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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of
HARSHAD PATEL, M.D.
Holder of License No. **22757**
For the Practice of Allopathic Medicine
In the State of Arizona.

Board Case No. MD-05-0884A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**
(Decree of Censure and Probation)

The Arizona Medical Board ("Board") considered this matter at its public meeting on April 5, 2006. Harshad Patel, M.D., ("Respondent") appeared before the Board with legal counsel Paul Giancola for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the following Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.
2. Respondent is the holder of License No. 22757 for the practice of allopathic medicine in the State of Arizona.
3. The Board initiated case number MD-05-0884A after being informed by the Maricopa County Sheriff's Office of a criminal investigation of Respondent regarding allegations of sexual misconduct with a patient ("Patient"). Patient alleged that during an office visit for vaginitis Respondent fondled her breast, bent her over an examination table, and inappropriately touched her rectal and vaginal area from behind without wearing gloves. Patient's statements to the Sheriff's Office and Board Staff were consistent. Board Staff interviewed Respondent and certain of his statements were not consistent with his statements to the Sheriff's Office. A Board

1 Medical Consultant reviewed the medical records and other materials and determined
2 Respondent failed to meet the standard of care for diagnosing and treating vaginitis.

3 4. The Executive Director issued an Interim Order for Psychosexual Evaluation.
4 Subsequently, the Board summarily restricted Respondent's practice and ordered him to not see
5 female patients without the presence of a chaperone who was a health care professional.
6 Respondent underwent the Psychosexual Evaluation. The evaluator recommended Respondent
7 not treat female patients until he completed a course of treatment related to sexual abuse,
8 misconduct, and chaperoned patient examinations. Respondent was informed of the results of
9 the evaluation and entered into an Interim Consent for Practice Restriction agreeing he would not
10 treat female patients until applying to the Board and receiving permission to do so.

11 5. Thereafter, Respondent entered Sexual Recovery Institute's ("SRI") intensive
12 outpatient program seeking treatment for his boundary violations against a female patient. The
13 Board did not order Respondent to attend SRI and did not pre-approve or otherwise sanction the
14 treatment. While at SRI Respondent admitted to the conduct alleged by his patient. SRI
15 recommended Respondent undergo intensive inpatient treatment before practicing medicine in
16 any capacity. Based on this recommendation Respondent entered the professional enhancement
17 program at Pinegrove, a treatment facility in Mississippi. The Board did not order Respondent to
18 attend Pinegrove and did not pre-approve or otherwise sanction the treatment. After he entered
19 Pinegrove, Respondent entered into an Interim Consent Agreement for Practice Restriction
20 prohibiting him from practicing clinical medicine or any medicine involving direct patient care.

21 6. Respondent was discharged from Pinegrove with aftercare recommendations
22 including one week partial intensive therapy at Psychological Counseling Services ("PCS"), with
23 follow-up outpatient therapy as recommended by PCS; Respondent not return to work at least
24 thirty days after discharge; that his work practice be limited to thirty hours per week with only
25 male patients and only in an office setting; that a licensed health care professional accompany

1 Respondent in all instances in all settings; that Respondent be evaluated at Pinegrove three
2 months after he resumes practice; and that Respondent undergo periodic polygraphs for up to
3 five years. Respondent completed the one week intensive program at PCS. PCS's aftercare
4 recommendations included individual therapy, complete sex offense study treatment, a
5 professional boundaries course, and that Respondent be restricted to seeing only male patients
6 until he has completed his course of treatment.

7 6. Before the Board began its questioning, Mr. Giancola informed the Board that
8 Respondent has been extremely cooperative with the Board's entire investigation and had
9 voluntarily undergone extensive treatment and continues to undergo extensive treatment. Mr.
10 Giancola noted Respondent was agreeable to all of the recommendations for his re-entry into a
11 limited and monitored practice. Mr. Giancola noted he intended no disrespect to the Board and
12 its obligations, but he recommended that Respondent not discuss with the Board the facts and
13 circumstances of his visit with Patient because that visit is still the subject of an outside
14 investigation. Mr. Giancola also noted Respondent does not contest there was a quality of care
15 violation as described by Board Staff and would welcome the opportunity to enter into a consent
16 agreement with the Board.

17 7. Respondent thanked the Board for giving him the opportunity to appear before it.
18 Respondent testified that he regrets his behavior harmed Patient and his family. Respondent
19 testified he has worked hard to understand his behavior and to develop insight, emotional
20 honesty, and empathy for others. Respondent testified he has developed a spiritual connection
21 with God that has helped him stay in the moment. Respondent testified he has monitoring of his
22 practice in place, a chaperone in place, has had a visit to his practice from staff of Pinegrove, and
23 has very good family support. Respondent testified he would appreciate the opportunity to
24 continue his rehabilitation under the auspices of the Board and would appreciate a return to
25 practice if the Board saw fit.

1 8. The Board noted Respondent's case had come before it when it considered
2 summary action and it did not intend to go through the issues relating to the visit that is the
3 subject of the criminal complaint, but did want to focus on the quality of care relating to the
4 treatment of Patient's vaginitis. The Board asked Respondent how he would typically approach
5 examining and diagnosing a patient who presented to him with symptoms of vaginitis.
6 Respondent testified the first thing would be to take a detailed history and have his nurse put the
7 patient in a proper position. Respondent testified he would then do a pelvic examination with the
8 speculum in the proper position and take a wet mount test or other cultures, if necessary,
9 depending on the patient's history and physical findings.

10 9. The Board asked what would be the likely treatment and follow-up if the results
11 were positive for vaginitis. Respondent testified it depended on the situation. Respondent noted
12 if the initial suspicion was from the history about yeast infection he will, if the wet mount is not
13 available, go ahead and treat the patient with the proper medications and wait while the cultures
14 are posted. The Board asked Respondent to describe his typical follow-up. Respondent testified
15 he would follow-up with the patient after a week or two to make sure all the cultures are back and
16 the patient is being treated properly. The Board asked if this necessarily would require another
17 visit or would another visit only be required if symptoms continued. Respondent testified follow-
18 up typically requires either a phone call to the patient or a visit.

19 10. The Board confirmed that Respondent practiced internal medicine. The Board
20 inquired whether, during the time frame of Patient's visit, it was his routine to do pelvic
21 examinations of his patients or did his female patients typically see a gynecologist for pelvic
22 examinations. Respondent testified it was mixed. Respondent was asked if, at the time of the
23 Patient's visit, it was his practice to have a chaperone present. Respondent testified he had a
24 chaperone present only during the examination. The Board asked if the chaperone was a
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1 licensed healthcare provider. Respondent testified he now would use a licensed health care
2 provider, but did not at the time of the incident.

3 11. The Board asked Respondent what he was proposing to the Board as far as his
4 return to work. Respondent noted one of the recommendations was for treating only male
5 patients with a chaperone for no more than thirty hours per week with continued intensive care
6 therapy and this was absolutely acceptable to him.

7 12. The standard of care for diagnosing vaginitis requires an examination conducted
8 with the patient in proper position with the physician appropriately gloved to evaluate the external
9 genitalia, vagina, and cervix. The standard of care requires a visual examination of the tissues
10 and a speculum examination to evaluate the cervix and vagina. The standard of care also
11 requires a wet mount and KOH slide preparation to determine the cause of the infection, or rule it
12 out. The standard of care does not require a rectal examination to evaluate possible vaginitis.

13 13. Respondent deviated from the standard of care because he did not conduct the
14 required examination to determine whether the patient had vaginitis, including a failure to properly
15 glove.

16 14. There was potential harm to the patient of a possible misdiagnosis of vaginitis.

17 CONCLUSIONS OF LAW

18 1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof
19 and over Respondent.

20 2. The Board has received substantial evidence supporting the Findings of Fact
21 described above and said findings constitute unprofessional conduct or other grounds for the
22 Board to take disciplinary action.

23 3. The conduct and circumstances described above constitutes unprofessional
24 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be
25 harmful or dangerous to the health of the patient or the public"); and 32-1401(27)(z) ("[e]ngaging

1 in sexual conduct with a current patient or with a former patient within six months after the last
2 medical consultation 'Sexual Conduct' includes: (i) [e]ngaging in or soliciting sexual
3 relationships (ii) [m]aking sexual advances, requesting sexual favors, or engaging in other
4 verbal conduct or physical contact of a sexual nature(iii) [i]ntentionally viewing a completely
5 or partially disrobed patient in the course of treatment if the viewing is not related to patient
6 diagnosis or treatment under current practice standards").

7 **ORDER**

8 Based upon the foregoing Findings of Fact and Conclusions of Law,

9 IT IS HEREBY ORDERED:

10 1. Respondent is issued a Decree of Censure for failing to properly conduct an
11 examination for vaginitis and for engaging in sexual conduct with a patient.

12 2. Respondent is placed on probation for five years with the following terms and
13 conditions:

14 a. Respondent's practice is restricted to no more than thirty hours per week
15 in any setting.

16 b. Respondent's practice is restricted only to male patients and he must see
17 all patients in the presence of another licensed healthcare provider who has an
18 unencumbered view of the patients. The licensed healthcare provider must be present in
19 all settings including, but not limited to, office, hospital and clinic. The licensed
20 healthcare provider must be employed by the Respondent, hospital or clinic and may not
21 be a representative or relative who accompanies the patient. Respondent shall instruct
22 the licensed healthcare professional to document his/her presence by signing, dating and
23 legibly printing his/her name on each patient's chart *at the time of the examination.*

24 Respondent shall instruct the licensed healthcare provider to immediately report any
25 inappropriate behavior to Respondent and the Board. Board Staff may perform random

1 periodic chart reviews to ensure compliance with this Order.

2 c. Respondent shall undergo follow-up individual therapy with Psychological
3 Counseling Services ("PCS").

4 d. Respondent shall undergo a follow-up evaluation with Pinegrove
5 ("Pinegrove") Professional Enhancement Program ("PEP") within three months of the
6 date of this Order.

7 e. Respondent shall comply with Pinegrove's recommendation for ongoing
8 PEP Care follow-up surveys with patients and staff.

9 f. Respondent shall participate in couples' therapy.

10 g. Respondent shall complete sex offense study treatment through group
11 process to help clarify offense cycle behavior, cultivate victim empathy and develop a
12 strong relapse prevention plan.

13 h. Respondent shall complete a Board-Staff pre-approved professional
14 boundaries course.

15 i. Respondent shall submit quarterly declarations under penalty of perjury on
16 forms provided by the Board stating whether there has been compliance with all the
17 conditions of probation. The declarations must be submitted on or before the 15th of
18 March, June, September and December of each year.

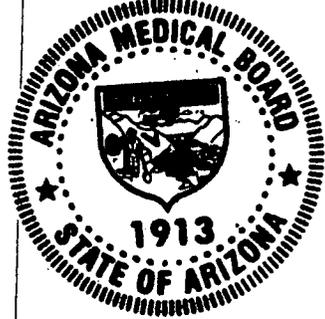
19 j. In the event Respondent should leave Arizona to reside or practice or for
20 any reason should Respondent stop practicing medicine in Arizona, Respondent shall
21 notify the Executive Director in writing within ten days of departure and return or the dates
22 of non-practice within Arizona. Non-practice is defined as any period of time exceeding
23 thirty days during which Respondent is not engaging in the practice of medicine. Periods
24 of temporary or permanent residence or practice outside Arizona or of non-practice within
25 Arizona will not apply to the reduction of the probationary period.

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k. Respondent shall obey all federal, state, and local laws and all rules governing the practice of medicine in Arizona.

l. Respondent may not petition for early termination of his probation, but he may petition the Board for modification of the terms of probation.

DATED this 9th day of June, 2006.



THE ARIZONA MEDICAL BOARD

By *Timothy C. Miller*
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed this 9th day of June, 2006 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing
mailed by U.S. Mail this 9th day of June, 2006, to:

Paul Giancola
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004-2202

and

Harshad S. Patel, M.D.
Address of Record

Harshad S. Patel