Head Start program at this time.

I have to tell you, Mr. O'Neill, that's a really concerning answer from the person who is interviewing to be leader at the department, and whose purview will not only be health programs, but the Human Services program that serve our children's, our Nation's children, and families. As the Deputy Secretary, you will be responsible for helping develop the budget request for programs like Head Start, which is an extremely important program for so many children and their families and divisions like the Administration for Children and Families.

My first question is, given your remarks just this last past week on Friday, regarding not having an updated view on Head Start. Have you now today, do you have a more—have you familiarized yourself with the Head Start Program since that discussion? And do you know how many children are even served by the Head Start program?

Mr. O'NEILL. Thank you for the question, Senator. And by the way, I really enjoyed our conversation in your office a few weeks ago. I have not had any input into any discussions about reorganizations or budget. If confirmed, of course, I would be happy to, and responsible for digging into every element of reorganization and budget around all HHS programs. Currently, I'm a private citizen.

Regarding measles, Senator, as you know, the measles outbreak began before Secretary Kennedy took office. Since he's taken office, he has recommended the MMR vaccine to parents, multiple occasions, including on television. He's also deployed a CDC task force to Texas and other locations, to take charge of the measles outbreak. I think both of these actions are extremely appropriate. I think he's taking measles seriously as he should. And I support all of that. I support the MMR vaccine, I support deploying—

Senator ALSOBROOKS. With all due respect, I only have another minute. Let me just ask you, Mr. O'Neill, I'm going to be able to talk to the secretary, I hope next week. I don't agree that he's taking Measles seriously at all. But I needed an answer from you. It's important for us to know what you think about Head Start. And so, I'd just like you to tell me whether or not you still believe, you're not sure, whether or not Head Start it's efficacious as you put it.

Mr. O'NEILL. Senator, it's essential that children in early childhood have good appropriate care and cognitive development. I don't know the best way to do that. It may well be Head Start. I have not been involved in any discussions around reorganizing it or moving it or anything like that. If confirmed, of course, I would be.

Senator ALSOBROOKS. Okay. And again, this program is so important, and when the Administration first announced its funding freezes, Head Start providers were locked out of a portal. This is of course, devastating. And many didn't know if they'd be able to even make payroll or continued to operate.

If confirmed, can you commit that the department will send all Head Start Awards to providers on time, and that this sort of chaos won't continue to resurface regarding Head Start? We just need a clear answer about what you intend to do with Head Start.

Mr. O'NEILL. Senator, I've never been a fan of chaos. I intend to do my best if confirmed to ensure that there's no chaos in the department or in any part of the department. Payroll should be always paid on time. And if the department has made any mistakes, of course it should correct them.

Senator ALSOBROOKS. Would that include reinstating the staff who administer the Head Start program and reopen the closed regional offices that are responsible for overseeing Head Start programs?

Mr. O'NEILL. Senator, I haven't been involved in any of those discussions. I would say that making sure there's the right number of people with the right skills in every division of HHS would be a responsibility.

Senator ALSOBROOKS. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Husted.

Senator HUSTED. Thank you, Mr. Chairman. Thank you, Mr. O'Neill, for your willingness to serve and provide testimony today and answer our questions. I look forward to working with you and the Secretary to improve health outcomes. You do a very important job.

President Trump recently issued an executive order this week that would prohibit Federal funding for potentially dangerous life science research, such as gain-of-function research, in adversarial countries of concern. For example, China, which is home of the Wuhan Institute of Virology, and the SARS-CoV-2 coronavirus that killed people around the world, closed schools, cost this government at least \$5 trillion and left a wake of devastation behind it. Sometimes small things can cause big problems, and this is certainly a case where it did.

I applaud the Administration for these efforts, I think it's an excellent step to keep Americans and the world safe and prevent the next pandemic. And I am concerned about unsupervised high-risk research right here at home though.

Specifically, I am concerned about what we can do to protect against the misuse of desktop gene synthesizers. I am a fan of innovation in technology and healthcare. It can do amazing things, and these devices have the potential to do good to advance research. They could also though, provide genes for deadly pandemics, either to state actors or terrorists, and could be used as a bio weapon. And unlike most commercial gene sequence providers, a terrorist group or state actor could synthesize a deadly pathogen with no screen or safeguards in place.

Looking at this issue through your role and through the Department of Health and Human Services, what can you say to us today that can provide some reassurance or guidance on the framework for how nucleic acid screening captures of a desktop gene synthesis and researching, occurring outside of the commercial gene census providers, how will you help make sure that this is done safely and responsibly in the United States?

Mr. O'NEILL. Thank you for the excellent question, Senator. Gain-and-function research imposes risks on the entire world. And so, it is not a simple matter of if the money could better be spent

elsewhere. It is a matter of should this research be done at all, and how to account for the fact that it might be conducted in other countries that we have little influence over. Of course, it's appropriate to research on viruses and microbes so that we are ready to respond to a pandemic regardless of whether it's naturally occurring or manmade.

But extending that research into gain-of-function research is a totally different level of risk. My understanding is that there was an NIH ban on gain-of-function research that I believe the Obama administration lifted or weakened during its last weeks before leaving.

Obviously, there's evidence that efforts were made by various scientists to evade even the rules that existed. It does look like NIH money made its way into some gain-of-function research. And if so, that strikes me as completely inappropriate and something we should work on.

You also mentioned desktop generation of genes. That is a concern. Overall, I think sophisticated technology is mostly going to be very beneficial. Artificial intelligence, machine learning, large language models, neural networks. But of course, there is potential danger as well, regulation might be appropriate. One thing I've noticed with regulation of cutting-edge science is the regulation struggles to be as up to date as the technology.

I would like to recruit very excellent technologists into the department in all divisions to ensure that anything we do to address the risks of gain-of-function research has an up-to-date technology side as well as regulatory side.

Senator HUSTED. Thank you. And I'll just add this. With quantum computing, AI essentially 3D printing types of technologies that are going to allow us to do some amazing research on health solutions. I just ask that we make sure we're doing all that is possible to ensure that it's not used for nefarious purposes, because we have seen what happens when either through sinister reasons or through incompetency, it can definitely have a major impact on our world. Thank you, Mr. Chairman.

Mr. O'NEILL. Thank you, Senator.

The CHAIRMAN. Senator Baldwin.

Senator BALDWIN. Thank you, Mr. Chairman. And Mr. O'Neill, thank you for our opportunity to speak prior to this hearing. I share the deep concern expressed about Health and Human Services submitting an operating plan, otherwise known as a spend plan to Congress that includes asterisks, rather than planned funding levels for over 530 different programs. This is effectively the Department of Health and Human Services saying that it doesn't need to tell Congress and the American taxpayers how it is spending tons of billions of dollars.

With that, we are left to assume that the Department of Health and Human Services is intentionally hiding what it's doing, and the results of a massive proposed reorganization, firing of tens of thousands of employees, terminating billions of dollars in grants and actively delaying billions of dollars in funding.

During our meeting, we discussed the importance of transparency. Secretary Kennedy has pledged what he called radical transparency, and that is absolutely not what we have seen. So, Mr. O'Neill, do you think that the Department of Health and Human Services should tell Congress and the American public how it is spending taxpayer dollars that we have already appropriated, yes or no?

Mr. O'NEILL. Thank you for the question, Senator. I also enjoyed our meeting. So, I've not seen this plan that you're referring to with the asterisk—

Senator BALDWIN. I can tell you that it was a long page asterisks, asterisks, asterisks, no dollar amount, except for a handful of programs. That is not radical transparency in my book. Should the Department of Health and Human Services tell Congress and the American public, if it is, for example, cutting funding for services through the 988 Suicide and Crisis Lifeline, yes, or no?

Mr. O'NEILL. Senator, I'm a former Senate staffer. I, I know that it's Congress that authorizes all the programs at HHS, it's Congress that appropriates the money for HHS, Congress absolutely deserves prompt and transparent and accurate information. I stress the prompt part.

Senator BALDWIN. What about how many employees have been fired and the functions that those employees were carrying out, should that be reported to Congress and the American taxpayers?

Mr. O'NEILL. Senator, my understanding of the—is that it was the decisions of who to lay off were, I think I read, made by the heads of the operating divisions who are closer—

Senator BALDWIN. Should that be reported to Congress?

Mr. O'NEILL. Senator, yes. I think so.

Senator BALDWIN. Okay. Should the Department of Health and Human Services tell Congress if it fired, for example, employees administering clinical trials at NIHs clinical Center? Yes, or no?

Mr. O'NEILL. Senator, I think every significant thing the department does should be available to Congress.

Senator BALDWIN. Mr. O'Neill, if you are confirmed, I will certainly be following up to ensure that Health and Human Services makes good on the commitment to transparency. And if these changes would actually enhance the health and well-being of Americans, HHS should be eager to explain how and why instead of what it's doing, which is hiding this information.

HHS has delayed funding for research on treatments for deadly diseases and for Head Start and childcare programs. It's decimated offices responsible for carrying out critical activities, including addressing lead poisoning in children.

Let me just give you an example of how HHS firings are impacting communities in Wisconsin. The city of Milwaukee requested assistance through the CDC's Childhood Lead Poisoning Prevention Surveillance Branch, to help respond to lead poisoning cases tied to several public-school facilities. The request for assistance was denied because of a lack of staff capacity after the entire childhood lead poisoning branch was fired. This is a clear example of HHS firing affecting critical program operations.

Without the support, Milwaukee faces lasting implications of health and well-being of children in the city. If you are confirmed, I will be following up with you on this, as I have yet to receive a response from Secretary Kennedy.

The CHAIRMAN. Senator Marshall.

Senator MARSHALL. Thank you, Chairman. And welcome Mr. O'Neill. It's good to see you again. I was excited yesterday to see the nomination for President Trump of Dr. Casey Means to be the Surgeon General, and certainly she is an expert on all things MAHA and nutrition and metabolism importance of mitochondria. And I want to relate that to what you mentioned in your testimony that you're anxious to reform our food system to prioritize health. And just kind of tell me what that vision looks like and how can you work with Dr. Means and the other folks there at HHS?

Mr. O'NEILL. Thank you so much for the question, Senator. And I really enjoyed our meeting a few weeks ago. I note that you mentioned the word mitochondria. I've noticed that 3 years ago people didn't know anything about that, they remember from high school biology. Oh, yes. Mitochondria, the powerhouse of the cell. But in the past few years thanks to a lot of smart people talking about metabolism much more than the past, people are starting to be interested.

Infectious disease is still a very serious challenge to a lot of people. But metabolism metabolic disorders, chronic diseases are getting more attention and I think that's wonderful. I hope they continue to get attention from researchers, from physicians, from patients.

Regarding the food system, the unfortunate situation today is that a lot of families really try hard to be healthier and have healthier habits and it's not easy. They go to the grocery store; junk food is much cheaper than healthy food. They're not even sure which food is healthy. Nutrition labels can be confusing. Official government nutrition advice, the dietary guidelines that two departments issue every 5 years often seem to lag by decades. Actual nutrition science, real nutrition science is so hard to do, because there's so many stakeholders with an interest in particular outcomes.

I think it's essential that we have good nutrition research that is free from outside influence. There's a metabolism lab at NIH that I visited, where you lock people in a room with their consent for days, measure every calorie that goes in and goes out, exercise. We need more of that. There was talk a year ago of shutting that down, I think we should have more of that.

Senator MARSHALL. Okay. You also mentioned prioritize health for children and I'm going to just focus for a second on mental health. I'm not sure if you had the opportunity to read the book, the Anxious Generation, but if you haven't, I surely would recommend that you do that. What role do you think social media apps have played in the mental health of our children and young adults?

Mr. O'NEILL. Thank you, Senator. That's a great concern. So, companies that develop apps have an interest in maximizing the

amount of time that users spend on the apps. The amount of engagement, try to hook them into it, that's expected given that they're trying to grow their business. But that's not necessarily what's best for users, especially young users.

There's more and more awareness that social media can be an addiction, and that it especially could have a profound lasting influence on young, developing brains. Brains seem to keep developing until age 25. So, people that don't even think of themselves as children could still be, well, adults could also suffer negatively. So yes, that is a concern that HHS should have a role in researching and communicating best practices.

Senator MARSHALL. Great. Certainly, adds to the loneliness as well. Maybe the little time we have left, I just want to emphasize the importance of replicating previous studies. Again, you mentioned that in your testimony. Over 20 years ago in NIH study on Alzheimer's took us down in the wrong direction. And that study was never replicated. So, what does that look like? I mean, you don't want your best buddy to do the replication of that surgery. It needs to be another non-biased person. So how do you implement that plan?

Mr. O'NEILL. Absolutely. So, there's two ways a study could lead us down the wrong road. One is outright fraud, which has happened in Alzheimer's research. And the other it's kind of bad luck. You do one study, there was no intention of fraud, but the results were an unusual combination. The stars were in a certain alignment, and it's also not going to replicate. So there's a lot of talk about the replication crisis in all of science about 10 years ago, and it's still an unsolved problem.

I think NIH should devote—and the problem is no one has a financial interest in replicating studies. So, NIH should do that. And I think that would be something that NIH can do best, whether that should be conducted operationally as one whole division of NIH focused on replication, or whether there should be a replication branch in each institute. I'm open to arguments both ways.

The CHAIRMAN. Senator Hassan.

Senator HASSAN. Well, thank you, Mr. Chairman and good morning, Mr. O'Neill. It's good to see you again. Secretary Kennedy has stated that one of his top priorities is to end the Fentanyl crisis, which has devastated countless families in New Hampshire and as you know and all across the country. One critical tool we have when we are fighting fentanyl is an overdose reversal medication called Naloxone. Do you agree that it is important for first responders to have access to Naloxone?

Mr. O'NEILL. Thank you. Lovely to see you again, Senator. I've very publicly advocated the approval and legalization of Naloxone for years. And yes, I believe that you never really know when it's going to be needed. When it is needed, you need it right there. And yes, I think first responders having it makes a lot of sense.

Senator HASSAN. President Trump has proposed to eliminate a critical program that arms and trains first responders in my state and across the country with Naloxone. So, you've just made the case for why they need to have it. If confirmed, will you use your

position to urge Secretary Kennedy and President Trump to reverse their cuts to Naloxone funding for first responders?

Mr. O'NEILL. Senator, there are probably a lot of ways to ensure that Naloxone is deployed locally. I'm not really sure what the best way to do that is.

Senator HASSAN. I can tell you as a former Governor, whose state was devastated when the fentanyl crisis first began to hit, that it was absolutely critical to have that Federal partnership to help fund Naloxone for first responders. State budgets can be sparse, and this is a really important tool. So, I hope you will urge Secretary Kennedy to reverse that, or at least work with states in a transparent way to find out what a different way of supporting Naloxone supply is. But just to end it without a plan moving forward, I think will really harm people and may cost us lives.

Now, I also wanted to turn to another issue that I'm deeply concerned about, which is Secretary Kennedy's decision to hire David Geier, an individual with a track record of harming children. Mr. Geier was disciplined for practicing medicine without a license, on children who have autism. And now, secretary Kennedy is paying Mr. Geier with taxpayer funds to conduct a study at HHS. Mr. O'Neill, if confirmed, would you advise the Secretary to fire David Geier?

Mr. O'NEILL. Senator, thank you for the question. I've never had any communication with this person. I don't know him. I would say that all research and research funding decisions and analysis research, should involve multiple people, ideally with different backgrounds who are allowed to disagree with each other.

Senator HASSAN. I appreciate that. This is by the way, the department's Web site that post Mr. Geier as an employee. Do you have concerns about the Secretary employing an individual who has been found responsible for harming children?

Mr. O'NEILL. Senator, I think that the Secretary is an excellent judge of personnel and character. He trusted me and I hope to not let him down if confirmed. And I don't know this person, so I can't really commit to—

Senator HASSAN. Well, what I would like to do is submit by unanimous consent for the record, this is the State of Maryland's complaint against Mr. Geier for practicing medicine without a license on children with autism, including injecting an 8-year-old with a testosterone suppressant, as some kind of treatment for autism. So, it is really concerning, and I hope you will turn your attention to Mr. Geier because—

The CHAIRMAN. Was that a request to put it in the record?

Senator HASSAN. Yes, it was a request to put in the record.

The CHAIRMAN. Without objection.

[The following information can be found on page 27 in Additional Material:]

Senator HASSAN. Last, I guess I'll just finish up this way. I really hope you will look at Mr. Geier's record, look at the allegations that were proven in this complaint. He was disciplined for practicing medicine without a license on children with autism, and it is deep-

ly, deeply concerning. I believe he has no place at the country's Premier Health Agency.

Secretary Kennedy also recently made troubling comments about children with autism. His comments reflected that he understands very little about people who are living with disabilities. Instead of taking the time to listen to individuals with disabilities and their families, Secretary Kennedy has moved to shut down programs and fire staff who provide critical support for these families and these individuals with disabilities.

For example, Secretary Kennedy fired staff that run the National Family Caregiver Support Program, a critical resource for people who care for family members with disabilities. Mr. O'Neill, will the Secretary's actions to gut caregiver support help children with disabilities?

Mr. O'NEILL. Senator as you may know, the Secretary has made it a priority to research autism. We don't know what causes autism. We don't know what causes the recent rise in autism. We don't know the best way. We Actually have——

Senator HASSAN. Excuse me, I'm running out of time. We actually have some really good studies that are leading us to understand the multiple causes of autism, but doing away with caregiving for these families and these children is not going to help them in the way they need. And I hope the Secretary will reverse course and listen to families. Thank you, Mr. Chairman.

Mr. O'NEILL. Thank you, Senator.

The CHAIRMAN. We want to take a 2-minute break. We will return subject to the call of the Chair.

[Recess.]

The CHAIRMAN. The Committee will be back in session, and Senator Hawley is next.

Senator HAWLEY. Thank you very much, Mr. Chairman. Mr. O'Neill, nice to see you. I enjoyed our conversation, our visit the other day. Let me just start with this. You're familiar, I think, with the recent insurance claim study regarding Mifepristone. Is that correct?

Mr. O'NEILL. Yes, Senator, I've not read the study, but I'm familiar with it.

Senator HAWLEY. This is a study of 865,727 prescribed Mifepristone abortions, chemical abortions between 2017 and 2023. It's the largest such study of Mifepristone ever conducted. The only major study conducted now in years. And as I think the results were really quite startling.

They showed that 10.93 percent of women who use the chemical abortion drug experience a major serious adverse health event, like sepsis, infection, hemorrhaging, often necessitating emergency room visits, often leading to life-threatening situations. The dramatic result of this, I mean, I think the takeaway of this is that this is a much, much higher rate of serious adverse health events than what the FDA currently reports, 22 times higher than what the FDA has currently reported.

My question is, in light of this new data, and it is truly an enormous data set, just an enormous data set, isn't it time for the FDA No. 1, to put back in place the reporting requirements of serious adverse health events? As you know, in 2016, the FDA eliminated at the behest of the Obama administration, eliminated the requirement that physicians and others report, non-life threatening, but yet serious health adverse health events. Shouldn't we put those back in place in light of this data?

Mr. O'NEILL. Senator, FDA has a responsibility to ensure that all drugs are safe and effective. And sometimes new data comes in and it needs a review. Mifepristone actually has a REMS, meaning it's been designated for a long time as something that needs periodic review of safety data. The Secretary's pledged to do a safety review of Mifepristone and I strongly support that review.

Senator HAWLEY. Good. And you'll help him carry out that review, that safety review.

Mr. O'NEILL. Absolutely.

Senator HAWLEY. This study that, is out just this last week, just underscores the need for ongoing safety review. And for a look, I think a fresh look at all the data. Would you agree with that?

Mr. O'NEILL. It does look that way.

Senator HAWLEY. Would you also agree that it's time for the FDA as part of that thorough top to bottom review, to think about reinstating the other longstanding safety protocols on this drug?

Until the Biden administration eliminated them, Mifepristone for 20-plus years, had always required physician dispensing, in-person dispensing, physician follow-up visits, the Biden administration eliminated all of those things. Now, telehealth providers, you don't even have to be in this country now to send this drug, to prescribe it, "you don't have to be a doctor." You don't have to see your patient. You don't have to be in America. You can mail it into states regardless of state law, what state law is, and this is one of the reasons we're seeing such incredibly high adverse health events, don't you think it's time to reconsider and to revisit imposing, putting back in place those longstanding safety protocols?

Mr. O'NEILL. Senator, a lot of patients have a lot of trouble getting prescriptions filled across state lines, even medicines that have much less safety concerns than this drug. And of course, every approval that FDA does or reviews can state the appropriate and inappropriate ways of prescribing or dispensing a drug. And so that all of that should be subject to review. Absolutely.

Senator HAWLEY. Okay, good. All of it is subject to review. The Secretary was very clear on this that he will conduct a full-scale safety review. He's required to by law, as you pointed out. But I think what this latest study shows is that the information that is coming into HHS, it's time that you take a serious look at the scope of that information, because, again, the FDA in 2016 eliminated the requirement to report much of this. This is why this study is so significant, because it looks at all insurance claims, 865,000 of them between 2017 and 2023.

Just to be clear, your commitment is you will do a safety review, you will look at this top to bottom, you will take this data into account. Do I have that right?

Mr. O'NEILL. I believe the Secretary has already committed to that, and I will promise you to fully support that.

Senator HAWLEY. Good, Okay. Let me ask you about your work on conscience protections in an earlier Administration. I think in one of the Bush administrations, the Bush 43rd administration, you worked on conscience protection rules for healthcare providers. Do I have that correct?

Mr. O'NEILL. Yes, that's correct. Senator.

Senator HAWLEY. Would you support reinstating and fully implementing conscience protections for healthcare providers?

Mr. O'NEILL. That would be up to the Secretary and the President. But if they decide to go in that direction, I would know exactly how to do it.

Senator HAWLEY. Would you advise them to do so?

Mr. O'NEILL. I believe I already have Senator.

Senator HAWLEY. Good. And that should be easy because the Secretary, when he sat right where you were sitting, said unequivocally, that he supported conscience protections, that he would put them back into place. The President said he supports conscience protections. In fact, the President had them in place in his first Administration. So, I'm glad to hear that. We'll hold you to that.

Let me talk to you for just a second here. Well, actually, I'll write Mr. Chairman, I see that I am out of time, and I'm always so good about obeying my time limits, aren't I, Senator Kaine?

[Laughter.]

Senator HAWLEY. I'll have a few—that's a joke. I'll have a few more questions for you for the record. Mr. O'Neill, thank you, Mr. Chairman.

The CHAIRMAN. What's the Definition of prevarication?

[Laughter.]

The CHAIRMAN. My Ivy League trained colleague, Senator Kaine.

Senator KAINE. Thank you. I appreciate my fellow Rockhurst High School alum, Josh Hawley for ceding time to me and not going over. There are two high schools in America that have two U.S. Senators, James Madison High School in Brooklyn, Bernie Sanders and Chuck Schumer and Rockhurst High School in Kansas City, Missouri, Josh Hawley, and Tim Kaine. And I think it tells us something about the value of a small Catholic education that a Josh Hawley and Tim Kaine could both be graduates of Rockhurst High School.

The elephant in the room, before I have a question or two for you, Mr. O'Neill. I'm concerned and confused that you're sitting alone at the table today. This was a hearing that was originally noticed to include the surgeon general nominee, the circumstances under which she is now not appearing and has had a nomination withdrawn is puzzling. I don't know whether it was the behest of the Committee, the White House, or some combination of both.

But some news accounts suggest that her nomination was withdrawn because she positively commented about the COVID vaccine, that it was a blessing from God. The COVID vaccine development in the first Trump administration was a huge accomplishment. Operation Warp Speed. The development of that vaccine in such short time relative to other vaccine developments at a time when it was critically needed, was a real plus in my view.

The thought that because she praised it at the time, that would be a reason to withdraw her nomination troubles me. I don't know if that was the reason or it was something else, but that's being mentioned as a reason for the withdrawal. And that will obviously lead to a lot of questions when the new nominee is before us.

Mr. O'Neill, you told the Finance Committee the other day that you supported focusing Medicaid on the populations it was created to support in the 1960's, and I think everyone on the Committee believes that. But that opens up a pretty big question, which is how about folks who have Medicaid because of the *Affordable Care Act* and Medicaid expansion.

20-plus million Americans, including more than 670,000 Virginians have Medicaid because of the Medicaid expansion component of the *Affordable Care Act*. As you know, Medicaid expansion is a state option. I think 41 of the 50 states have embraced Medicaid expansion. Have you made statements in the past in opposition to the *Affordable Care Act*?

Mr. O'NEILL. I'm not sure Senator.

Senator KAINE. Can you recall whether you've ever advocated in opposition to the *Affordable Care Act*?

Mr. O'NEILL. I don't recall, Senator.

Senator KAINE. Can you recall whether you've ever stated a position about the Medicaid expansion part of the *Affordable Care Act*?

Mr. O'NEILL. I don't believe I have, Senator.

Senator KAINE. Would you agree with me that if there were a proposal to eliminate the *Affordable Care Act*, including Medicaid expansion, that would be a massive and dramatic cut to Medicaid?

Mr. O'NEILL. I don't know, Senator. I haven't looked at the numbers. There was obviously a lot of discussion in President Trump's first term about repealing and replacing the *Affordable Care Act*.

Senator KAINE. Repealing, we had a vote on a repeal without a replace. And it failed in the Senate because both Republicans and Democrats opposed repeal of the *Affordable Act* without a replacement. But you acknowledge that 41 states have embraced Medicaid expansion. States that have Republican Governors and Democratic Governors, Republican legislatures, and Democratic legislatures, you acknowledge that, correct?

Mr. O'NEILL. I believe that's accurate. Senator.

Senator KAINE. You would not challenge me when I say more than 20 million Americans have health insurance through Medicaid expansion. Does that number sound generally in the right range to you?

Mr. O'NEILL. I believe you, Senator.

Senator Kaine. Have you had conversations either with Secretary Kennedy, President Trump, or any other members of the Trump administration about repeal of the *Affordable Care Act* in a second Trump Presidential term?

Mr. O'Neill. I don't believe I have, Senator.

Senator Kaine. Have you had conversations with anyone in the Trump administration, including Secretary Kennedy, about reductions or repeal of the Medicaid expansion part of the *Affordable Care Act*?

Mr. O'Neill. Perhaps very briefly, but I don't recall anything in specific.

Senator Kaine. Would it have been full repeal, partial repeal, reduction of the subsidies enabling families to afford Medicaid expansion? Or do you recall?

Mr. O'Neill. I recall general discussions about preserving the core populations of Medicaid and how that's essential, and how any changes that Congress might like to make to the structure of Medicare would be up to Congress, and it would be HHS's responsibility to implement whatever Congress legislates.

Senator Kaine. Well, I want to dispute the notion that there is a core recipient of Medicaid and a non-core recipient of Medicaid. If you're a struggling family, and the only way that you can afford health insurance for your family and kids is through Medicaid expansion, that's part of the *Affordable Care Act*. You're not a non-core recipient of Medicaid. Medicaid is helping you and your family, and that to me is a core responsibility. I yield back, Mr. Chairman.

Mr. O'Neill. Senator, my opening statement, I did point out that many families struggle to afford health insurance. That is a continuing problem. And that's what I'd like to address, and there are probably multiple ways to address it.

The Chairman. For the record, Republicans did have a replacement plan, I helped co-author it. So, for the record.

Senator Hickenlooper.

Senator Hickenlooper. Thank you, Mr. Chairman. Thank you, Mr. O'Neill, for being here. Thank you for your willingness to go deeper into public service. You have experience with companies that are focused on age related diseases and conditions, Alzheimer's being prominent. And certainly, I share that interest and been particularly interested in some of the research around sugar and ultra processed foods that could be connected to dementia, different types of dementia in later life.

As you may know, the Trump administration's, NIH funding cuts and delays have led to a large amount of confusion, some would call it chaos, particularly at the Alzheimer's Disease Research Centers. And I mean, let's put it this way, are you still interested in further research and understanding into the causes of and possible treatments of Alzheimer's and if so, will you figure out some way to restore funding to the Alzheimer's disease research projects being done at NIH?

Mr. O'Neill. Senator, that does absolutely remain an interest. There are multiple causes of dementia, Alzheimer's, and Parkinson's, and Lewy bodies are perhaps the three most well-known.

There could be others. There could be others that we don't know about.

I think it's an open scientific question of how much we should focus research money more downstream, specifically Alzheimer's for these dollars, specifically Parkinson's for these dollars, specifically Lewy bodies for these dollars. And versus how much we should focus research dollars more upstream on what potential common factors and common causes, all kinds of dementia and all kinds of aging damage has. I don't have a specific answer for that, but it is an area of like intellectual and operational interest for me and I would love to engage in that.

Senator HICKENLOOPER. Good. Glad to hear that. In Colorado and in a lot of states we worked hard to make access to green spaces, a natural outdoor environment, recreational opportunity. It was both an economic priority for outdoor recreation is a big part of most of the Western states, I'd say all the Western states, but also as a public health benefit. And making sure that those who work in outdoor spaces are safe, I think is a responsibility for all of us and for the Federal Government.

Nearly all the workers at the National Institute of Occupational Safety and Health have been laid off, equally at the same office in Denver. The office in Denver, specifically focused on occupational health hazards experienced often uniquely in the West, such as wildfire. If you're fighting wildfires, what does that particulate and all those noxious smoke and fumes that you inhale, what are the consequences of that.

If you're confirmed Mr. O'Neill, how will you prioritize occupational safety and health, particularly in the West, with a severely feeble staff? In other words, the, Federal office has been not quite just destroyed, but significantly reduced.

Mr. O'NEILL. Thank you, Senator. That is a huge concern. As someone who's lived in Marin County, California for the last 14 years, I've had a lot of negative experience with smoke from wildfires. I stocked up on N95 masks before the Covid pandemic. I recall trying to understand the distinction between the N95 masks that were approved by FDA versus the ones that were approved by NIOSH. They seem very similar. I think they are pretty similar. Of course, it's important that all parts of government, including state governments, do their best to prevent wildfires and respond to them and HHS, of course, has a role.

Senator HICKENLOOPER. I'm fine with that. And I guess my question is really, are you going to fight like hell to make sure you get enough funding so you can do some of that basic research because it is ongoing and critical.

Last question, and then I'll let you go. As you know, the National Institutes of Health are the largest funders of biomedical research on earth. Basic research often informs the next big discovery, often done in-house at NIH. Many biomedical companies are not incentivized to do this nuts-and-bolts research that translates into the big deal. And yet we all depend on that research.

If confirmed as Deputy Secretary, how are you going to incentivize private companies and institutions to conduct research

that historically they have depended on NIH for, but now they are going to have to do on their own?

Mr. O'NEILL. I think I agree with the whole premise of your question very strongly, Senator. Companies have a financial incentive to do late-stage translational research. They don't have an incentive to do basic research, which is also harder to patent. It's important that NIH do very extensive basic research because almost no one else will.

Senator HICKENLOOPER. You're going to have a lot of work to do. Thank you very much.

Mr. O'NEILL. Thank you, Senator.

Senator HICKENLOOPER. I yield.

The CHAIRMAN. Mr. O'Neill just a follow-up. In my question, I asked regarding, there's a current effective mandate of CDC, if somebody wishes to become a permanent resident of the United States legally, it is effectively mandated that they receive vaccines. Would knowing your opposition to mandates, would you attempt to rescind that?

Mr. O'NEILL. Senator, I share a concern about either legal immigrants or illegal immigrants coming into the country with an infectious disease or without recommended vaccinations. I've not had a chance to discuss. I've been focused on most of the vaccine questions on rules for citizens and advice to citizens. I haven't had a chance to discuss rules for legal immigrants with the Secretary. But I would be happy if confirmed to dig in on that issue.

The CHAIRMAN. Well, I will have that as my question for the record, if you could respond to that before next week. And for any other senator wishing to ask additional questions, questions for the record will be due at 5 p.m. tomorrow, May 9th. Thank you, again, to Mr. O'Neill for being here.

The Committee stands adjourned.

ADDITIONAL MATERIAL

ALLEGATIONS OF FACT³

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. The Respondent is not and never has been licensed to practice medicine or any other health occupation in the State of Maryland or any other State. The Respondent has a Bachelors of Art degree in biology from a Maryland State university. The Respondent has taken several graduate courses, but has not earned a graduate degree in any specialty or discipline.
2. As detailed below, on October 8, 2008, the Board received a complaint from the mother ("Parent A") of a former patient of Dr. Mark R. Geier ("Patient A", below).⁴ Parent A complained *inter alia* that the Respondent examined and diagnosed her son at an office visit on May 19, 2008.
 - I. **The Respondent's Curriculum Vitae ("CV")**
3. According to the Respondent's CV, which the Board obtained in furtherance of its investigation, in 2008, the Respondent was a co-founder of ASD Centers, LLC,⁵ the slogan of which is: "where medical solutions for autism can be found..." The Respondent is the "Executive Director" of

³ The allegations set forth in this document are intended to provide the Respondent with notice of the alleged charges. 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.

⁴ Patient A in this document corresponds to Patient C in the Board's Order for Summary Suspension of Mark R. Geier, M.D.'s medical license. Names of patients and other individuals are confidential. The Respondent may obtain the names from the Administrative Prosecutor.

⁵ ASD is the abbreviation for autism spectrum disorder.

ASD Centers. The Respondent's father, Mark R. Geier, M.D.,⁶ is a co-founder of ASD Centers and its President.

4. In the Respondent's CV, he describes ASD Centers as, "a national network of genetic centers with locations in Missouri, Florida, Texas, Illinois, Indiana, New Jersey and Maryland involved in the evaluation and treatment of more than 600 patients diagnosed with autism spectrum and other neurodevelopmental disorders."
5. According to the Respondent's CV, in 1999 he founded and is currently the President of MedCon, Inc., an entity which he describes as conducting "medical-legal consulting and biochemical-epidemiological research." MedCon's address is the Respondent's home address, where he resides with Mark R. Geier, M.D.
6. From 2004 to "the present,"⁷ the Respondent was "on staff" at the Genetic Centers of America, which he describes as "[c]enters involved in the evaluating and treat (*sic*) several hundred patients with autism, neurodevelopmental disorders, and other chronic diseases. In addition, these centers help to provide prenatal genetic care and adult predictive genetic care."
7. In 2006, the Respondent founded and is currently the Vice President of the Institute of Chronic Illnesses, Inc. ("ICI"), "a non-profit 501(C)(3)

⁶ Effective April 27, 2011, the Board summarily suspended Dr. Geier's license to practice medicine in Maryland concluding that his treatment of autistic children with Lupron, a potent anti-androgen, and in some instances, chelation therapy, constituted a substantial risk of serious harm to the public health, safety or welfare. On May 12, 2011, after a hearing before the Board, the Board issued an Order to continue Summary Suspension.

⁷ The Respondent's CV contains entries through 2009.

foundation dedicated to studying chronic illnesses.” ICI’s address is the Respondent’s home address. Dr. Mark R. Geier is the President of ICI.

8. In 2007, the Respondent founded and is currently Vice-President of CoMeD, Inc. [Coalition for Mercury-Free Drugs], an entity described on one of its websites as “a not-for-profit 501(c)(3) corporation that is actively engaged in legal, educational and scientific efforts to stop all use of mercury in medicine and to ban the use of all mercury-containing medicines.” CoMeD, Inc.’s address is the Respondent’s home address. On CoMeD, Inc.’s website, the Respondent’s father is identified as the Treasurer of the corporation.

Complaint Alleging that the Respondent Practiced Medicine without a License

9. In her complaint, Patient A’s mother (“Parent A”) alleged that the Respondent examined her autistic son during a May 19, 2008 appointment at Genetic Centers of America (also referred to “Genetic Centers of Maryland” or “Genetic Consultants”). Parent A knew both the Respondent and his son, having met them both at a July 2005 consultation. The Board designated this complaint as Case Number 2009-0318.⁸
10. Patient A, was ten (10) years old when he was initially evaluated by Dr. Mark Geier in July 2005. Patient A had been diagnosed as autistic at age three (3), having regressed in his development when he was two (2) years old.

⁸ The Board had previously opened Case Number 2008-0222 as part of its investigation of Dr. Mark R. Geier.

11. Parent A had been drawn to Dr. Geier's practice because of his prior research experience at the National Institutes of Health ("NIH") and because she believed that he was an expert on the possible impact of mercury on children with autism.
12. At the initial 2005 visit, Dr. Geier observed some hair development on Patient A's legs and arms. He also noted that Patient A had received a DPT⁹ vaccination in France, after which he had a high fever.
13. Based on his interview with Parent A and his observations of Patient A, Dr. Geier diagnosed him with unspecified developmental delay, possible precocious puberty and possible childhood heavy metal exposure (mercury).
14. Dr. Geier's plan, as documented in the office note, was to prepare a laboratory work-up to assess Patient A's current health and potential causal factors for his developmental delays and then to arrange for a follow-up consultation with Patient A's mother to discuss findings and possible treatment directions.
15. Parent A did not follow-up on the 2005 initial visit. She had sought treatment for Patient A from a neurologist and did not want to interfere with his treatments.
16. In the Spring of 2008, Patient A's mother saw a YouTube video in which Dr. Geier's theory regarding the causal effect of mercury and testosterone

⁹ The abbreviation for diphtheria, pertussis (whooping cough) and tetanus.

on autism was discussed by a mother of one of his patients.¹⁰ In her complaint to the Board, Parent A wrote:

[r]elying on Dr. Geier's growing reputation as an expert witness in autism-related court cases, and his credentials as a medical geneticist, I trusted that he had the expertise to perform a competent evaluation and treatment of my son....I thought that Dr. Geier might be able to conduct tests to determine whether there was a genetic basis for my son's autism, and whether he had high testosterone. It seemed that such testing might offer some insight into his condition, and that the treatment described in the video might offer him some relief and might even eliminate his autism.

17. Parent A scheduled an appointment for Patient A to be seen by Dr. Geier on May 19, 2008 at the Genetic Centers of America's office in Rockville, Maryland.
18. On May 19, 2008, after waiting with her son for approximately one (1) hour in the waiting room, Parent A and her son were taken to an office where the Respondent was seated behind a desk.
19. Parent A and the Respondent discussed genetic testing for approximately the first half-hour of the visit.
20. Parent A reported that the Respondent, after asking very few questions regarding Patient A's medical history and symptoms, told her that he was absolutely certain that her son seemed to be a "typical high-testosterone kid" whose growth would be stunted if his testosterone production continued at its current pace.
21. Board staff interviewed Parent A during the course of the investigation. Parent A stated that she did not recall whether the Respondent had

¹⁰ This individual is President of CoMeD and is a member of ICI's Institutional Review Board ("IRB").

identified himself as a physician at the May 19, 2008 office visit; however, she had assumed that the Respondent was a physician because he was the only person with whom she had spoken about her son at that visit. She also noted that the Respondent "had this certainty about him."

22. At no time during the May 19, 2008 office visit did Parent A see, much less speak to, Dr. Geier. The Respondent was the only person who examined her son.
23. According to Parent A, the Respondent performed an ultrasound examination on Patient A, who by then was too restless to sit or lie still on the examining table. The Respondent told Parent A that he needed an ultrasound of Patient A's thyroid. The Respondent followed Patient A as Patient A walked around the room, attempting to examine his neck and abdomen by tapping him with the ultrasound wand.
24. When Parent A asked the Respondent how he could possibly obtain an accurate reading under such circumstances, the Respondent replied that everything was "okay" and that the test results were "normal."
25. The note of the May 19, 2008 visit¹¹ indicates that "comprehensive" abdominal and thyroid ultrasounds were performed. Patient A's physical appearance is described as suggesting "advancement from his chronological age."

¹¹ The note was typed on a "Patient Interview Form." Dr. Geier's name is typed at the bottom of the report, it is neither signed nor initialed.

26. Prior to seeing the Respondent on May 19, 2008, Parent A completed an Autistic Treatment Evaluation Checklist ("ATEC") form.¹² Parent A indicated on the form that hitting or injuring others was a "minor problem"¹³ for Patient A and that hitting or injuring himself was a "moderate problem." The only behaviors Parent A described as serious problems were Patient A's hyperactivity, fixation on certain objects or topics and repetitive movements. Notwithstanding Parent A's description of Patient A, the Respondent documented that Patient A appeared to be "potentially significantly physically aggressive to himself and/or others." The Respondent failed to specifically describe Patient A's aggressive conduct, except that to note that "[Patient A]...can be destructive, his (*sic*) or injuries (*sic*) self or others." The Respondent also noted that Patient A "suffers from significant sleep cycle problems," although Parent A had noted on the ATEC form that "sleep problems" were only a moderate problem for Patient A.
27. The Respondent documented in "Psychological Examination" section of the note: "It is apparent based upon examination of the DSM-IV criteria that [Patient A]'s present symptoms are compatible with a diagnosis of pervasive developmental delay – not otherwise specific (*sic*)."

¹² The ATEC is a listing of twenty-five (25) behaviors and abilities; the individual who completes the form is asked to indicate from three (3) or four (4) descriptive phrases for each behavior that best describes the patient.

¹³ The descriptors for the "Health/Physical/Behavior" portion of the ATEC are: not a problem; minor problem; moderate problem and serious problem.

28. The Respondent documented the following Impression: 1) PDD-NOS,¹⁴ 2) Sleep problems (insomnia) and 3) Unspecified Metabolic Disorder. The Respondent's plan was to prepare a laboratory work-up after which a follow-up consultation would be scheduled to discuss treatment. Twenty-six (26) laboratory studies are listed in the plan.
29. According to Parent A, the Respondent inquired if she was going to have any problems with how expensive the laboratory studies were going to be and discussed the accuracy of results of certain laboratories. Parent A responded that she was not concerned about the price because she wanted to learn whether her son had a genetic basis for his autism and wanted the most accurate results. The Respondent advised that he would have the laboratory order forms mailed to Parent A.
30. Several days after the office visit, Parent A received in the mail a laboratory order for four (4) diagnostic tests to be conducted at Laboratory A (5-Androstane-3, 17-Diol Glucuronide; Androstendione; DHEA and testicular function). The Respondent initialed that he had completed the form on May 22, 2008 and printed his father's name as the ordering physician.
31. Upon receipt of the laboratory order form, Parent A called the Respondent because the test order did not include the genetic tests she and the Respondent had discussed. The Respondent agreed to send another laboratory order.

¹⁴ The abbreviation for Pervasive Developmental Disorder – Not Otherwise Specified.

32. Parent A received the second laboratory order several days later; it was written for over twenty (20) tests from Laboratory B.
33. According to Parent A, Laboratory B personnel were “flummoxed by the amount of blood needed for the tests” and she instructed them to draw only as much blood as was necessary to assay some genetic conditions, urine metals and porphyrins, the latter because the Respondent had emphasized their importance during the visit.¹⁵
34. Parent A began to wonder why the Respondent would order so many laboratory tests that required drawing so much blood from children and then searched the internet for more information about the Geiers’ practice. It was from her research that Parent A learned that the Respondent was not a physician.
35. Parent A closely examined the laboratory orders and discovered that the Respondent had written the diagnostic code for insomnia on the first order form; on the second order form he had noted both the diagnostic codes and the diagnoses insomnia, NOS [not otherwise specified] and metabolism disorder, NOS.
36. Parent A did not return to Genetic Centers of Maryland after the May 19, 2008 office visit.
37. In late July 2008, Parent A received billing statements from Genetic Consultants of Maryland with charges listed for four (4) separate dates:

¹⁵ Laboratory B submitted an invoice to Parent A in the amount of \$3,915.96 for the laboratory studies that Parent A had requested. Parent A’s health insurance paid \$1,169.68 (\$2,453.76 had been “discounted”); Parent A was billed \$292.42.

May 22, 2008 – Prolonged 1st hour Eval[uation] and Management (99358)
\$150.00

June 18, 2008 – Prolonged 1st hour Eval and Management (99358) - \$150.00

38. After receiving the bills from Genetic Centers of Maryland, Parent A called the office and demanded a copy of all records of her son's May 19, 2008 evaluation and all of his test results.
39. Parent A received Patient A's test results from Genetic Centers of Maryland in early September 2008, but as of the date of this document has not received any of the other records she had requested.
40. A Phone Contact Sheet in Patient A's Genetic Center chart contains three (3) entries: the latter two (2) were written and initialed by the Respondent.¹⁶

6-17-08: 2 p.m. Consultation with [Patient A]'s mother re: lab testing for her son. Reviewed lab scripts and testing procedures at [Laboratory A] v. [Laboratory B]

6-18-08: 9 p.m. Registered & completed lab script for [Patient A] with [Laboratory B] using online 360 software.

¹⁶ When interviewed by Board staff in furtherance of its investigation, the Respondent acknowledged that he had written the June 17 and 18, 2008 entries.

Other Genetic Center Patients

41. In furtherance of the Board's investigation of Dr. Mark Geier, the Board obtained a peer review of the records of nine (9) of Dr. Geier's Genetic Center patients. A review of those records revealed that the Respondent documented consultations with parents; the results of ultrasound procedures and patient-specific treatment plans in which medications were started or dosages of current medications were revised. In all of the notes discussed below, the Respondent initialed his handwritten notes. Dr. Geier did not initial, co-initial or sign these notes as he did in other notes, nor did the Respondent indicate, as he did in other notes, that Dr. Geier was present during the consultations and/or that it was Dr. Geier who made the treatment recommendations.

Patient B¹⁷

42. Patient B, a female, was nine (9) years and three (3) months old when she initially presented to the Respondent on May 2, 2007.¹⁸ According to the notes in Patient E's chart, she was diagnosed with autism at the age of two (2).
43. On October 10, 2007, the Respondent documented an office visit with Patient B's mother "to evaluate the effects of ↑ Lupron SQ dosing." The Respondent documented that the "plan is to continue with present dosing. Will re-evaluate & follow-up with mother re: dosing when labs are back."

¹⁷ Patient B corresponds to Patient E in Dr. Geier's Order of Summary Suspension.

¹⁸ The vast majority of the Respondent's notes in the reviewed cases were handwritten and consisted of phrases. Several of Patient E's office notes were typed and consisted of lengthy narratives.

44. The Respondent further documented that Patient B's mother had questioned the use of an antiviral medication. The Respondent noted: "[a]t present time, [illegible] [medication] has been agreed by mutual consent to be put off."

Patient C¹⁹

45. Patient C, a female, was eight (8) years and seven (7) months old on March 14, 2008 when she was initially assessed by Dr. Geier during a telephone consultation. Patient C had been diagnosed with ASD at 23 months of age.
46. On June 23, 2008, the Respondent documented an office visit with Patient C. The Respondent documented that Patient C was seen in the office for an examination, review of laboratory results and discussion of a potential treatment plan. The Respondent documented the results of a Wood's lamp examination, a neck ultrasound and various laboratory results. The Respondent's note reads in pertinent part:

Assessment is that pt has a toxic encephalopathy & associated ↑ body-burden of heavy metals, particular (*sic*) Hg [mercury], base upon ↑ urinary porphyrins.²⁰ Pt also has evidence of mitochondrial dysfunction. Additionally, pt has evidence of premature puberty with associated pituitary dysfunction....Plan is to: 1) start Lupron²¹ SQ & IM,²² &

¹⁹ Patient C corresponds to Patient H in Dr. Geier's Order of Summary Suspension.

²⁰ The Respondent and Dr. Geier have reported that "[m]ercury toxicity [is] associated with elevations in urinary [porphyrins]...Porphyrins need to be routinely measured in ASDs to establish if mercury toxicity is a causative factor and to evaluate the effectiveness of chelation therapy." Geier, D.A. and Geier, M.R. *A prospective study of mercury toxicity biomarkers in autistic spectrum disorders*. J. Toxicolol. Environ Health A., 20 (2007).

²¹ Lupron is a potent anti-androgen; it lowers the testosterone level the body produces. The only medically accepted use of Lupron for children is precocious (or premature) puberty.

²² IM is the abbreviation for intramuscular injection; SQ is the abbreviation for subcutaneous injection.

Aldactone 50 mg BID²³ for premature puberty; 2) start Carnitor liquid for mitochondrial dysfunction; 3) start B-12 – folonic acid for sulfur-bearing amino SNPs in MTHFR;²⁴ 4) start vitamin D 1,000 mg IU BID for low vitamin D; 5) start melatonin sublingual for sleep disturbance; & 6) will start metal DMPS²⁵ in futer (*sic*) @ present stop all chelation.

47. On January 28, 2009, the Respondent documented “authorized with pharmacist 6 additional refills of Lupron Dept 15 mg kits...”

Patient D²⁶

48. Patient D, a male, was nine and one-half (9½) years old when Dr. Geier initially assessed him during a telephone consultation on March 21, 2006.
49. On January 7, 2008, the Respondent documented a consultation with Patient D’s mother regarding blood in Patient D’s stools. The Respondent noted in pertinent part:

Mother reported she has been recently administering [Patient D] mega-doses of vitamin C....Plan is as follows: a) told mother to keep [Patient D] off high-dose vitamin C...Mother will follow up with us re [Patient D]’s clinical status.

50. On February 10, 2008, the Respondent documented:

Consulted with [Patient D]’s mother & reviewed record & decided to get [Patient D] script for Carnitor. Called in Carnitor script to pharmacy.

²³ The abbreviation for twice a day.

²⁴ SNP is the abbreviation for single-nucleotide polymorphism. MTHFR is an enzyme responsible for creating the circulating form of folate.

²⁵ Chelation therapy is the administration of chelating agents to remove heavy metals from the body. The Respondent and Dr. Geier have reported that high levels of mercury is the cause of autism. DMPS is a chelating agent that has not been approved by the Food and Drug Administration.

²⁶ Patient D corresponds to Patient I in Dr. Geier’s Order of Summary Suspension.

Internet Communications Regarding the Respondent

51. The internet provides topic-specific forums for interested individuals to exchange ideas. In furtherance of its investigation, Board staff reviewed public communications posted in chat groups for parents of children with autism. A sampling of the messages pertaining to the Respondent follows.²⁷

52. **Parent Consultations with the Respondent:**

- a. Posted January 6, 2007: [the child's hormone levels are discussed]
"David Geier said it's like she's in a constant state of PMS. He also said that we will see her 'move more towards neurotypical.'"
- b. Posted June 13, 2007: "...We had our consultation with David yesterday. [The child's hormone levels are discussed]. David was very nice on the phone and really explained the science."
- c. Posted June 14, 2007: "...David did tell my [x] son that the Lupron might make him 'not as strong', but that it would not do much more than that."
- d. Posted July 9, 2007: "I don't know what to do. David upped the dailies [Lupron SQ injections] from .4 to .5 last week and [the child] is still getting worse....I try to be as prepared as I can with all that is going on with her when David calls."
- e. Posted July 2, 2008: "I spoke with David today and convinced him to try the oral DSMA with [the child] again..."

²⁷ The Administrative Prosecutor will provide the specific address of the messages upon the Respondent's request.

- f. Posted October 3, 2008: "...David Geier recommend (*sic*) that since [the child] is doing so well on the Lupron that we try to get him off (*sic*) of all of his meds. I did this very slowly...and once we stopped everything it was a disaster!!!!"

53. **The Respondent and Dr. Geier as a Team**

- g. Posted March 21, 2006: [regarding the cost of Lupron injections]
"Yes, they're expensive, but covered by insurance. I think it's nice that the Geiers work with insurance companies. If they didn't, we wouldn't be able to do this protocol."
- h. Posted March 21, 2006: "I love the Geiers – very competent, knowledgeable and in this for all the right reasons but please remember that the whole mercury, testosterone, Lupron, etc. is just a THEORY that they are trying to prove." [emphasis in original]
- i. Posted May 22, 2006: "We had a bout of regression when we added DSMA chelation to the protocol...after which the Geiers took her off the chelator."
- j. Posted November 7, 2006: "...the Geiers want to wait to chelate until the aggressions/testosterone is under control, because the chelation will make it worse...[discussion regarding the child's body] "which according to David and Dr. Geier, is not so typical of autistic kids."
- k. Posted June 26, 2007: "...I started emailing Dr. Geier and David directly with questions/concerns. And anything of an urgent matter,

one of the two gentlemen has always called me right away. I also use email to keep them updated on their progress. (I have [x] children on the protocol.)”

- I. Posted June 26, 2007: [regarding the start of chelation therapy for one of several children] “Dr. Geier and David just wanted him to be on the Lupron for awhile before starting the chelation.”

54. **The Respondent’s Qualifications**

- m. Posted September 22, 2006: “Dr Geier (David) explained to me the other night [about effect of Lupron].”
- n. Response to above posting: “Dr. Geier’s name is Mark....David isn’t a doctor. But I’m confident he will get his PhD some day. He sure the heck is smart enough!”
- o. Response: “I had found out in August that David is not also a doctor, but it is already a habit for me to call him Dr. Geier...by the time I ‘untrain myself’. He will probably be one! LOL!!”
- p. Posted December 11, 2006: [Discussion by a health care provider who returned to the “Geiers” after an initial consultation to inquire about Lupron] “First of all Dr. Mark Geier was not in the room the son was giving us the lab result and the treatment protocol. As a [health care provider] I found that to be odd because the son is not an M.D. therefore I felt this was practicing without a license.”

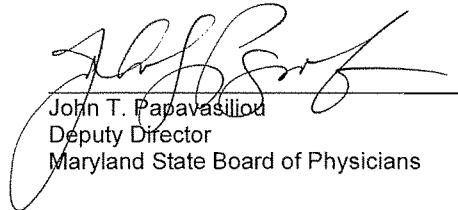
The Respondent’s conduct, in whole or in part, constitutes the practice of medicine without a license, in violation of H.O. § 14-601.

If, after a hearing, the Board finds that there are grounds for action under H.O. §§ 14-601, the Board may impose a monetary penalty.

NOTICE OF CASE RESOLUTION CONFERENCE

A Case Resolution Conference in this matter is scheduled for **Wednesday, July 6 2011 at 10:00 a.m.** the Board's office, 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the case resolution conference and prehearing conference is described in the attached letter to the Respondent. If this matter is not resolved on terms accepted by the Board, an evidentiary hearing will be scheduled.

5/16/2011
Date


John T. Papavasiliou
Deputy Director
Maryland State Board of Physicians

IN THE MATTER OF	*	BEFORE THE
DAVID A. GEIER	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
Unlicensed	*	Case Nos.: 2008-0022 & 2009-0318
* * * * *	*	* * * * *

FINAL DECISION AND ORDER

On May 16, 2011, the Maryland State Board of Physicians (the “Board”) charged David A. Geier with practicing medicine without a license. *See* Md. Code Ann., Health Occ. § 14-601. On December 15, 2011, an evidentiary hearing was held before an administrative law judge (“ALJ”) of the Office of Administrative Hearings (“OAH”). The same ALJ who presided over David Geier’s case also presided over two recent Board cases against David Geier’s father, Mark Geier, M.D. (“Dr. Mark Geier”). One of those proceedings concerned the summary suspension of Dr. Mark Geier’s medical license (“Dr. Mark Geier’s Summary Suspension Hearing”). In the other proceeding, the Board charged Dr. Mark Geier with violating the Maryland Medical Practice Act (“Dr. Mark Geier’s Charges Hearing”).

At David Geier’s OAH hearing, Linda Grossman, M.D., an expert witness for the State, testified. David Geier, on his own behalf, also testified at the hearing. In addition, transcripts of testimony from the following witnesses at Dr. Mark Geier’s Charges Hearing were admitted into evidence: Dr. Mark Geier; David Geier; Dr. Grossman; and Joshua Schafer, a Board investigator. Also, transcripts of testimony from the following witnesses from Dr. Mark Geier’s Summary Suspension Hearing were admitted into evidence: Parent A (the mother of Patient A) and the mothers of Patients B, and C (as those letters were used during David Geier’s hearing), and the mothers of Patients A, B, and F (as those letters were used during Dr. Mark Geier’s Summary

Suspension Hearing).¹ The documents that were admitted into evidence are listed in the ALJ's File Exhibit List.

On March 7, 2012, the Administrative Law Judge issued a proposed decision recommending that the Board dismiss the charges. The administrative prosecutor filed exceptions. On May 25, 2012, the Board held a hearing on the exceptions.

FINDINGS OF FACT

The following findings of fact were proven by a preponderance of the evidence²:

David Geier has never obtained a license to practice medicine nor has he held a license to practice any health occupation. In 2002, he obtained a Bachelor of Arts degree from the University of Maryland, Baltimore County. He has not attended any medical school.

David Geier has founded and is an executive of the following organizations: MedCon, Inc., which, according to David Geier's curriculum vitae, involves "Medical-Legal Consulting & Biochemical-Epidemiological Research"; the Institute of Chronic Illnesses, Inc., which is "dedicated to studying chronic diseases"; CoMeD, Inc., which advocates for those "adversely impacted by environmental and medicinal toxins"; and ASD Centers, LLC, which is involved in "the evaluation and treatment of more than 600 patients diagnosed with autism spectrum and other neurodevelopmental disorders."

In addition to his work on the organizations he founded, David Geier was "on staff" at his father's, Dr. Mark Geier's,³ clinical practice, named the Genetic Centers of America ("Genetic Centers"). Genetic Centers operates two medical clinics in Maryland. One clinic is located at 11125 Rockville Pike, Rockville, Maryland 20852, and is called Genetic Consultants of

¹ Different letters were used to identify the patients at the various hearings.

² Additional factual findings discussed in this decision were also proven by the preponderance of the evidence.

³ During the events at issue, Dr. Mark Geier was licensed to practice medicine in Maryland.

Maryland (“Genetic Consultants”).⁴ The other clinic is located at 20 Crossroads Drive, Owings Mills, Maryland 21117, and is called Genetic Center of Baltimore. In addition to Dr. Mark Geier, one other licensed physician worked at Genetic Centers. According to David Geier’s curriculum vitae: “Centers involved (*sic*) in evaluating and treat (*sic*) several hundred patients with autism, neurodevelopmental disorders, and other chronic diseases. In addition, these centers help to provide prenatal genetic care and adult predictive genetic care.” David Geier’s curriculum vitae does not describe his responsibilities at Genetic Centers.

PATIENT A

July 1, 2005

On July 1, 2005, Patient A, a male, was 10 years old and, with his mother, Parent A, met with Dr. Geier and David Geier at Genetic Consultants for a medical appointment. Patient A has autism, and the appointment was for the treatment of his autism. An Autism Treatment Evaluation Form (“ATEC”)⁵ was completed and scored. Parent A was not made aware of David Geier’s credentials. Dr. Mark Geier and David Geier took extensive notes of their interview with Parent A and Patient A. Genetic Consultants also ordered laboratory testing at Quest Diagnostics and LabCorp for Patient A. A two-page Patient Interview Form was typed. The Impression section of the form lists Unspecified Developmental Delay, Possible Childhood Heavy Metal Exposure (Mercury), and Possible Precocious Puberty. Dr. Mark Geier’s name is

⁴ According to Dr. Mark Geier, Genetic Consultants and Genetic Center are part of Genetic Centers of America.

⁵ The ATEC is intended to measure the severity of a patient’s autism, and, if taken on multiple occasions, it is intended to measure whether the treatment the patient is receiving is effective. The ATEC is divided into four sections: (1) Speech/Language/Communication, (2) Sociability, (3) Sensory/Cognitive Awareness, and (4) Health/Physical/Behavior. Each section has multiple statements and asks how accurate each statement is. For example, under Speech/Language/Communication, “Can use sentences with 4 or more words,” one circles whether that statement is: Not true, Somewhat True, or Very true. Each section is scored and given a percentage range. The section scores are then combined for a final percentage range.

typed at the end of the second page. Dr. Mark Geier did not sign or initial the Patient Interview Form. Parent A did not take her son to get the ordered laboratory testing and did not return to Genetic Consultants until approximately three years later.

May 19, 2008

Parent A scheduled another medical appointment for May 19, 2008, in order for her son and herself to meet with Dr. Mark Geier concerning her son's autism. On May 19, 2008, as scheduled, Parent A and Patient A arrived at Genetic Consultants in Rockville, Maryland. Patient A was 13 years old.

While in the waiting room, Parent A was given an ATEC. She filled out the form, answering all the questions. Parent A gave the completed ATEC form to a receptionist.

A receptionist took Parent A and Patient A to an office in the clinic. When Parent A and Patient A entered the office, David Geier was in the office seated behind a desk. Dr. Mark Geier was not in the room; he was busy with another patient. David Geier was the only person in the office when Parent A and Patient A entered. There were two chairs for the "doctor's side" of the desk. (Testimony of Dr. Mark Geier, December 9, 2011, Tr. 941.) Dr. Mark Geier generally sat in the front chair and David Geier sat in the side chair to take notes. *Id.* In this case, David Geier sat in the front chair, not in the side chair. Parent A and Patient A sat on the other side of the desk from David Geier. Parent A, Patient A, and David Geier met for approximately a half-hour in this office and had a discussion. Nobody at Genetic Consultants explained to Parent A what David Geier's professional credentials were. Parent A assumed that David Geier was licensed to practice medicine. David Geier then had a discussion with Parent A and Patient A.

Dr. Mark Geier was not involved in the discussion between David Geier and Parent A and Patient A. And Dr. Mark Geier did not enter the office while the discussion took place.⁶ The Board finds that Dr. Mark Geier did not speak to Parent A or Patient A on May 19, 2008.⁷ The ALJ also found that Dr. Mark Geier did not speak with Parent A or Patient A on May 19, 2008. (ALJ's Proposed Decision, Finding of Fact 44, at 11; ALJ's Proposed Decision, at 23-24.)

In the discussion in the office with Parent A and Patient A on May 19, 2008, David Geier first said: "Looking at [Patient A], he doesn't look like he's thirteen, he looks like he's sixteen." Then, noting that the patient was beginning to grow a mustache, David Geier said that the patient "looks like a typical high-testosterone kid."

David Geier then had an extensive discussion with Parent A about laboratory testing for Patient A.⁸ Their discussion centered on genetic testing. David Geier spoke to Parent A about laboratory testing for microdeletion, to determine whether the patient had a rare genetic disorder. David Geier also told Parent A about testing for the porphyrin autism marker. Parent A agreed that her son would be tested for an array of genetic testing, including agreeing to microdeletion and porphyrin tests, and testing for Fragile X, Angelman, and Rett syndromes, among others. The testing required blood samples from the patient, which would be taken by the laboratories

⁶ The Board is not adopting the ALJ's finding on whether Dr. Mark Geier entered the office during the discussion between Parent A and David Geier. The ALJ found that Dr. Mark Geier "periodically popped" into the room without being seen and without talking to the parent. (ALJ's Proposed Decision, Finding of Fact 44, at 11; ALJ's Proposed Decision, at 23-24). The Board does not accept that finding. It is highly doubtful that in a case where a parent and patient had an appointment with a physician, the physician would enter the room where the discussion of the patient's treatment was taking place without saying a word (including not even greeting the parent and patient) and without even being noticed by the parent.

⁷ Parent A testified that she did not speak to Dr. Mark Geier on May 19, 2008. Parent A said that she only "might have seen [Dr. Mark Geier] with the other couple and child walking by, but that was very fleeting."

⁸ Dr. Mark Geier claimed to determine the course of medical treatment for autism based upon the results of the laboratory testing. (Testimony of Dr. Mark Geier, Interview, November 6, 2007, at 32-33.)

performing the tests. David Geier told Parent A that he would have the orders for the laboratory testing mailed to her.

After the discussion in the office, David Geier, Parent A, and Patient A went into another room for abdominal and thyroid ultrasounds of the patient. The sonographer then entered the ultrasound room. The patient was not cooperative with the ultrasound. According to Parent A, “he was running around the room, he was even behind the equipment.” Before the ALJ, David Geier testified: “Specifically, in the sonogram room, that he was engaged in kicking behavior and so I tried to help hold his feet.”⁹ The ultrasounds were attempted, although no ultrasound photographs were taken due to Patient A’s behavior. Dr. Mark Geier was not in the ultrasound room. David Geier wrote the patient’s name in the abdominal ultrasound report and, in the date section, wrote the patient’s identification number. The section titled “Patient History/Reason for Ultrasound” was left blank. The sonographer checked boxes on the report indicating that Patient A’s kidneys, spleen, and gallbladder were normal. Dr. Mark Geier wrote on the abdominal ultrasound report: “Slightly limited exam due to non-cooperation from pt. MG [Dr. Mark Geier’s initials].” The sonographer did not sign, initial, or date the report. Concerning the thyroid ultrasound, the sonographer wrote: “Please note that this ultrasound was performed with a C5-2M transducer. This can only rule out gross abnormalities.” The sonographer also wrote measurements for the right and left lobes. Dr. Mark Geier initialed the thyroid ultrasound note. The sonographer did not sign or initial the report. The report is dated May 19, 2008. The sonographer’s name is not mentioned on either report. After the ultrasound, Parent A and Patient A did not return to the office where the earlier discussion took place that day.

⁹ Dr. Mark Geier testified that David Geier “occasionally” goes into the sonogram room to help control children, by holding the children’s legs, when they kick.

On or about May 19, 2008, David Geier scored the ATEC and wrote the scores on the ATEC form. David Geier did not date, sign, or initial the ATEC.

David Geier also wrote a Patient Interview Form report concerning the May 19, 2008, visit. The Board finds that the Patient Interview Form was written by David Geier on or about May 19, 2008.¹⁰ The Patient Interview Form is typed, three pages, and single-spaced and includes the following sections: Diagnosis, History, Present Consultation, Ultrasound Examination, Medications, Sexual Development, Psychological Examination, Impression, Plan, and a list of labs that should be ordered from LabCorp and Quest Diagnostics. The section titled Psychological Examination states:

A follow-up evaluation of [Patient A] was undertaken using the Autism Treatment Evaluation Checklist (ATEC) completed by [Patient A's] mother and evaluated by me.¹¹ The results indicate that [Patient A] continues to show significant (*sic*) overall development delays (overall score at present = 60-6[9]% vs overall score previously = 70-79%). He continues to have significant problems with his sociability and sensory/cognitive awareness skills. [Patient A] has serious problems with hyperactivity and stemming behaviors. In addition, [Patient A] suffers from significant sleep cycle problems and can be destructive, his or injuries (*sic*) self and others, and is anxious/fearful. It is apparent based upon examination of the DSM-IV criteria that [Patient A's] present symptoms are compatible with a diagnosis of pervasive developmental delay (*sic*) – not otherwise specific (*sic*) (PDD-NOS).

Under the Impression section, David Geier wrote: PDD-NOS, Sleep Problems (Insomnia), and Unspecified Metabolic Disorder.

¹⁰ The only date on the form (other than the patient's date of birth) is May 19, 2008, which refers to the date of the interview. It is possible that the form was written at a later date, but the form was not written after May 22, 2008. After May 22, 2008, the information in the form would have been outdated. The form refers to LabCorp tests that *should* be ordered. Those tests *were* ordered on May 22, 2008. Dr. Mark Geier testified that he did not know when it was typed.

¹¹ David Geier testified that he scored the ATEC. (State's Ex. 20, Tr., 12/15/2011, at 130.) Dr. Mark Geier testified that he suspected that David Geier scored the ATEC. (State's Ex. 19, Tr., 12/9/2011, at 943.)

The Patient Interview Form also lists four tests (with code numbers) that should be ordered from LabCorp: Androstane Diol Glucuronide, Androstenedione, Dehydroepiandrosterone (DHEA), and Testicular Function Profile II. The form also lists 22 tests that should be ordered from Quest:

1. Gene Alter, Postnatal, CGH
2. Fragile X DNA w/Chromosome, BLD
3. Rett Syndrome Mutation
4. Prader-Willi/Angelman Syndrome
5. Heavy Metals Group II, Blood
6. Heavy Metals, Complete, Urine
7. Zinc, RBC;
8. Copper, RBC
9. RBC Folate, B12 Folate
10. Porphyrins, Fractionated, Plasma
11. Porphyrins, Fract, Random Urine
12. Carnitine & AcylCarnitine
13. Ammonia, Plasma
14. Lactic Acid, Plasma
15. Vitamin B6
16. Vitamin A (Retinol)
17. Vitamin D, 1,25-Di & 25-Hydroxy
18. Myelin IGG AB, IFA+
19. 22Chem W-eGFR, AMY, LIP, UA
20. Organic Acids, QT, UR, full
21. Amino Acid Analysis, LC-MS (P)
22. Estrogens, Fract, Serum.

Each test had a code number next to it. The Patient Interview Form also has Dr. Mark Geier's name – "Mark R. Geier, M.D., Ph.D., FABMG, FACE" – typed at the end of the report on page three. Dr. Mark Geier testified that he usually initials or signs the Patient Interview Form if someone shows it to him. Dr. Mark Geier did not sign, date, initial, or otherwise mark the May 19, 2008, Patient Interview Form.¹² David Geier is not mentioned by name on the

¹² In contrast, there are Patient Interview Forms signed by Dr. Mark Geier, such as Patient B's. (State's Ex. 8, at MG11077.)

form. David Geier, however, wrote and typed the Patient Interview Form without Dr. Geier's input or review.

Genetic Consultants billed the insurance company covering Patient A \$150 for a "psychiatric diag interview exam" for May 19, 2008. In addition, for May 19, 2008, Genetic Consultants billed the insurance company \$150 for an office consultation, \$225 for a neck ultrasound, and \$225 for an abdominal ultrasound. David Geier determined the billing for Genetic Consultants.

May 22, 2008

On May 22, 2008, David Geier completed an order form for laboratory testing for Patient A at LabCorp. (State's Ex. 7, at MG10865.) David Geier wrote at the top of the form: "Completed 5/22/2008 Dg [David Geier's initials]." The order was written on a LabCorp form. The number 53958831788 is printed several times on the order form. David Geier entered the code for insomnia under the diagnosis section. In the Physician's Signature space on this LabCorp form is a signature that reads "Dr Mark Geier."¹³ The Board agrees with the ALJ that the "D" in the "Dr" immediately preceding "Mark Geier" "is remarkably like the formation of the first letter in Respondent's [David Geier's] first name." (ALJ's Proposed Decision, at 17.) In other words, the handwriting of the "D" in "Dr" preceding "Mark Geier" has an uncanny resemblance to the distinctive "D" in David Geier's initials when David Geier initials a document. David Geier signed "Dr. Mark Geier" in the Physician's Signature section of the May 22, 2008, LabCorp order form.

¹³ It is possible to view the signature as "D Mark Geier," but upon very close inspection there appears to be a slight squiggle at the end of the D which the Board finds was intended to be an "r." Thus, the Board finds that the signature says "Dr Mark Geier" instead of "D Mark Geier."

The LabCorp order form requests four tests, which are the same four lab tests listed on the May 19, 2008, Patient Interview Form as tests that should be ordered from LabCorp. On May 22, 2008, Genetic Centers mailed the LabCorp order to Parent A. Genetic Centers' contact sheet states: "5-22-08 Mailed Lab Specimen 53958831788." No signature or initials are next to this entry. This entry indicates that Genetic Centers mailed the LabCorp order form to Parent A on May 22, 2008. Genetic Consultants billed the insurance company \$150 for a prolonged 1st hour evaluation and management for May 22, 2008. David Geier determined the billing. Shortly thereafter, Parent A received the LabCorp testing order in the mail.

David Geier, however, forgot to order the 22 lab tests from Quest.

June 17, 2008

On June 17, 2008, Parent A had a telephone conversation with David Geier. Parent A called Genetic Consultants because she only received the LabCorp order, which did not include the genetic testing that Parent A had discussed with David Geier during the visit on May 19, 2008 (the testing that David Geier forgot to order, i.e., the Quest testing). David Geier agreed to send the order for the missing testing. Parent A did not speak with Dr. Mark Geier. An entry on Genetic Centers' contact sheet, written and initialed by David Geier, states: "Dg [David Geier's initials] 2PM 6-17-08 Consultation with [Patient A's] mother re: lab testing for her son. Reviewed Lab scripts & testing procedures @ LabCorp vs Quest."

Genetic Consultants billed Patient A's insurance company \$150 for a prolonged 1st hour evaluation and management. David Geier determined the billing.

June 18, 2008

On June 18, 2008, as he had agreed to do the day before on the telephone with Parent A, David Geier typed in the order for the 22 tests for Quest which he had forgotten to order after the

May 19, 2008, visit. David Geier also registered the patient with Quest. Genetic Centers' contact sheet states: "Dg 9PM Registered & completed lab script for [Patient A] with Quest using Online 360 software." The Quest order form is dated "6/18/2008" and lists the same 22 tests and test codes listed on the May 19, 2008, Patient Interview Form for testing that should have been ordered from Quest. There is no signature line on the order form. The diagnoses David Geier listed on the order form are Insomnia, NOS and Metabolism Disorder NOS. The Quest testing order was mailed to Parent A. Parent A received the Quest order form shortly thereafter. Parent A and Genetic Centers had no further contact. Genetic Consultants maintained a copy of the Quest order form. Genetic Consultants billed Patient A's insurance company \$150 for a prolonged 1st hour evaluation and management. David Geier determined the billing.

July 11, 2008

On July 11, 2008, Parent A took Patient A to Quest for the 22 blood tests. Quest asked Parent A if she realized how many tubes of blood would be needed for all the blood. According to Parent A, she understood, after a discussion with Quest, that the 22 tests would involve an "insane amount of blood," and that one couldn't draw that much blood in one sitting. Parent A opted only for the testing that she considered appropriate. By July 23, 2008, Quest had completed the reports for the testing and sent the results to Genetic Consultants. Genetic Consultants maintained the Quest reports in its file for Patient A. Genetic Consultants did not attempt to schedule another appointment and did not take any further action in regard to Patient A. Parent A did not take her son to LabCorp for testing.

October 2, 2008

After taking her son to Quest for the laboratory testing, Parent A began to research David Geier and Dr. Mark Geier through the internet and learned that David Geier was not a physician. Parent A was also upset after receiving billing statements from Genetic Consultants, which contained billing inconsistent with the services provided. Parent A was also disappointed that there was no follow through by Genetic Consultants after the Quest laboratory testing results had been sent to Genetic Consultants. On October 2, 2008, Parent A filed a complaint with the Board concerning her interactions with David Geier and Genetic Consultants in 2008.

CREDIBILITY DETERMINATIONS

The ALJ determined that David Geier was more credible than Parent A. The Board rejects this credibility determination. After carefully reviewing the transcripts and the documents admitted into evidence, it is clear that David Geier's testimony was not reliable and that he was not a credible witness. Dr. Mark Geier's testimony from his Charges Hearing was also admitted into evidence. Dr. Mark Geier's testimony also was not reliable or credible. In addition to being misleading, evasive and implausible, the testimony of David Geier and Dr. Mark Geier contradicted each other and the documentary evidence. Often times, their testimony was self-contradictory. While at times noting obvious discrepancies in their testimony, the ALJ failed to adequately address those discrepancies. The ALJ also failed to adequately address the contradictions between David Geier's and Dr. Mark Geier's testimony, the contradictions between their testimony and the medical records, and their self-contradictory statements. Parent A's testimony, on the other hand, was much more consistent and aligned with the records in evidence.

In addition, the ALJ's negative credibility determination regarding Parent A in this case was based upon grounds that were different from the basis of her credibility determination that she previously made regarding Parent A concerning the same testimony, which was transcribed from Dr. Mark Geier's Summary Suspension Hearing. The same ALJ presided over the evidentiary hearing regarding Dr. Geier's Summary Suspension. In the ALJ's view, Parent A lacked credibility in that case because Parent A did not even notice a fourth person (the sonographer) in the ultrasound room. This observation by the ALJ was incorrect. Parent A had consistently maintained that there was a fourth person in the room. The administrative prosecutor pointed out that the basis of the ALJ's negative credibility determination was incorrect. After the administrative prosecutor demonstrated to the ALJ that the basis of the ALJ's previous credibility determination was incorrect, the ALJ then, in the instant case, found Parent A not credible again but for different reasons. However, the ALJ's new credibility finding is again belied by the record in this case. In sum, there are extremely strong reasons for rejecting the ALJ's credibility determinations.

David Geier

The reliability of David Geier's testimony before the ALJ was diminished immediately. He began his testimony discussing his curriculum vitae. On direct examination, he was asked whether his curriculum vitae was up-to-date. David Geier responded: "Pretty much, yes." He then explained that after looking at it, that there were "probably some additional publications, peer review publications." On cross examination, however, he was asked about the following statement on his curriculum vitae: "2009-Present Appointed by Maryland Governor Martin O'Malley to serve on the Maryland Commission on Autism (3 year-term)." The question was whether he was presently on the Maryland Commission on Autism. He responded: "No, I am

not.” David Geier said that he was “asked to stop serving.” On redirect he was asked whether he agreed to stop serving, but he evaded the question: “Well, that was the end of my services.”

On direct examination, David Geier was asked whether he assisted his father at his father’s clinical practice. David Geier said that he did and then described what that entailed:

It can take a variety of different ways of assistance; it can be things like calling in prescriptions for hi[m]; it can be acting as a note-taker for him for patients.

It can also be administrative in nature, meaning billing, helping to put charts together, that kind of thing.

He did not mention that he assisted his father by meeting with the patients and parents alone and discussing the course of treatment with the parents when Dr. Mark Geier was busy. He also failed to mention that he scored ATECs, resolved blood testing order problems, and typed medical documents. He clearly minimized his role at the clinic.

On January 19, 2010, David Geier was interviewed under oath by Joshua Schafer, a Board investigator. It is evident from the interview that David Geier was not a credible witness:

Q. [Mr. Schafer] As part of your duties and responsibilities at the Genetic Centers of America, do you meet with patients there?

A. [David Geier] No.

Q. You don’t meet with patients at the Rockville Pike location?

A. What do you mean by “meet with patients?” I’m not trying to be evasive, but what do you mean by “meet with patients?”

Q. Have face-to-face interaction with patients.

A. Can I answer in my own words, or you want a “yes” or “no” answer to that question?

Q. Well, I will ask it in a yes or no way. Do you have face-to-face interaction with minor patients and their parents at the Rockville Pike location?

A. I would like to answer in my own words, if I could.

Q. That’s the only words that I’m interested in.

A. I am sometimes an administrative assistant in Rockville. So in the sense of patients coming through the door, there are patients that come through the door. I wouldn’t -- you know, that’s how I see them in the sense of they come through and they’re seen in the office. That doesn’t mean that I conducted a face-to-face meeting. I wouldn’t describe it in the words that you are saying. [State’s Exhibit 6, Tr. 7-8.]

This is certainly contradicted by his own testimony that he “tried to help hold [Patient A’s] feet” and Dr. Mark Geier’s testimony that David Geier occasionally controls the legs of patients during ultrasounds. And it is, of course, contradicted by his own testimony and Dr. Mark Geier’s testimony that he met with Parent A and Patient A.

During the hearing before the ALJ, David Geier was asked about Parent A’s and Patient A’s visit to the clinic on May 19, 2008, and he testified:

Yes. I remember that [Parent A] came to our office. This was a day that I went with my father to the practice. They came in. They were in the office. They were eventually seen in an office room there. And in the office room I was *present*, as well as my father, who came in and out.

The patient also had a series of procedures performed while in the office, referring to the sonograms.

It is clear that David Geier reduced his role in the visit. Remarkably, at no point in his testimony does David Geier acknowledge speaking to Parent A on May 19, 2008. He only goes so far as to say he was “present.” The Patient Interview Form, however, does address the discussion that David Geier had with Parent A on May 19, 2008, regarding laboratory testing:

Reviewed with mother laboratory testing presently being employed by our office to help evaluate children diagnosed with autism spectrum disorders. It was decided following an informed consent decision that new laboratory testing would be ordered for [Patient A] through LabCorp for hormone testing (androgens) and the other tests to be ordered would be conducted through Quest Diagnostics.

The review of the laboratory testing, the informed consent, and the testing that would be conducted by LabCorp and Quest had to have taken place in a conversation between David Geier and Parent A, because Parent A did not talk with Dr. Mark Geier that day. As the ALJ found, Dr. Mark Geier did not speak to Parent A: “. . . [Dr. Mark Geier] did not address [David Geier], Parent A, or Patient A . . .” (ALJ’s Proposed Decision, Finding of Fact 44, at 11.) The Patient Interview Form, which describes a significant discussion, is consistent with the testimony of Parent A. David Geier purposely obscured his role during the appointment. There is no doubt

that David Geier had a discussion with Parent A on May 19, 2008. David Geier's failure to acknowledge that he spoke with Parent A was meant to mislead.

David Geier's testimony before the ALJ became even more unreliable. He did not deny, but claimed no memory of significant factual issues related to whether he was practicing medicine or not. On direct examination, David Geier was asked by his attorney whether he "prepared" the three-page, single-spaced Patient Interview Form (State's Ex. 7, at MG10891-93) pertaining to Patient A's visit to the clinic on May 19, 2008. Although he was the one who interviewed Parent A, David Geier testified that he could not recall. The Board finds this implausible. When David Geier was asked whether he recalled making the comment that "[Patient A] looked like a typical high-testosterone kid," David Geier testified that he did not know.¹⁴

The ALJ wrote that she doubted David Geier's testimony that Dr. Geier spent a significant amount of time with Parent A and Patient A on May 19, 2008. The ALJ appears to have nevertheless made a positive credibility finding concerning David Geier based almost entirely on his demeanor. The ALJ, thus, failed to consider whether his testimony was consistent with the rest of the evidence. A witness's demeanor while testifying is significant, and the Board grants the ALJ's demeanor-based credibility determinations substantial deference, but the Board cannot rely upon the ALJ's positive demeanor-based credibility determination when the medical records and the transcripts show decisively that the testimony was not credible.

On June 17, 2008, Parent A called Genetic Centers because David Geier had failed to send her the order for the testing at Quest. The next day, June 18, 2008, David Geier wrote the

¹⁴ The ALJ was "impressed" with David Geier's "candid admission" that he did not know whether he said that Parent A's son "looked like a high-testosterone kid." It is certainly possible that David Geier did not remember making that statement to Parent A. But, if that were the case, this would have been a rare example of David Geier's candor.

order for the Quest testing. The testing that was ordered on June 18, 2008, was the exact same testing that he had determined, on May 19, 2008, was going to be ordered. Those tests are listed, with their codes, on the May 19, 2008, Patient Interview Form. On June 18, 2008, David Geier simply copied the tests and codes listed on the Patient Interview Form onto the Quest order form. The tests are even listed in the same order. But Genetic Consultants billed \$150 for one hour of a prolonged 1st Hour Evaluation and Management on both June 17, 2008, and June 18, 2008. David Geier testified that a physician must perform the prolonged first-hour evaluation and management in order to bill for that service.

On cross examination, David Geier was asked to testify as to what occurred on June 17 and 18, 2008, and to explain the billing for those days. David Geier's testimony is directly contradicted by the following medical records: the May 19, 2008, Patient Interview Form; the May 22, 2008, LabCorp order; and the June 18, 2008, Quest order.

David Geier testified on what the billing for July 17, 2008, was for:

A. The billing is indicative of the fact that Dr. Geier spent a significant amount of time reviewing the laboratory tests that were ordered for this patient and discussing with me and others about what this patient should have in evaluating LabCorp versus Quest.

* * *

A. This was a discussion with Dr. Geier and myself. The billing would reflect that we were consulting about the issue of laboratory testing for this patient. I guess it's Patient A.

David Geier was then asked whether the discussion concerned at which facilities (LabCorp or Quest) the tests should be conducted. David Geier said "Yes." But it is clear from the medical records that the decisions as to where the testing would take place and what tests were to be performed were made a month earlier and documented as such in the Patient Interview Form. Again, the order for the testing at LabCorp had already been written, sent, and

received weeks earlier. Dr. Mark Geier's involvement on June 17, 2008, would thus have been entirely unnecessary. David Geier was then asked about the contradiction – that the May 19, 2008, Patient Interview Form already contained the testing information that he testified was extensively labored over on June 17, 2008. He could not reconcile the contradiction nor did he even attempt to do so. (David Geier's Testimony, 12/15/2011, Tr. 126-27.)

David Geier then testified about the bill submitted for Dr. Geier's time on June 18, 2008. David Geier testified that Dr. Mark Geier's time was billed for his (David Geier's) typing the Quest registration and orders on the computer. According to David Geier, Dr. Mark Geier "would have been overseeing and ensuring what I was doing was accurate and appropriate." This testimony, however, was contradicted by Dr. Mark Geier, who said: "I don't have anything to do with the registration." And Dr. Mark Geier did not testify that he oversaw David Geier typing the Quest laboratory order. This testimony by David Geier concerning what occurred on June 17 and 18, 2008, was false.

Dr. Mark Geier's testimony concerning the events of June 17 and 18, 2008, was equally false. Dr. Mark Geier testified that on June 17, 2008, he (Dr. Mark Geier) did a lot of work figuring out the Quest *lab codes*. But this is inconsistent with David Geier's testimony and does not make any sense, because the Quest lab codes were already figured out and written on the May 19, 2008, Patient Interview Form. Dr. Mark Geier then tried to explain the \$150 bill Genetic Consultants submitted for June 18, 2008. Dr. Mark Geier testified that Parent A called back on June 18, 2008, and he had to handle an unspecified further request from her. There is nothing to corroborate this testimony. Parent A did not call back on July 18, 2008. Dr. Mark Geier also testified that he "helped with both of those [the Quest and LabCorp orders] to get them straight." But the LabCorp order was already completed and sent on May 22, 2008.

What did occur was that, on May 22, 2008, David Geier ordered the LabCorp testing but forgot to write the Quest testing order. The LabCorp order was then sent to Parent A. Parent A called Genetic Centers on June 17, 2008, and asked David Geier to send her the order for the missing tests (the Quest order). David Geier then billed for this telephone conversation and perhaps for reviewing the medical file to verify that the Quest tests had not been ordered. On June 18, 2008, David Geier ordered the Quest testing by copying the tests and codes listed on the May 19, 2008, Patient Interview Form. David Geier also registered the patient with Quest. The actual work for which the bill was submitted to the insurance company for June 18, 2008, was simply the typing of the Quest order and registering the patient. Dr. Mark Geier was not involved. Parent A's testimony and the medical records that Genetic Consultants maintained and which were admitted into evidence support a finding that these events occurred. David Geier's and Dr. Mark Geier's versions of events conflict with each other and with the documents in evidence. The reasons for rejecting the ALJ's demeanor-based credibility determination concerning David Geier are both strong and manifold.

Parent A

The ALJ found that Parent A was not credible in the Dr. Mark Geier Summary Suspension Hearing. Parent A did not present live testimony in David Geier's case. The transcript of Parent A's testimony from Dr. Mark Geier's Summary Suspension Hearing was admitted into evidence instead.

In her proposed decision in David Geier's case, the ALJ quoted her credibility finding regarding Parent A from Dr. Mark Geier's Summary Suspension Hearing, which, in relevant part, reads:

The single parent witness I did not find to be credible was Parent A The reliability of Parent A's recollections disintegrated on cross-examination when

she admitted that there might have been someone else in the treating room, and when the “diagnosis” was revealed to be little more than an observation.

At the David Geier case, however, the administrative prosecutor pointed out to the ALJ that the ALJ’s finding concerning Parent A’s “admission” that “someone else” (a fourth person, the sonographer) had been in the “treating room” (ultrasound room) was incorrect. Parent A, in fact, did not “admit” on cross examination that there might have been someone else in the room, because Parent A had said all along that there were four people in the room. Parent A’s testimony had been consistent in her Complaint, in the Board interview, and in her testimony before the ALJ. The basis for the ALJ’s credibility finding in the ALJ’s Proposed Decision in Dr. Mark Geier’s Summary Suspension Hearing was, therefore, unfounded.

But, in David Geier’s case, the ALJ again found that Parent A’s recollection disintegrated on cross examination. But the ALJ changed the point at which she remembered Parent A’s recollection disintegrating. This time the ALJ found that Parent A’s recollection did not disintegrate when Parent A “admitted” that there might have been “someone else” in the treating room. Instead, Parent A’s recollection disintegrated this time, according to the ALJ, when Parent A realized that the LabCorp order stated “Dr Mark Geier” under Physician’s Signature. Parent A had previously thought that the handwriting in the Physician’s Signature section on the LabCorp order said “David Geier.” However, Parent A’s recollection could not have disintegrated at this point either because the question did not call for a recollection, it called for her opinion of what the handwriting said, and the very next area that Parent A testified about was the number of people in the ultrasound room, which the ALJ now acknowledges was accurate and consistent with the parent’s previous statements. The Board finds that Parent A’s testimony was credible. The Board rejects the ALJ’s finding that parent A’s recollection disintegrated on cross examination. The signature on the LabCorp form is significant, though.

The Board finds that the “Dr Mark Geier” written as the physician’s signature on the May 22, 2008, LabCorp order was written by David Geier, not by Dr. Mark Geier. The ALJ found that the handwritten “D” in the “Dr Mark Geier” is “remarkably like” the “D” that David Geier writes when he initials a document.¹⁵ The Board agrees. The “D” in “Dr Mark Geier” is extraordinarily similar to David Geier’s distinctive “D” when he initials a document. The “D” is also very different from the “D” in “Dr.” that Dr. Mark Geier uses when Dr. Mark Geier signs documents. In addition, it does not appear from Dr. Mark Geier’s testimony that he was aware of *when* the LabCorp order was issued, nor does it appear that he was even aware that the May 22, 2008, LabCorp order existed.

Dr. Mark Geier’s testimony on the laboratory testing orders was so vague, confusing, and inaccurate that there is no indication that he had any knowledge of or involvement in ordering the laboratory tests. For example, when he was asked about the billing for May 22, 2008, exemplified by the contact note for May 22, 2008, (State’s Ex. 7, at MG10859) and the billing entry for May 22, 2008 (State’s Ex. 7, at MG10858), Dr. Geier had no idea what this contact note was for, nor what the billing entry was for. (State’s Ex. 19, Tr., 12/9/2011, at 950-51). Both documents referred to the May 22, 2008, LabCorp order. (State’s Ex. 7, MG10865).¹⁶ The billing document, the contact note, and the LabCorp order are the only medical records for Patient A with respect to May 22, 2008. These documents indicate that the only things that occurred on May 22, 2008, were the completion, the signing, and the sending of the LabCorp order. Dr. Mark Geier, however, did not know what occurred on May 22, 2008, other than what was written on the contact note. Dr. Mark Geier’s lack of knowledge of the May 22, 2008,

¹⁵ The ALJ, however, does not appear to have considered the obvious issue of whether David Geier wrote the “Dr Mark Geier.”

¹⁶ The May 22, 2008, LabCorp order and the May 22, 2008, contact note both have the same transaction number: 53958831788.

LabCorp order is another indicator that he did not sign the document. And in Dr. Mark Geier's testimony, he (Dr. Mark Geier) did not claim that he (Dr. Mark Geier) signed or authorized or even knew about the LabCorp order. Dr. Mark Geier was not involved in the LabCorp order. Instead, David Geier chose the LabCorp tests, David Geier obtained informed consent from Parent A for those tests, David Geier completed the LabCorp order form, David Geier signed Dr. Mark Geier's name to the LabCorp order, and then David Geier determined what should be billed for May 22, 2008. There is no reliable evidence to indicate otherwise.

The State argued in its Exceptions that the Board should not adopt the ALJ's credibility determinations. David Geier responded to the State's Exceptions. David Geier argued that the ALJ made demeanor-based credibility determinations and that the Board must adopt the ALJ's demeanor-based credibility findings or the "Board's decision would be reversed." (David Geier's Response to State Exceptions, at 5.) For three reasons, the Board does not accept David Geier's analysis. First, David Geier does not accurately describe the relevant case law. The relevant case law does not require that agencies accept administrative law judges' demeanor-based credibility determinations. The relevant case law instead allows an agency to reject an ALJ's demeanor-based credibility determination if the agency "gives strong reasons for doing so." *Anderson v. Department of Public Safety and Correctional Services*, 330 Md. 187, 217 (1993), quoting 1 Charles H. Koch, Jr., *Administrative Law and Practice* (1995), § 6.73, p. 520; *Maryland Board of Physicians v. Elliott*, 170 Md. App. 369, 385 (2006); *Gabaldoni v. Board of Physician Quality Assurance*, 141 Md. App. 259, 261, 263 (2001); *Shrieves v. Department of Health and Mental Hygiene*, 100 Md. App. 283, 302 (1994). Second, David Geier asserts that the ALJ made several crucial demeanor-based credibility determinations in regard to Parent A. It is, however, not clear that the ALJ's credibility determinations regarding Parent A were

“demeanor-based credibility determinations” as those determinations are construed under the relevant case law. Third, if the ALJ did make demeanor-based credibility determinations regarding Parent A, those should be rejected because only the written transcript of Parent A’s testimony was admitted into evidence. Parent A did not testify in person or on video during David Geier’s hearing, and the ALJ did not admit into evidence a copy of the video recording of Parent A’s testimony. The demeanor of Parent A while testifying should not have been considered at all, since it was not part of this proceeding.¹⁷

It is not clear that the ALJ made any “demeanor-based credibility determinations” regarding Parent A as those determinations are recognized under the relevant case law. David Geier listed nine examples of what he asserts are demeanor-based credibility determinations made by the ALJ concerning Parent A. The examples he listed are that Parent A: (1) was “outraged,” (2) was “angry,” (3) disintegrated on cross examination, (4) had an “unconscious leaning” against David Geier, (5) added testimony in a “self-designed fabrication,” (6) was “clearly distracted,” (7) was frustrated and embarrassed by her son’s behavior, (8) had an “unusual crusader-like tone,” and (9) testified in a voice that demonstrated puzzled frustration that her insurance company failed to take these claims seriously. These examples, however, are not “demeanor-based credibility determinations.”

“Demeanor-based credibility determinations” pertain to the demeanor of the witness *while* the witness testifies. *Elliott*, 170 Md. App. at 388. Most of the examples offered by David Geier pertain instead to Parent A’s demeanor at times other than while she was testifying. For example, according to the ALJ, Parent A was “clearly distracted.” But, according to the ALJ,

¹⁷ The State offered to present the recording of the videoconference testimony of Parent A from Dr. Mark Geier’s Summary Suspension Hearing, but the ALJ rejected the recording. The ALJ instead only admitted the written transcript of Parent A’s testimony. (Tr., 12/7/2011, at 6.)

Parent A was “clearly distracted” “*during this visit.*” “This visit” was the visit on May 19, 2008, to Genetic Consultants, thus, Parent A was not “clearly distracted” while testifying. Likewise, the ALJ found that Parent A’s emotions of “frustration and embarrassment” diminished Parent A’s ability to be a keen observer. But, again, Parent A’s emotions of “frustration and embarrassment” occurred at Genetic Consultants, not while testifying. The ALJ found that Parent A was “outraged” and “angry.” Parent A was no doubt outraged and angry upon seeing a copy of the bill Genetic Centers submitted to the insurance company. But the ALJ did not find that Parent A was “outraged” and “angry” while testifying. In fact, the ALJ found that “Parent A’s Complaint to the Board was initiated, in large part, because of her outrage over the bills sent to her insurance company.” The outrage, thus, was present, according to the ALJ, when the Complaint was *initiated*. If the ALJ meant that Parent A was “outraged” and “angry” while testifying, the ALJ could have at least set forth her observations on how Parent A manifested her outrage and anger, such as whether Parent A raised her voice, had a red face, or was shaking with anger. But it does not appear that this is what the ALJ meant. Similarly, the ALJ found an “unusual ‘crusader-like’ tone” to Parent A’s written complaint. Parent A’s written complaint is dated October 2, 2008. The ALJ did not find that Parent A had an “unusual crusader-like tone” while she testified on June 17, 2011. The ALJ’s findings, described above, are not entitled to the deference *Anderson, Elliott, Gabaldoni, and Shrieves* reserve for “demeanor-based credibility determinations.”

The ALJ’s “unconscious leaning” finding is not a valid “demeanor-based credibility finding” in any respect. The ALJ found that Parent A’s “unconscious leaning” against David Geier caused her to “translate” the signature of “Dr Mark Geier” written under Physician’s Signature on the May 22, 2008, LabCorp form to “David Geier.” But when Parent A was asked

to examine the signature during the evidentiary hearing before the ALJ, Parent A said that it said Mark Geier. Thus, Parent A's "unconscious leaning" did not diminish the accuracy of her testimony before the ALJ, because the handwriting at issue does say Mark Geier.

Next, the ALJ's finding that Parent A included in her testimony a "self-designed fabrication" does not even involve demeanor. But, more significantly, the testimony that the ALJ inferred was a "self-designed fabrication" should not have been interpreted as such. The ALJ found that Parent A testified falsely that she (Parent A) had asked David Geier whether he was issuing a "diagnosis" during their discussion in the office on May 19, 2008. But Parent A did *not* testify that she asked David Geier whether he was issuing a "diagnosis." After Parent A testified that David Geier said that her son looked "like a high-testosterone kid," she was then asked by the administrative prosecutor whether David Geier mentioned any diagnosis. Parent A responded that she thought that he had stated a diagnosis, namely "high- testosterone." The transcript reads:

- A. Okay. We went into the office, and one of the first things I recall was David Geier saying that my son was like a high testosterone kid right off the bat. Just looking at him, he felt that my son looked a lot older than he was. And I – thought it was curious that he thought that, that he looked like he was about age 16.
- Q At that time did he mention any diagnosis?
- A I'm sorry, what?
- Q. Did Mr. David Geier mention any medical condition or diagnosis related to your son?
- A. Well, he though[t] he was a typical high-testosterone kid –
- Q. Um-hum.
- A. – so I did say, "A – diagnosis, high-testosterone levels?" Other than that, not really.

Parent A's testimony was not meant to convey that she *asked* David Geier whether *he* was "issuing" a "diagnosis." For that to be unambiguously the case, the word "say" would have been "asked." Parent A did not even say that she said this *to David Geier*. Thus, the ALJ

wrongly interpreted Parent A's testimony. Parent A's testimony was "so I did say a diagnosis" (punctuation of transcript omitted); it was not "[I] asked [David Geier] if he was issuing a 'diagnosis.'" (See ALJ's Proposed Decision, at 18). And if Parent A were fabricating her testimony, it seems more likely that she would have testified that David Geier, and not herself, used the word "diagnosis." Parent A was simply confused by the administrative prosecutor's question and tried to convey that she considered "high testosterone levels" to be a diagnosis and thus had already answered the administrative prosecutor's question. The Board does not agree with and does not adopt the ALJ's inference that this testimony was a "designed fabrication."

The final two examples are closer to "demeanor-based credibility determinations," because they at least seem to be related to demeanor-type findings of Parent A while she was testifying. The first of these, the purported disintegration of Parent A's recollection, was discussed above, where the Board has found that the ALJ's second version of Parent A's "disintegration" was, as was the ALJ's first version, not supported by the transcript. But, more to the point at hand, if this did constitute a "demeanor-based credibility determination," it was improper because Parent A's demeanor while testifying should not have been considered: only the written transcript of Parent A's testimony from Dr. Mark Geier's summary suspension hearing was entered into evidence. Since the videoconference recording was not admitted into evidence in David Geier's hearing, and only the transcript of Parent A's testimony was, no demeanor-based credibility determination of Parent A should have been made by the ALJ in David Geier's case.

David Geier lastly points to the ALJ's comment that "Parent A's voice in the Summary Suspension Hearing demonstrated puzzled frustration that her insurance company failed to take these claims seriously." The ALJ's reference to the parent's voice does seem to pertain to Parent

A's demeanor while she testified at the hearing. Parent A was probably frustrated and puzzled by the insurance company's lack of interest in her complaint. But this does not suggest that her testimony concerning the insurance company's lack of interest or any other part of the parent's testimony was false. There was no evidence to suggest that the insurance company was interested in her complaint.

The Board accepts the State's exception concerning Parent A's credibility, thus, the Board rejects the ALJ's credibility determination that Parent A was less credible than David Geier. The Board finds that Parent A was a credible witness.

PRACTICING MEDICINE WITHOUT A LICENSE

Relevant Legal Authority

Section 14-601 of the Health Occupations Article states:

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice medicine in this State unless licensed by the Board.

Section 14-101(*l*) of the Health Occupations Article (2007 Supp.)¹⁸ reads, in relevant part:

- (1) "Practice medicine" means to engage, with or without compensation, in medical:
 - (i) Diagnosis;
 - (ii) Healing;
 - (iii) Treatment; or
 - (iv) Surgery.
- (2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:
 - (i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:
 - 1. By physical, mental, emotional, or other process that has exercised or invoked by the practitioner, the patient, or both; or
 - 2. By appliance, test, drug, operation, or treatment;

¹⁸ Effective October 1, 2010, the definition of "Practice medicine" was moved without a change to the substance of the definition from § 14-101(*l*) to § 14-101(*n*) of the Health Occupations Article.

COMAR 10.32.12.04 provides, in relevant part:

A. A physician may not delegate to an assistant technical acts which are exclusively limited to any individual required to be licensed, certified, registered, or otherwise recognized pursuant to any provision of the Health Occupations Article and the Education Article, Annotated Code of Maryland.

B. A physician may delegate technical acts consistent with national standards in the medical community and the approved policies and procedures of the sites for the delivery of health services in the following categories:

* * *

(2) Nonsurgical technical acts while the assistant is under the physician's direct supervision or on-site supervision if the assistant performs the act in accordance with procedures of the site.

* * *

D. At sites not included in Health-General Article, §§19-114 and 19-3B-01(b), Annotated Code of Maryland, when providing the following specified levels of supervision, a physician may delegate to an assistant technical acts which include but are not limited to:

(1) Without on-site supervision:

- (a) Patient preparation for physician examination;
- (b) Patient history interview;
- (c) Collecting and processing specimens, such as performing phlebotomy and inoculating culture media;
- (d) Preparation of specimens for selected tests including:
 - (i) Pregnancy tests,
 - (ii) Dipstick and microscopic urinalysis, and
 - (iii) Microbiology (rapid streptococcal testing and throat cultures);
- (e) Laboratory tests that the physician is satisfied the assistant is qualified to perform under State and CLIA regulations;
- (f) Clinical tests such as:
 - (i) Application of tuberculin skin tests,
 - (ii) Electrocardiography,
 - (iii) Administering basic pulmonary function tests; and
 - (iv) Visual field tests;
- (g) Transmitting prescriptions to a pharmacy;
- (h) Providing sample packets of medication, selected by a physician who is physically present at the time of selection, to patients as directed by the delegating physician and in conformance with Health Occupations Article, §12-102(a), (d), and (f), Annotated Code of Maryland; and
- (i) Preparing and administering oral drugs;

(2) With on-site supervision:

- (a) Preparing and administering injections limited to intradermal, subcutaneous, and intramuscular (deltoid, gluteal, vastus lateralis) to include small amounts of local anesthetics;
- (b) Establishing a peripheral intravenous line; and

- (c) Injecting fluorescein-like dyes for retinal angiography; and
- (3) With direct supervision, injecting intravenous drugs or contrast material.

E. A physician may not delegate to an assistant acts which include but are not limited to:

- (1) Conducting physical examinations;
- (2) Administering any form of anesthetic agent or agent of conscious sedation other than topical anesthetics or small amounts of local anesthetics;
- (3) Initiating independently any form of treatment, exclusive of cardiopulmonary resuscitation;
- (4) Dispensing medications;
- (5) Giving medical advice without the consult of a physician; and
- (6) Providing physical therapy.

Diagnosis

The May 19, 2008, Patient Interview Form contains the following impression of Patient A: “pervasive development delay (*sic*), not otherwise specific (*sic*)”; “Sleep Problems (Insomnia)”; and “Unspecific Metabolic Disorder.” The impressions were different from the those from July 1, 2005, which listed Unspecified Developmental Delay, Possible Childhood Heavy Metal Exposure (Mercury), and Possible Precocious Puberty.

The diagnosis of “pervasive developmental delay, not otherwise specific” or “PDD-NOS” is written in the Psychological Examination and Impression sections of the May 19, 2008, Patient Interview Form. The Board finds that David Geier made this diagnosis, not Dr. Mark Geier.

In 2008, Patient A was almost exclusively handled by David Geier. It is undisputed that David Geier was present for the entire discussion with Parent A and Patient A in the clinic’s office; scored the ATEC; was present during the attempted ultrasounds; wrote the patient’s name and identification number on the abdominal ultrasound report; completed the LabCorp order form on May 22, 2008; spoke to Parent A on the telephone on June 17, 2008; ordered the Quest testing; and registered Patient A at Quest. In contrast, the only undisputed acts that Dr. Mark

Geier performed in 2008 with regard to Patient A were to write on the abdominal ultrasound report that the results were slightly limited, initial this note, and initial the thyroid ultrasound report.

David Geier also did not deny that he prepared the Patient Interview Form. The Board finds that David Geier wrote the Patient Interview Form. Dr. Mark Geier's name is typed at the end of the form, but Dr. Mark Geier did not sign or initial the form. And Dr. Mark Geier testified that he usually initials or signs the Patient Interview Form if someone shows it to him. Thus, Dr. Mark Geier neither prepared nor reviewed the Patient Interview Form.

The Psychological Examination section in the Patient Interview Form states that the ATEC was completed by Patient A's mother and "evaluated by me." David Geier testified that he (David Geier), not Dr. Mark Geier, scored the ATEC. The Board is aware that scoring may be different from evaluating, but even if the writer of this form meant scoring and evaluating to be different, the scoring was certainly part of an evaluation of the ATEC. Thus, the fact that David Geier, who scored the ATEC, is not referenced at all, indicates that, even if one accepted the Geier's version of events, the Psychological Examination section is misleading. And the fact that Dr. Mark Geier testified that he did not even know who scored the ATEC suggests that he (Dr. Mark Geier) was not involved in the evaluation.

The Psychological Examination section ultimately states: "It is apparent based upon examination of the DSM-IV criteria that [Patient A's] present symptoms are compatible with a diagnosis of pervasive developmental delay (sic) – not otherwise specific (sic) (PDD-NOS)." This diagnosis was made by David Geier and was not reviewed by Dr. Mark Geier. The DSM-IV criteria for Pervasive Developmental Disorders were filed in Patient A's medical record at

Genetic Consultants. The DSM-IV criteria for 299.80 Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS) states:

This category should be used when there is a *severe and pervasive impairment* in the development of reciprocal social interaction or verbal and nonverbal communication skills, or when stereotyped behavior, interests, and activities are present, *but the criteria are not met for a specific pervasive developmental disorder*, schizophrenia, schizotypal personality disorder, or avoidant personality disorder. For example, this category includes “atypical autism” – presentations that do not meet the criteria for autistic disorder because of late age of onset, atypical symptomatology, or subthreshold symptomatology, or all of these.

(State’s Exhibit 7, at MG10898) (emphasis added).

At his summary suspension hearing, Dr. Mark Geier was asked about the diagnoses listed on the 2008 Patient Interview Form. He then read the diagnoses listed on the form, which are “PDD-NOS, sleep problems, and unspecified metabolic disorder.” Dr. Geier was then asked why the diagnoses were different from 2005. Dr. Geier testified:

-- the child was older, and second of all, *it became obvious that the child had autism*. And PDD-NOS is, as a tentative diagnosis, just means sort of *medium*. It’s a -- it means that the child is -- it has language and is not banging his head against the wall, not full-blown autism, but not mild. It’s a --

* * *

-- working diagnosis. And sleep problem, I think she told us about at the time.

Dr. Mark Geier’s testimony gives the Board no confidence that he diagnosed Patient A in 2008. His testimony amounts to medical imprudence in the Board’s opinion. His testimony contradicts itself and the DSM-IV criteria, which the diagnosis PPD-NOS was purportedly based upon.

Dr. Mark Geier testified at first that it was “obvious that the child had autism.” If a patient has autism, however, it is inappropriate under the DSM-IV criteria to diagnose PPD-NOS. *See* States’ Exhibit 7, at MG10898. The diagnosis PPD-NOS is reserved for those conditions which do not meet the criteria for a specific pervasive developmental disorder. *Id.* Autism is a specific pervasive developmental disorder. *See* Autistic Disorder - 299.00, State’s

Exhibit 7, at MG10897. A patient who meets the criteria for autism is thus not properly diagnosed with PPD-NOS. And, in contrast to Dr. Mark Geier's testimony, the DSM criteria does not consider PPD-NOS "sort of medium"; the DSM-IV criteria instead states that PPD-NOS is a "severe and pervasive impairment." Dr. Mr. Geier's explanations for why this patient with autism was diagnosed with PPD-NOS were inconsistent and medically unintelligible to the Board.

Additionally, the correct name of the disorder is not "pervasive developmental delay – not otherwise specific." It is pervasive developmental *disorder*, not otherwise *specified*. It is highly unlikely that a licensed physician specializing in the field of pervasive developmental disorders would not know the correct name for the disorder.

And Dr. Mark Geier's attempts at explaining the sleep problems (insomnia) and unspecified metabolic disorder were just as unconvincing. The diagnoses on the 2008 Patient Interview Form were made by David Geier. By diagnosing Patient A, David Geier practiced medicine without a license. *See* Health Occ. § 14-404(I)(1)(i) (2007. Supp.); Health Occ. § 14-601.

On May 22, 2008, David Geier entered the diagnostic code for insomnia in the diagnosis section of the LabCorp testing order. On June 18, 2008, David Geier completed the Quest testing order and provided as the diagnosis codes his diagnoses of Insomnia, NOS and Metabolism Disorder NOS. He was practicing medicine without a license in ordering the lab testing, as well.

Ordering Laboratory Testing

On May 19, 2008, David Geier discussed with Parent A the laboratory testing that would be ordered for Patient A. Parent A agreed that the laboratory testing, as discussed, should be

ordered. David Geier then determined specifically which tests should be ordered. He listed the tests to be ordered on the May 19, 2008, Patient Interview Form. Each test to be ordered, along with the test's code, is listed under the laboratory that should be used to conduct those tests. On May 22, 2008, David Geier completed the order form for LabCorp, as he had determined the testing should be and as he documented on the Patient Interview Form, and then he signed on the LabCorp order "Dr Mark Geier" for the physician's signature. Dr. Mark Geier had no involvement in ordering these tests. David Geier's actions in determining the tests to be ordered and in ordering those tests, without any involvement or real oversight from a physician, constitutes practicing medicine without a license. Health Occ. § 14-101(*l*) (2007 Supp.); Health Occ. § 14-601.

Because the physician's signature on the May 22, 2008, LabCorp order states "Dr Mark Geier," the ALJ found that David Geier did not order the LabCorp testing. The Board, however, finds that David Geier signed "Dr Mark Geier" and, thus, rejects the ALJ's finding that Dr. Mark Geier ordered the LabCorp testing.

On June 18, 2008, David Geier ordered laboratory testing for Patient A at Quest. The testing that he ordered was as he determined on May 19, 2008, and as he documented on the Patient Interview Form. Dr. Mark Geier was not involved in this Quest order. David Geier's actions in ordering the 22 Quest tests also constitutes practicing medicine without a license.

The ALJ also found that David Geier was authorized to order the laboratory testing because the laboratory testing was "the delegation of a routine technical task by Dr. Geier to [David Geier]." (ALJ's Proposed Decision, at 30 n. 17.) Based upon Dr. Grossman's testimony, the ALJ also found that an unlicensed individual "may properly order laboratory tests if the physician has written specific guidelines about what tests need to be done." (ALJ's Proposed

Decision, Finding of Fact 51, at 12.) The Board's regulations state: "A physician may delegate technical acts consistent with national standards in the medical community and the approved policies and procedures of the sites for the delivery of health services. . . ." COMAR 10.32.12.04B. And an unlicensed individual may perform nonsurgical technical acts while "the assistant is under the physician's direct supervision or on-site supervision if the assistant performs the act in accordance with the procedures of the site." A technical act is defined as "a routine medical or surgical act which does not require medical judgment. . . ." COMAR 10.32.12.02B(8). The ALJ erred.

The laboratory testing orders were not routine. Dr. Mark Geier testified that "[t]here is individuality, but there is a central group." Further, Genetic Consultants had no approved policies and procedures (and certainly none that were written) for the ordering of laboratory testing by unlicensed individuals. No such policies and procedures are in the record. And the lack of policies and procedures at Genetic Consultants was further established by David Geier's testimony in the instant case in his response to a question about the seemingly random nature of the initialing and signing of documents at the clinic:

It's a reflection of the way that it just happened. I mean, the answer is that thousands of patients, thousands of charts we're talking about, there are just times when things happen.

I mean, we don't have a formal protocol in place in the office that says you will do it this way or that way. It's simply what happened in the course of patient care.

The ALJ simply disregarded the requirements that technical acts must: (1) not involve medical judgment, (2) be consistent with national standards, and (3) be performed consistent with written policies and procedures. The laboratory testing that David Geier ordered required medical judgment, was not routine, and was not in compliance with the written policies and procedures of the site (since the site did not have any policies and procedures on the ordering of laboratory

testing by unlicensed individuals). And there was no evidence that the laboratory testing was consistent with national standards.

RECUSAL

David Geier filed a motion with the Board on exceptions requesting that all members of the Board recuse themselves from the case. At the exceptions hearing, on May 23, 2012, the Board notified the parties that David Geier's motion to recuse was denied.

Under COMAR 10.32.02.07:

A. A Board member may not participate in an investigation or a proceeding in which the impartiality of the Board member might reasonably be questioned, including but not limited to proceedings and investigations in which the Board member has or appears to have:

- (1) A personal bias or prejudice concerning a party; or
- (2) Personal knowledge of disputed evidentiary facts concerning a proceeding.

B. A Board member shall determine whether the Board member falls within §A of this regulation and shall state the recusal on the record.

C. In a hearing before the Board, the parties may waive the recusal.

D. Participation by a Board member in an investigation, CRC, WRP, or other administrative proceeding involving a respondent does not constitute a basis for recusal in a contested case proceeding unless the Board member has:

- (1) Personal bias or prejudice against the respondent; or
- (2) Knowledge of disputed evidentiary facts outside of the administrative process.

David Geier argued that the Board's Cease and Desist Order concerning Dr. Mark Geier's alleged violation of the order summarily suspending his medical license shows an appearance of personal bias by Board members. According to David Geier, the Cease and Desist Order contained detailed personal medical information concerning Dr. Mark Geier and his family members and the inclusion of this detailed personal medical information was "clearly intentional and designed to inflict humiliation rather than fulfill a legitimate and legal goal of this Board." David Geier also states that the Board issued the order publically and argues that the public issuance was illegal.

Assuming David Geier's description of the Cease and Desist Order is true, this would not lead to the conclusion that the Board included detailed medical information for the purpose of inflicting humiliation. Detailed facts and medical information are generally included in charging documents in order to provide adequate notice to the Respondent. The detailed medical information pertains to the factual grounds for the order. David Geier does not argue that the information was irrelevant. He argues instead that the information could have been described in more general terms. Other than the assertion that medical information in the Cease and Desist Order was detailed, no evidence was presented to support a finding that the Board intended to humiliate anyone or has a personal bias against David Geier or anyone else. David Geier's speculation as to why certain information was included is not a valid basis to disqualify each and every Board member. And David Geier's assertion that the Board acted illegally by issuing the order publically is contravened by section 14-411(g) of the Health Occupations Article and section 10-617(h)(2)(vi) of the State Government Article, which make Board orders and charges public documents.

David Geier then argued that all Board members should have recused themselves because Dr. Geier, his wife, and son filed a Maryland Tort Claim with the State Treasurer concerning the information contained in the Cease and Desist Order. According to David Geier, with the prospect of litigation, the Board members will not be able to impartially decide David Geier's case. The Board disagrees. If recusal were required when a lawsuit is filed or threatened, the Board, like every regulatory body, would be paralyzed and there would be a perverse incentive to sue government agencies. There is no law or reasonable policy supporting David Geier's argument that a tort claim filed with the State Treasurer or a threatened lawsuit against individual Board members necessitates recusal. *See Regan v. State Board of Chiropractic Examiners*, 355

Md. 397, 414 (1999), quoting *United States v. Studley*, 783 F.2d 934, 940 (9th Cir. 1986) (a “judge is not disqualified by a litigant’s suit or threatened suit against him”).

David Geier also argued that all Board members should have recused themselves because Paul T. Elder, M.D., Board Chairman during the events at issue,¹⁹ while speaking before the Maryland Senate’s Education, Health and Environmental Affairs Committee, referenced Dr. Mark Geier. David Geier did not provide a transcript of Dr. Elder’s comments. David Geier instead relies upon an article from the Baltimore Sun. The article, however, does not quote Dr. Elder’s comment referencing Dr. Mark Geier. And David Geier does not quote the article’s reference to Dr. Mark Geier. The reference in the article to Dr. Mark Geier is in a paragraph that states that Dr. Elder disputed certain criticism of the Board and “noted several actions it had taken in recent years.” The suspension of Dr. Mark Geier’s license was one of the several actions the article states that Dr. Elder noted as being taken by the Board. Thus, if the Baltimore Sun article is accurate, Dr. Elder noted that Dr. Mark Geier was suspended. Dr. Mark Geier was summarily suspended. This is undisputed. It is also possible from the article to infer that Dr. Elder did not think the Board’s decision to summarily suspend Dr. Mark Geier was wrong. It is self evident from the fact that the Board summarily suspended Dr. Mark Geier that the Board did not think that that decision was wrong. That does not mean that when cases involving the Geiers return to or show up anew before the Board that Dr. Elder or the Board cannot impartially decide those cases. See *Doering v. Fader*, 316 Md. 351 (1989). And there is no indication that Dr. Elder’s alleged comment was based upon anything other than information he properly received through the administrative adjudicatory process. *Id.* David Geier’s motion for recusal was properly denied.

¹⁹ Dr. Elder’s last day as a Board member was June 27, 2012, after his completion of two complete terms.

CHAT ROOM DOCUMENTS

During the evidentiary hearing before the ALJ, the State attempted to admit into evidence chat room documents. (Offered State's Exhibit 11 – not admitted.) The ALJ rejected the admission of these documents. The State filed exceptions. The Board agrees with the ALJ that the chat room documents should not have been admitted into evidence in this case, and, thus, the Board has not considered the chat room documents in reaching its decision in this case. The State's exception on this issue is, thus, denied.

CONCLUSIONS OF LAW

As explained above, the Board concludes that David Geier practiced medicine in Maryland without being licensed by the Board to practice medicine in violation of section 14-601 of the Health Occupations Article.

SANCTION

The Board has carefully considered the extent to which David Geier derived financial benefit from the improper conduct, the willfulness of the improper conduct, and the extent of potential harm caused by his misrepresentations. After weighing these factors, the Board imposes a \$10,000 civil fine upon David Geier for his violation of section 14-601 of the Health Occupations Article. *See* Health Occ. § 14-606(a)(4)(ii).

ORDER

Based upon David Geier's violation of § 14-601 of the Health Occupations Article and an affirmative vote of a majority of a quorum of the Board, it is hereby

ORDERED that David Geier is fined \$10,000; and it is further

ORDERED that David Geier, within three months of the date of this Final Decision and Order, shall pay the \$10,000 civil fine by money order or bank guaranteed check made payable

QUESTIONS FOR THE RECORD

RESPONSES BY JAMES O'NEILL TO QUESTIONS OF SENATOR CASSIDY

SENATOR CASSIDY

Vaccine Requirements

Question 1. Currently, refugees resettling to the U.S. are not statutorily required to be vaccinated. However, CDC “strongly recommend[s]” that refugees receive routine vaccinations before travel to the U.S. “to protect health, prevent morbidity and travel delays due to disease outbreaks, and to facilitate earlier school enrollment for children after arrival.”

Do you support requiring refugees, prior to their arrival in the U.S., to receive the same vaccines against vaccine-preventable diseases that are statutorily required for aliens lawfully seeking admission as an immigrant or seeking adjustment of immigration status to become a lawful permanent resident under Section 212(a)(1)(A)(ii) of the *Immigration and Nationality Act*? Alternatively, do you support requiring refugees to receive these vaccines within 1 year of their arrival to the U.S. to continue to maintain their lawful refugee status?

Question 2. Currently, illegal aliens are not required to be vaccinated even if they are detained by immigration enforcement authorities. Therefore, unvaccinated illegal aliens who are released from detention into the U.S. are at risk of spreading infectious diseases.

Do you support requiring illegal aliens detained and in the custody of Immigration and Customs Enforcement or Customs and Border Protection to receive the same vaccines against vaccine-preventable diseases outlined in question 1 prior to their release from detention?

Answer 1–2. I support and will follow the law. I share your desire to ensure illegal immigrants are not bringing diseases into our country and, if confirmed, will evaluate applicable HHS policies and legal authorities. President Trump explicitly acknowledged this threat in his January 20, 2025 Executive Order entitled “Guaranteeing the States Protection Against Invasion, and I commit to working with you and the Department of Homeland Security to ensure that aliens—whether legal or illegal—in no way threaten the health of the American people.

RESPONSES BY JAMES O'NEILL TO QUESTIONS OF SENATOR HAWLEY

SENATOR HAWLEY

Question 1. In his first term, President Trump issued his “most favored Nation” prescription drug pricing rule to prevent Medicare from paying prices multiple times higher than what other countries pay. He is reportedly planning to revive this policy.

(a). If confirmed, will you fully implement the President’s drug pricing agenda, including his “most favored Nation” policy?

(b). If confirmed, will you commit to using every tool at your disposal to deliver the best drug prices possible for Americans?

Answer 1(a)–(b). The President has committed to lowering the price of drugs for all Americans. If confirmed, I look forward to working with you to ensure that all the dollars in the American healthcare system are devoted to working for the patient—including lowering the price of drugs by ensuring transparency in costs, providing accountability to middlemen, looking for innovative ways to provide high-cost drugs at low prices, and making sure other countries pay their fair share for prescription drugs.

Question 2. Do you support restoring the first Trump administration’s Title X rule—known as the Protect Life rule—which bars Title X dollars from going to organizations like Planned Parenthood that promote abortion?

Answer 2. I would fully implement President Trump’s agenda on the issue of life. That includes President Trump’s Executive Order on Enforcing the Hyde Amendment to stop taxpayer dollars from funding or promoting abortion. If confirmed, I will also carry out the Protecting Life in Global Health Assistance policy and work to strengthen enforcement of Federal conscience laws.

Question 3. If confirmed, how do you plan to use your position to limit consolidation in the healthcare industry, which often harms rural providers?

Answer 3. If confirmed, I look forward to working with Congress and the FTC to evaluate and address market consolidation issues and ensure high quality care and good prices for American patients.

[Whereupon, at 11:22 a.m., the hearing was adjourned.]

