

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

JIONG GAO,

APPELLATE CIVIL DIVISION:
CASE NO.:

Petitioner,

v.

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES,

Respondent.

_____ /

PETITION FOR WRIT OF CERTIORARI

ON APPEAL FROM FINAL UNIVERSITY DECISION OF
FLORIDA ATLANTIC UNIVERSITY

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TABLE OF CONTENTS

Table of Contents i-ii

Table of Citations iii-iv

I. Introduction 1

II. Basis for Invoking Jurisdiction 1

III. Statement of the Case and Facts 2-9

 a. Summary of the Petition 2

 b. Forensic Pathology Rotation Incident 2-3

 c. Hearing and September 30, 2024 Decision 3-6

 d. November 5, 2024, Appeal Hearing and Determination 6-7

 e. Final Appeal and Determination 7-8

 f. Prior Incidents 8-9

IV. Nature of Relief Sought 9

V. Argument 9-21

 a. Standard of Review 9-10

 b. The decision must be reversed because FAU’s decision was a departure from the essential requirements of the law 10-14

 c. Essential Requirements of Law 14-15

 d. Competent Substantial Evidence 15-21

Conclusion 21-22

Certification Of Compliance 23
Certificate Of Service 24

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TABLE OF CITATIONS

Cases

| | |
|--|--------|
| <i>Abramson v. Fla. Int'l Univ.</i> , 704 So. 2d 720, 720 (Fla. 3d DCA 1998) | 11, 17 |
| <i>Allstate Insurance Co. v. Kaklamanos</i> , 843 So. 2d 885, 890 (Fla. 2003) | 15 |
| <i>Board of Curators of Univ. of Missouri v. Horowitz</i> , 435 U.S. 78, 86 (1978) | 11 |
| <i>Broward County v. G.B.V. International, Ltd.</i> , 787 So. 2d 838 (Fla. 2001) | 10 |
| <i>City of Deerfield Beach v. Vaillant</i> , 419 So.2d 624, 626 (Fla. 1982) | 10, 11 |
| <i>Cole v. Cole</i> , 159 So. 3d 124, 126 (Fla.) | 11 |
| <i>Combs v. State</i> , 436 So.2d 93, 96 (Fla. 1983) | 14 |
| <i>Couchman v. University of Cent. Florida</i> , 84 So. 3d 445, 449 (Fla. 5th DCA 2012) | 15 |
| <i>Decker v. Univ. of W. Florida</i> , 85 So. 3d 571, 574 (Fla. 1st DCA 2012) | 1 |
| <i>De Groot v. Sheffield</i> , 95 So. 2d 912, 916 (Fla. 1957) | 16 |
| <i>Epps v. State</i> , 941 So. 2d 1206, 1207 (Fla. 4th DCA 2006) | 10 |
| <i>Gordon v. Savage</i> , 383 So. 2d 646 (Fla. 5th DCA 1980) | 11 |

| | |
|---|--------|
| <i>Ivey v. Allstate Insurance Co.</i> , 774 So. 2d 679, 682 (Fla. 2000) | 14 |
| <i>Matar v. Florida Int'l Univ.</i> , 944 So. 2d 1153, 1160 (Fla. 3d DCA 2006)..... | 11, 14 |
| <i>Palazzo Las Olas Group LLC v. City of Fort Lauderdale</i> , 966 So. 2d 497, 500 (Fla. 4th DCA 2007) | 9 |
| <i>State Dep't of Highway Safety & Motor Vehicles v. Wiggins</i> , 151 So. 3d 457, 462 (Fla. 1st DCA 2014) | 15 |
| <i>Student Alpha ID No. Guja v. Sch. Bd. of Volusia County</i> , 616 So. 2d 1011, 1012 (Fla. 5th DCA 1993)..... | 11, 17 |
| <i>Wiggins v. Fla. Dept. of Highway Safety & Motor Vehicles</i> , 209 So. 3d 1165, 1171 (Fla. 2017)..... | 16 |
| <u>Statutes</u> | |
| § 1006.60, Florida Statutes | 12, 19 |
| <u>Rules</u> | |
| Fla. R. App. P. 9.100(c)(3)..... | 1 |
| Rule 9.190(b)(3)..... | 1, 9 |
| <u>Other Authority</u> | |
| Art. IX, § 7, Fla. Const..... | 15 |

Petitioner, JIONG GAO, by and through the undersigned counsel and pursuant to Rule 9.190(b)(3) of the Florida Rules of Appellate Procedure, hereby petitions this Honorable Court for the issuance of a Writ of Certiorari to quash the quasi-judicial decision of the Florida Atlantic University Board of Trustees to dismiss Jiong Gao, a medical student at Florida Atlantic University Schmidt College of Medicine, for his failure to meet the professional technical and ethical standards required by the College.

I. Introduction

In this Petition, Jiong Gao will be referred to as “Gao” or “Petitioner”. Florida Atlantic University and Florida Atlantic University Board of Trustees will be referred to as “FAU”. References to the documents contained in the attached Appendix will be indicated by the symbol “A-”.

II. Basis for Invoking Jurisdiction

This Court has jurisdiction to review FAU’s quasi-judicial administration decision affirming that Gao violated the Code pursuant to Florida Rule of Appellate Procedure 9.100(c)(3). See *Decker v. Univ. of W. Florida*, 85 So. 3d 571, 574 (Fla. 1st DCA 2012) (certiorari is the proper remedy to challenge a disciplinary action by a university).

III. Statement of the Case and Facts

a. Summary of the Petition

A final determination was issued via a letter dated February 28, 2025, to dismiss Gao from FAU. This decision, as well as FAU's initial academic suspension, was made without regard to fundamental fairness, due process, and equitable application of the University's disciplinary policies. The penalty of expulsion, so near to completion of the MD Program and after having initially voted for Gao to remain in school, is shocking to one's sense of fairness and is unsupported by the evidence presented in the disciplinary process.

Petitioner seeks the reversal of his improper expulsion and to be reinstated in good standing.

b. Forensic Pathology Rotation Incident

FAU's decision to dismiss Gao is based upon one allegation of misconduct during his forensic pathology rotation. On or about September 4, 2024, Gao observed an autopsy that he found both significant to his training and emotionally impactful. In an effort to share this clinical experience, he sent a private Snapchat message to a fellow medical student whom he had recently mentored during a consult-liaison/emergency

psychiatry rotation. Although the language in his message was frank, descriptive, and generally consistent with the realities of forensic pathology, it was also instructed to him ad verbatim during the autopsy and was intended solely for the recipient's eyes. The private message was subsequently disseminated to other students without Gao's knowledge or consent, resulting in a Professionalism Incident Report (PIR) being filed against him. (A9- A11). FAU set forth the specific allegation against Gao as follows:

This most recent PIR filed on September 4, 2024 concerned a "Snapchat" that you sent to a M3 student. In that "Snapchat," you describe in graphic and explicit detail an autopsy that you worked on during your recent Forensic Pathology Rotation. The language you used in your "Snapchat" was so graphic and disturbing that the recipient, who was not a participant on your rotation, was reportedly alarmed and submitted a PIR against you. The Medical Examiner, who was the site director for your Forensic Pathology Rotation, immediately terminated you from the rotation upon learning of your post. You were also removed from all clinical activities by the Office of Student Affairs, due to patient safety concerns in light of the disturbing nature of your post, until the MSPPSC could convene to review your circumstances and make any appropriate recommendations or determinations.

PRN was also notified of your social media post, at which point they recommended that you refrain from clinical practice pending either (i) review of this matter by the MSPPSC and/or (ii) an updated psychological evaluation by PRN. (A9-11)

c. Hearing and September 30, 2024 Decision

Upon receiving notice of the PIR, Gao attended a hearing on September 20, 2024. (Meeting minutes at A18-21). Gao described the fact that he had complied with all prior Committee determinations to date. He also stated that this particular description of the autopsy was different from the prior identified by the Committee since this was not a social media post but a private message; it did not involve his private life and was not jocular or malicious. Rather, Gao stated that he was trying to share a rare, valuable clinical experience using language he was taught in that was comparable to that of prior conversations with the recipient.

As reflected in the Medical Student Promotions and Professional Standards Committee (MSPPSC) meeting minutes from September 20, 2024, the Committee members voted not to dismiss Gao from FAU. (A18-21)

By letter dated September 30, 2024, Gao received notification of the September 20, 2024, decision of the MSPPSC to suspend you from the Schmidt College of Medicine. (A22-26) The totality of the findings and recommendations were as follows:

1. You must complete another evaluation by the Professionals Resource Network (PRN). You must contact PRN within 4 weeks of receipt of this letter to set up your evaluation and comply with all recommendations set forth by PRN. PRN will report their findings and recommendations back to the Committee.
2. You have been placed on academic suspension, effective immediately, through at least the end of this academic year (AY 2024-2025), at which time the Committee will review your academic and progress to determine if you may resume the medical school curriculum. This suspension will be reported on your Medical Student Performance Evaluation ("MSPE," also known as the "Deans Letter") and/or other information transmitted to outside entities (e.g. certifications of training) and will remain on your permanent record at the College of Medicine. In addition, the MSPPSC previously determined that your probation would continue through at least the first semester of year 4. Due to the continued unprofessional behavior you have displayed, you will now remain on probation, throughout your remaining tenure in medical school.
3. During your suspension, you will be required to appear before the Committee every 2 months. During these appearances, you will be asked to (a) present on your personal and professional development, including your reflections on effective and professional communication and behavior and; (b) confirm your compliance with any recommendations set forth by PRN. The first date for your required appearance before the committee will be November 15, 2024.
4. Any future academic deficiencies or professionalism concerns in your performance will be reviewed by the MSPPSC and may result in academic determinations and/or sanctions by the MSPPSC, up to and

including probation, suspension, or dismissal from the College of Medicine.

5. Any future adverse actions or violations (e.g., a PIR, or any other violation of University or College rules, regulations, policies, or procedures) that result in any academic, professional, or behavioral determination against you by the MSPPSC may result in further disciplinary action, up to and including probation, suspension, or dismissal from the Charles E. Schmidt College of Medicine.

FAU stated these determinations were based on Gao's conduct, which the MSPPSC determined fell short of the expectations for a future physician, and your violations of the College's policies and professionalism standards.

(A22-26)

d. November 5, 2024, Appeal Hearing and Determination

Pursuant to the College of Medicine Student Handbook, Gao initiated a good-faith appeal of his suspension to the MSPPSC.

On or around November 5, 2024, an appeal hearing was held, at which the MSPPSC not only declined Gao's appeal but also escalated the suspension sanction to expulsion, citing a "disturbing lack of compassion" in addition to what it characterized as recurrent social media-related professionalism violations. The meeting minutes indicate that the Committee spent hours deliberating before ultimately voting to dismiss Gao from FAU in a 4-3 vote. The meeting minutes do not reflect any finding of additional

violations by Gao. (A30-32). There was no rational basis to now increase his penalty based on the same occurrence.

e. Final Appeal and Determination

On December 9, 2024, Gao submitted a written request to appeal the decision made at the November 5, 2024, appeal hearing. In accordance with the Appeals Policy in our Medical Student Handbook, the Acting Dean of the College of Medicine at that time convened an Appeals Committee to conduct a hearing. The hearing was held on February 7, 2025. In addition to the previously raised issues regarding the factual finding, Gao specifically expressed that the justification for the appeal was based upon the severity of the penalty. (A39-42)

Following the hearing, Gao informed the Committee that on February 12th, he received a text message from the original recipient herself, Adé, that read, “Hi John! It’s Adé (from C/L psych rotation), I hope all is well. I know you took the forensic pathology rotation. I’m interested in it as well. Do you mind telling me how it went? Hours? If you think it’s worth taking? Thank you!” She was amicable, apparently undisturbed, unaware of Gao’s disciplinary process, and was even interested in pursuing the forensic pathology rotation after Gao’s message, consistent with Gao’s intent behind

his message, knowing she had previously expressed interest in the specialty. This is inconsistent with the PIR's account of her reaction, calling into question the credibility of and disingenuous intent behind the PIR altogether. Furthermore, this undermines the MSPPSC's argument that Gao was "disingenuous" because she perceived no educational value and was instead so disturbed by his message that a PIR was filed against him. (A44-45)

A final determination was issued via letter dated February 28, 2025, to dismiss Gao from FAU. (A46-47). This decision, as well as FAU's initial academic suspension, was made without regard to fundamental fairness, due process, and equitable application of the University's disciplinary policies.

f. Prior Incidents

Prior to this incident, Gao had encountered two brief professionalism concerns connected to social media usage, for which he was referred to PRN. Neither incident resulted in findings of impairment against him as full compliance with all PRN recommendations was followed. At some point, FAU placed him on probation due to social media issues but never clearly defined the scope or terms of that probationary status. Nonetheless, despite

unclear probation status and full compliance with PRN, these older incidents were heavily referenced by the MSPPSC to suggest a pattern of unprofessionalism and bolster the argument for expulsion.

IV. Nature of Relief Sought

Petitioner, JIONG GAO, by and through the undersigned counsel and pursuant to Rule 9.190(b)(3) of the Florida Rules of Appellate Procedure, hereby petitions this Honorable Court for the issuance of a Writ of Certiorari to quash the quasi-judicial decision of the Florida Atlantic University Board of Trustees to dismiss Jiong Gao, a medical student at Florida Atlantic University Schmidt College of Medicine.

V. Argument

a. Standard of Review

A Petition for Certiorari is the remedy for the review of a quasi-judicial decision. *Palazzo Las Olas Group LLC v. City of Fort Lauderdale*, 966 So. 2d 497, 500 (Fla. 4th DCA 2007). The standard of review of an administrative action requires the court to determine “(1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether there was competent, substantial evidence to

support the administrative findings and judgment.” *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982).

As acknowledged by the Supreme Court in *Broward County v. G.B.V. International, Ltd.*:

On certiorari the appellate court only determines whether or not the tribunal or administrative authority whose order or judgment is to be reviewed has in the rendition of such order or judgment departed from the essential requirements of the law and upon that determination either to quash the writ of certiorari or to quash the order reviewed...The appellate court has no power in exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment. 787 So. 2d 838 (Fla. 2001).

In this instance, the decision must be reversed because Gao was not provided due process, the decision departed from the essential requirements of the law, and the decision to impose the most severe punishment was not supported by competent and substantial evidence.

b. The decision must be reversed because FAU’s decision was a departure from the essential requirements of the law.

Gao was the victim of a fundamentally unfair disciplinary process. Florida law is well settled that an opportunity to be heard must be meaningful and complete and not merely colorable or illusive.” *Epps v. State*, 941 So. 2d

1206, 1207 (Fla. 4th DCA 2006). The right to be heard must be both meaningful in time and in manner. *Cole v. Cole*, 159 So. 3d 124, 126 (Fla.)

In order to prevail on his Petition under the applicable standard of review, Gao would have to show that the MSPPSC hearing did not afford him due process. See *City of Deerfield Beach*, supra., 419 So. 2d at 626.

In student disciplinary actions, due process requires adequate notice, an opportunity to be heard, and substantial evidence to support the penalty. *Matar v. Florida Int'l Univ.*, 944 So. 2d 1153, 1160 (Fla. 3d DCA 2006). The due process requirement of a student administrative proceeding requires that the proceeding must be “essentially fair.” *Student Alpha ID No. Guja v. Sch. Bd. of Volusia County*, 616 So. 2d 1011, 1012 (Fla. 5th DCA 1993); *Abramson v. Fla. Int'l Univ.*, 704 So. 2d 720, 720 (Fla. 3d DCA 1998) (finding student's due process violations argument without merit as the record demonstrated that the proceeding was “essentially fair”). It is equally clear that disciplinary proceedings do not require the same safeguards afforded to criminal defendants. See e.g., *Gordon v. Savage*, 383 So. 2d 646 (Fla. 5th DCA 1980). When there is a failure by a student to meet academic standards, procedural due process concerns are far less stringent. See *Board of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 86 (1978).

Under Fla. Stat. § 1006.60, universities must provide notice to students with a list of known witnesses who have provided, or will provide, information against the student and all known information relating to the allegation, including inculpatory and exculpatory information. FAU failed to present the student who allegedly received Gao's message during the MSPPSC hearing, and it is unknown whether that student was the initial recipient or a secondary recipient. Such information should have been provided to Gao at least (5) days before the MSPPSC hearing. Without such pertinent information, he was deprived of a meaningful opportunity to establish an appropriate defense.

Furthermore, Gao notified the Committee that on February 12th, she received a text message from the original recipient, Adé, which read, "Hi John!" It's Adé (from the C/L psych rotation). I hope all is well. I know you took the forensic pathology rotation. I'm interested in it as well. Do you mind telling me how it went? Hours? If you think it's worth taking? Thank you!" She was amicable, apparently undisturbed, and unaware of Gao's disciplinary process. She even expressed interest in pursuing the forensic pathology rotation after receiving Gao's message, consistent with Gao's intent behind his message, given that she had previously shown interest in the specialty.

This is inconsistent with the PIR's account of her reaction, calling into question the credibility of and disingenuous intent behind the PIR altogether. Furthermore, this undermines the MSPPSC's argument that Gao was "disingenuous" because she perceived no educational value and was instead so disturbed by his message that a PIR was filed against him. Thus, the MSPPSC's decision from its initial ruling was predicated on unsubstantiated and, later, apparently dubious evidence from the PIR that the MSPPSC indicated it had no interest in investigating. (A44-45)

FAU further violated Gao's due process rights by failing to provide a formal charging letter outlining the allegations against him, the specific policy provisions allegedly breached, or the evidence upon which the College relied. He learned the basis for discipline primarily through informal communications rather than from any clearly stated written charge. Without such notice, he could not fully prepare his defense for either the original hearing or the appeal. Meaningful due process requires notice of the exact nature of the charges and the opportunity to respond to them adequately.

Further, in the initial Committee determination following the hearing on September 20, 2024, the Committee members voted **not to dismiss** Gao from FAU. (A18-21). Had Gao accepted the initial decision, he would have

remained in school pursuing his medical degree. Only after he exercised his right to appeal the decision did these same Committee members reflect upon Gao's attitude and view of the allegations. It is patently unfair to increase the penalty to a student based on the same finding, due to his good-faith use of the school's own disciplinary appeals process. Due process is met when there is adequate notice, an opportunity to be heard, and substantial evidence to support the penalty. *Matar*, supra., 944 So. 2d at 1160.

c. Essential Requirements of Law

The second factor to be evaluated in determining whether the Petition should be granted is whether the University observed the essential requirements of the law in making its decision. As explained in *Ivey v. Allstate Insurance Co.*, 774 So. 2d 679, 682 (Fla. 2000), the departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. In order to warrant certiorari, there must be a violation of a clearly established principle of law resulting in a miscarriage of justice if not corrected. See *Combs v. State*, 436 So.2d 93, 96 (Fla. 1983). The essential requirements of law can derive from a variety of legal sources, including recent controlling case law, rules of court,

statutes, and constitutional law. *Allstate Insurance Co. v. Kaklamanos*, 843 So. 2d 885, 890 (Fla. 2003).

The Florida Constitution offers guidance on the requirements of law applicable here. The Florida Constitution establishes a single state university system governed by the Board of Governors, which has the power to “operate, regulate, control, and be fully responsible for the management of the whole university system.” Art. IX, § 7, Fla. Const. The Board of Governors has delegated broad constitutional authority to individual university boards of trustees to administer their respective universities. These broad powers include the authority to adopt rules and regulations establishing a uniform student code of conduct and related penalties. See *Couchman v. University of Cent. Florida*, 84 So. 3d 445, 449 (Fla. 5th DCA 2012). The relevant law in this case is derived from the student code, which is set forth in the Handbook.

d. Competent Substantial Evidence

In first-tier certiorari review, the circuit court must review the record and determine, among other things, whether the administrative findings and judgment are supported by competent, substantial evidence. See *State Dep't of Highway Safety & Motor Vehicles v. Wiggins*, 151 So. 3d 457, 462 (Fla.

1st DCA 2014). “Competent substantial evidence” was defined in the leading decision of *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) as follows:

We have used the term “competent substantial evidence” advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective “competent” to modify the word “substantial,” we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.

This court may only look to whether there are facts in the record constituting competent substantial evidence supporting the final agency action on review. See *Wiggins v. Fla. Dept. of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1171 (Fla. 2017); *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

In student disciplinary actions, due process requires adequate notice, an opportunity to be heard, and substantial evidence to support the penalty. *Matar v. Florida Int’l Univ.*, 944 So. 2d 1153, 1160 (Fla. 3d DCA 2006). The due process requirement of a student administrative proceeding requires

that the proceeding must be “essentially fair.” *Student Alpha ID No. Guja v. Sch. Bd. of Volusia County*, 616 So. 2d 1011, 1012 (Fla. 5th DCA 1993); *Abramson v. Fla. Int’l Univ.*, 704 So. 2d 720, 720 (Fla. 3d DCA 1998).

There is a lack of substantial evidence to support FAU’s decision to increase the penalty against Gao to dismissal following his good-faith appeal of the initial suspension decision. FAU’s changing opinions on Gao’s professionalism, only after he brought an appeal to the Committee, is not substantial evidence to support dismissal.

The private Snapchat message in question, while descriptive and containing instances of subjective dark humor, was never intended for the broader student community nor for public consumption. Gao’s primary purpose was to share a novel clinical experience with a student he had mentored. The message was then disseminated beyond his control by the original recipient to a larger group of students, one of whom apparently filed a PIR. This chain of events suggests that the true violation of privacy occurred when a private communication was forwarded without his consent.

At the MSPPSC hearing, FAU failed to present the alleged witness who suffered harm from receiving Gao’s message. Without knowing who the allegedly offended student received the message from, Gao was effectively

barred from mounting a real defense with knowledge of all pertinent facts. Likewise, without presenting that witness, the “impact” of my Client’s message on him/her remains unsupported. This was further revealed when the identity was later learned, and Gao presented a text message to the Committee for consideration prior to the dismissal.

Upon information and belief, FAU has neither disciplined nor addressed the conduct of the individual (or individuals) who passed the private message to others. By singling out Gao for punishment while ignoring the more egregious breach by the student who forwarded his message, the MSPPSC has engaged in the selective enforcement of University policies, which raises serious concerns about its fairness. If dissemination of a sensitive message constitutes “unprofessional conduct,” then accountability should not fall solely on the original sender, particularly when he reasonably intended his remarks for one known peer within a professional, clinical context.

Between FAU’s initial hearing and the subsequent appeal, the MSPPSC unexpectedly shifted emphasis from supposed “social media misuse” to condemning a purported “disturbing lack of compassion,” despite the absence of any new or additional evidence. This abrupt change deprived

Gao of the opportunity to prepare a defense specific to the latest accusation and casts doubts about the consistency and integrity of the MSPPSC's appeal process. A student cannot properly defend himself if the rationale shifts midstream, especially when the penalty is as severe as expulsion.

Furthermore, under Fla. Stat. § 1006.60, a student is expressly entitled to appeal any final decision issued by a disciplinary committee. This statutory guarantee reflects the fundamental principle of fairness that underpins Florida's educational institutions. Although the College of Medicine Student Handbook ostensibly provides for an appeal process, its language operates in a manner that is arguably retaliatory and prohibitive. The Handbook states that a request for appeal or reconsideration "reopens the review and may lead to a new decision by the MSPPSC," thereby threatening elevated sanctions for students who merely seek a good faith review of what they perceive as an unfair determination against them.

In a similar fashion, Gao's appeal served only to exacerbate the sanction against him, from a suspension into an expulsion. This outcome exemplifies the chilling effect of FAU's policy allowing new or harsher sanctions upon appeal. Rather than receiving a fair reevaluation, Gao faced an increased penalty based on a sudden recharacterization of the underlying

allegations. Such practice risks deterring students from exercising their right to appeal for fear of greater punishment. In addition to shifting the disciplinary rationale mid-process, the Committee's approach places an impermissible burden on students who seek legitimate review of questionable decisions.

A significant portion of the MSPPSC's rationale for expulsion appears to hinge on alleged repeated or "patterned" unprofessional conduct. Yet the probationary terms imposed on Gao following earlier incidents related to social media use offered no explicit warning that any subsequent offense would automatically or presumptively result in dismissal. In fact, the term "probation" was never explicitly defined in his disciplinary letters, creating uncertainty regarding compliance with those standards. Although dismissal may always be available as an ultimate sanction, the written conditions did not specify that Gao was on a "zero tolerance" policy for all future conduct. Moreover, seeing as the secondary hearing shifted its basis of determination to an alleged "disturbing lack of compassion," the specific role of his previous social media concerns is questionable. Without clear, written conditions or notice, Gao could not have foreseen that a private message to a single peer might trigger catastrophic consequences for his medical career.

There were also additional mitigating factors presented to FAU during the hearing process. Gao's compliance with PRN recommendations, consistent performance in clinical rotations, and the positive feedback he has received from supervisors all contradict the notion that he poses an ongoing risk of unprofessional conduct or lacks fundamental empathy. He has demonstrated a readiness to learn from his past social media errors. The autopsy description, however frank, was shared within a professional context among peers. Additionally, in medical settings, such as pathology or forensic rotations, graphic language can sometimes serve as a coping mechanism through "dark humor" or as a means of clinical description, depending on the language used. As such, and by not disclosing any personal information, Gao did not breach confidentiality under HIPAA. He expressed his regret for any misunderstanding or discomfort caused, but respectfully disagreed that such an instance should overshadow his entire academic and professional record, particularly given the secondary conveyance without his consent.

Conclusion

Based on the above, FAU's decision to dismiss the Petitioner from medical school is unsupported by substantial evidence, and FAU failed to satisfy the due process requirements during the disciplinary process.

Based on the record before the Court, the Petitioner respectfully requests that the Court grant this Petition and reinstate the Petitioner to the medical program, remanding the matter back to FAU.

Dated: March 28, 2025
Fort Lauderdale, FL

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CERTIFICATION OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font and word count limit requirements of Florida Rules of Appellate Procedure 9.045 and 9.210 and is being filed in Arial 14-point font with a word count that does not exceed 13,000 words.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been Electronically filed with the Clerk of the Court, who will electronically serve all counsel listed on the attached service list on this 28th day of March 2025.

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