

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

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In the Matter of)	
)	Docket No. 96F-9248-MDX
)	
MARK K. PATTON, M.D.)	
)	
Holder of License No. 23562)	FINDINGS OF FACT,
For the Practice of Medicine)	CONCLUSIONS OF
In the State of Arizona.)	LAW AND ORDER
)	
Re: S.S. v. Mark K. Patton, M.D.)	
(Inv. #9428))	

On January 29, 1999, this matter came before the Arizona State Board of Medical Examiners (Board) for oral argument and consideration of the Administrative Law Judge's (ALJ) proposed Findings of Fact and Conclusions of Law.¹ (Attached hereto is a copy of the ALJ's Findings of Fact and Conclusions of Law.²) MARK K. PATTON, M.D. appeared in person and was represented by Charles Buri, Attorney at Law. The State was represented by Assistant Attorney General Marc H. Harris. The Board was advised by Assistant Attorney General Thomas Dennis of the Civil Appeals Section of the Attorney General's Office.

The Board, having considered the ALJ's proposed Findings of Fact and Conclusions of Law and the entire administrative record in this matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

¹ The Administrative Hearing was held on May 21 and 22, June 1, July 14 and August 11, 1998.

² The ALJ's Findings of Fact and Conclusions of Law are incorporated herein by reference.

I.

FINDINGS OF FACT

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3 1. Respondent is the holder of License Number 23562 for the practice of medicine
4 in the State of Arizona.

5 2. Respondent completed an application for a medical license on September 15,
6 1995. Question #7 to the application asks: "Have you ever been charged with a violation of
7 any statute, rule or regulation of any domestic or foreign governmental agency?" to which
8 Respondent answered "yes".
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10 3. In explanation to his "yes" answer, Respondent wrote:

11 In November 1993 I was falsely accused of sexual
12 assault by a woman in Utah. I was arrested in Phoenix,
13 AZ. After being released on bail, my attorney and I
14 returned to Utah to investigate the false claims. We
15 soon learned that her accusations were not even
16 possible since I was in Arizona at the time that the
17 assault was allegedly to have taken place. In addition,
18 we found that the accusations came only after a very
19 suggestive session of hypnosis. Luckily that session
20 was tape recorded. When the judge reviewed the
evidence, all charges were dismissed prior to trial.
Enclosed is a copy of the order for dismissal. I have
never been charged with a violation of any other statute,
rule or regulation of any domestic or foreign
governmental agency, nor have I ever been convicted of
any crime other than for simple traffic violation.

21 4. The situation about which Respondent wrote in his answer to Question
22 #7 had been reported in the Arizona Republic newspaper with the headline "Phoenix
23 pediatrician held on rape counts" and the investigation staff of the Board obtained the
24 article. At the time of the newspaper article, Respondent was working as a resident
25 pediatrician at Phoenix Children's Hospital. The article identified the charges against
26 Respondent as two counts of rape of a child and two additional counts of rape, which
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1 rapes were alleged to have been committed in the summers of 1986 and 1987, in
2 December 1992 and in July 1993, all involving a single victim.

3 5. At the time of his arrest, Respondent was not licensed as a physician in
4 either Arizona or Utah. *After the 1993 newspaper article about Respondent's arrest*
5 *was obtained, it was kept "somewhere in the investigative department." When*
6 *Respondent applied for a medical license in 1995, the article was not brought to the*
7 *attention of then - Deputy Director, Elaine Huginin. At the time, the then - Deputy*
8 *Director signed off on Respondent's license application, she had not seen or been*
9 *informed of the newspaper article.*³

11 6. The "woman" to whom Respondent referred in his explanation of
12 Question #7 is his sister-in-law, S.S.,⁴ and the allegations made against Respondent in
13 the newspaper report of the criminal complaint were made by S.S.

15 7. When Respondent submitted his license application in September 1995,
16 Ms. Huginin directed the license technician to check with the investigators about
17 Respondent's 1993 arrest and the license technician reported back to Ms. Huginin that
18 the investigators said that it was okay to issue a license to Respondent. On October 13,
19 1995, Respondent was issued medical license number 23562.

21 8. In November 1995, S.S. lodged a complaint with the Board of Medical
22 Examiners, alleging that Respondent engaged in improper sexual activity with her.

24 9. On January 10, 1996, the Board conducted an investigational interview
25 with Respondent. During the course of that interview, Respondent was asked about the

26 ³ In order to more accurately reflect the evidence, the Board deleted the last sentence of the ALJ's
27 proposed finding of fact in this paragraph and replaced it with the italicized text.

28 ⁴ To protect the identity of the victim, the Board has deleted her full name and placed it throughout this document
with her initials.

1 allegations made by S.S. and Respondent told the interviewers that he had engaged in
2 actions during 1986 and 1987 where he "fondled" S.S.

3 10. Respondent related that, in July 1986, when S.S. was approximately
4 twelve or thirteen years old and Respondent was twenty-two or twenty-three years old,
5 as the family was traveling back from Disneyland in a family van, Respondent took his
6 hand and placed it on S.S.'s clothed crotch while he thought she was sleeping. Shortly
7 thereafter, Respondent took S.S.'s hand and placed it on his clothed crotch while he
8 thought she was sleeping.
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10 11. Respondent also related that, at some time during the fall of 1986, he,
11 his wife and S.S. were in the family Jacuzzi and Respondent, holding S.S. by her
12 thighs, lifted her up and out of the water.
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14 12. Respondent also related that, sometime in early 1987, while in his home
15 in St. George, Utah, S.S. was sleeping on a couch in the den of the house. At that time
16 she was wearing a large T-shirt and her underwear. Respondent went to the couch,
17 lifted the leg of S.S.'s underwear and touched her external labia with his finger. He
18 then released the underwear and left the room. S.S. did not awaken during this
19 incident.
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21 13. Respondent also related that, in the summer of 1987, while he and his
22 family were living in Salt Lake City, S.S. came to stay with his family as a babysitter
23 for their infant. S.S. slept in the baby's room and on one evening when S.S. was asleep
24 on top of the bed wearing only a bra and panties, Respondent went to her and lifted the
25 elastic leg of her panties with his thumb and finger. The elastic slipped out of his
26 fingers and snapped back, waking S.S. Respondent ran from the room and, as he was
27 running out of the room, tripped over a floor fan.
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1 14. On the following day, S.S. told Respondent's wife about the incident in
2 the van in the summer of 1986 and the incident of the previous night in the summer of
3 1987. *When first confronted by his wife, Respondent initially denied the conduct. He*
4 *testified at the hearing that he admitted the incident from the previous night.*⁵

5 15. Before the Board had received S.S.'s 1995 complaint, S.S. had made a
6 criminal complaint against Respondent in the State of Utah. On January 16, 1992,
7 Respondent was interviewed by Detective Jacobson where Respondent admitted to
8 *inappropriately sexually* touching S.S. three to four times, which included the incident
9 in the van driving home from Disneyland, the incident in the Jacuzzi, the incident in
10 Salt Lake City and the incident in St. George.⁶

11 16. Respondent was not charged with sexual abuse of a minor, however, he
12 agreed to enter a diversion program and, on March 6, 1992, he signed a Diversion
13 Agreement wherein he agreed that, for the next twelve months, in consideration of the
14 prosecution's agreement to divert him from the criminal justice system, Respondent
15 would enroll in and complete a counseling program through the Intermountain Sexual
16 Abuse Treatment (ISAT) Program and that, if he successfully completed the program,
17 "that prosecution under the facts which give rise to the offense in the above-entitled
18 matter shall be resolved without filing any charges against the Defendant."
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20 17. Respondent enrolled in the ISAT program and he participated in two
21 group therapy sessions, each of which was one and one-half hours long. He also
22 participated in two individual sessions of one hour each. Because he was living in Salt
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26 ⁵ In order to accurately reflect the evidence, the Board replaced the last sentence of the ALJ's proposed finding of
27 fact in this paragraph with the italicized text.

28 ⁶ In order to accurately reflect the evidence, the Board modified the ALJ's description of the admission and added
the italicized text to the ALJ's proposed finding of fact in this paragraph.

1 Lake City and the ISAT program is based in St. George, Utah, Respondent asked for a
2 referral to a local counselor and he was referred to Kent McDonald, M.S. at the Sandy
3 Counseling Center. After three visits with Mr. McDonald, Mr. McDonald told
4 Respondent that he did not need further counseling and, on April 28, 1993, Mr.
5 McDonald wrote to the St. George County Attorney and informed him "It is my
6 opinion that Mark is not currently in need of additional treatment."
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8 18. No evidence exists in the record of this matter to show that, based on the
9 1986 and 1987 touching incidents involving Respondent and S.S., Respondent was
10 criminally charged with sexual abuse of a minor at any time. No evidence exists in the
11 record of this matter to show that Respondent failed to complete the requirements of
12 the Diversion Agreement into which he entered in March 1992.
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14 19. Problems related to child visitation arose between Respondent and his
15 ex-wife and, in August 1994, Respondent was ordered to undergo an evaluation.
16 Respondent was evaluated by Kevin Gully, Ph.D. in Salt Lake City. In connection
17 with Respondent's evaluation, he was administered a penile plethysmograph and he
18 was also administered the MMPI-2. Dr. Gully concluded that Respondent was not a
19 person who is "sadistic or prone to engage in violent sexual acts" but that Dr. Patton
20 "may avoid dealing with his feelings or problems and lack insight. This suggests he
21 may struggle to be emotionally intimate possibly in an attempt to protect himself from
22 emotional pain." Dr. Gully concluded that "Dr. Patton lacks insight about his noted
23 sexual behavior with Ms. S.S. and regardless of his statement, he still makes excuses
24 for engaging in sexual behavior he believes is wrong." Dr. Gully recommended that
25 "Dr. Patton should participate in psychotherapy to gain insight into his sexual abuse of
26 Ms. S.S. and have support altering some potential issues. I believe the sessions should
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1 be fixed to a given number per year, rather than based on performance, and the content
2 should be ordered by the court to be confidential and privileged since the benefits will
3 depend on Dr. Patton participating in an honest and open manner. Dr. Patton should
4 complete 20 individual sessions over the next twelve months. Thereafter, Dr. Patton
5 should complete 10 session per year until the children are all 18 years of age.”

6 Respondent saw Dr. Gully twice.
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8 20. Following the investigative interview with Respondent in January 1996,
9 the Board and Respondent entered into a stipulation with Respondent where
10 Respondent agreed that, whenever he would see any patient between the ages of zero
11 and eighteen years of age, he *was required to have an adult female present and that he*
12 *shall legibly write the name of the adult female in the patient's chart at the time of the*
13 *examination.*⁷
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15 21. Also, as a result of the January 1996 investigative interview,
16 Respondent was directed to submit to an evaluation at the Menninger Clinic in Topeka,
17 Kansas.

18 22. Respondent participated in a week-long evaluation at the Menninger
19 Clinic between April 29 and May 3, 1996. The evaluators addressed the following
20 questions: 1) Is Mark Patton impaired in his ability to practice medicine in the State of
21 Arizona with reasonable skill and safety?; 2) If he is not felt to be impaired at the
22 current time, under what specific conditions does the team feel he could resume
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28 ⁷ To accurately reflect the Stipulation and Order entered into between the Board and Respondent, the Board modified the ALJ's proposed finding of fact in this paragraph by replacing the inaccurate summary of the stipulation with the italicized text.

1 practice, while protecting public health and safety?; 3) Does Mark Patton suffer from a
2 sexual disorder or other mental disorder and, if so, could this be the source of potential
3 impairment in the future?; and 4) What other recommendations does that team have
4 which might be useful for this physician to assist in his personal and professional
5 development? Dr. Richard Irons, M.D. served as the director for Respondent's
6 assessment.
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8 23. At the conclusion of the Menninger assessment, Dr. Irons wrote:

9 Mark Patton provided a history of significant sexual
10 preoccupation with his sister-in-law. In addition to the
11 four episodes of sexual touching he acknowledged
12 masturbation to sexual fantasies of her on multiple
13 occasions, the last being six or seven years ago. Other
14 than the acknowledged fondling, there has never been
15 additional substantial information that supported extensive
16 sexual involvement nor any evidence that Mark has
17 expressed interest outside of his family in other male or
18 female children, either pre- or post- pubertal. Although
19 Mark's paraphilic interests appear to have peaked at age
20 23 and 24, it is not possible to categorically dismiss the
21 possibility of any further fantasies or urges in the future.
22 It appears, on the basis of collateral materials, that Mark
23 has developed, at least, some insight into the nature of his
24 sexual misconduct, however Mark has a certain rigidity to
25 his thought processes and tenaciously holds onto his vision
26 of a future in Houston, Texas where he can be vindicated
27 as a father and perhaps, to some extent, as a husband.
28 Patient's extensive history of personal trauma has been
incompletely resolved. His mother's death remains a
tragedy associated with grief and a residual idealization of
her. Patient intends on limiting his pediatric practice to
toddlers and infants. He states that he rarely, if ever,
encounters young teenage girls in his practice and that he
would never examine such a patient without a chaperone.
Patient's pedophilia is regressive and appears to be focal
with particular interest in post-pubertal females.
Furthermore, it seems to have occurred in incest scenario
only. Patient does appear to be stable and shows no other
evidence of an active sexual disorder. He does have
significant strengths and is motivated to engage in a
course of long-term psychotherapy to heal the wounds
which have caused him so much pain. In diagnostic

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interview, this examiner could find no significant risk facts that would mitigate against his ability to engage in pediatric practice with reasonable safety, provided chaperones are present and the practice setting is structured.

24. The assessment team presented six opinions and recommendations to the Board. They are: 1) Mark Patton does not appear to be impaired at the current time in his ability to practice medicine, specifically pediatrics involving pre-pubertal children with reasonable skill and safety. We believe he will need a structured practice setting and the use of chaperone where limited clinical encounters with post-pubertal females under supervision does not appear to constitute a significant additional risk; 2) In order to provide structure and the opportunity for personal growth, we encourage Mark to remain in his re-entry practice for at least two years; 3) We feel that Mark would benefit from finding and working with an appropriate professional mentor who could provide him with guidance and direction during this time of transition, personally and professionally. He may also benefit from further vocational counseling on how to best use his time and talents; 4) We believe the patient should strongly consider engaging in long-term psychotherapy in order to facilitate person, as well as professional, growth and development; 5) We encourage him to engage in continuing medical education in the areas of substance abuse, domestic violence, professional ethics, and healthy and appropriate professional boundaries; and 6) We believe that a brief and focal re-evaluation at the end of two years could be beneficial for Mark as he charts a further course for his professional life.

25. While living in Houston, Texas after completing his residency training at Phoenix Children's Hospital, Respondent was contacted by one Dr. Martin Berger, Medical Director of Maryvale Pediatric Clinic. Dr. Berger was seeking an associate to work at Maryvale Pediatric Clinic and Respondent indicated his interest in working at Maryvale

1 Pediatric Clinic. After conducting a background check, Dr. Berger hired Respondent to work
2 at Maryvale Pediatric Clinic and Respondent began work there as a physician in June 1996.

3 26. In July, 1996, after returning to Phoenix following his evaluation at the
4 Menninger Clinic, Respondent engaged the services of Chris Hughes, Ph.D. for
5 psychotherapy. Dr. Hughes initially evaluated Respondent and then began counseling/therapy
6 sessions once or twice per month, for a total of eight time between August 15, 1996 and
7 January 1997. Respondent was "especially resistant" to weekly therapy sessions with Dr.
8 Hughes even though he had expected Respondent to participate in weekly to bi-weekly
9 sessions as part of a sex offender program. Respondent also received therapy from Dr.
10 Hughes' associate on one occasion in December 1996 when Respondent visited the office with
11 his children. Respondent told Dr. Hughes that he was required to seek therapy based on the
12 Menninger report. Dr. Hughes did not treat Respondent as a sex offender, but rather, the
13 therapy concentrated on anxiety and depression with an overall theme of trying to regulate his
14 emotions and control. During the sessions with Dr. Hughes, Dr. Hughes did not note any
15 behavioral characteristics that would impair Respondent's ability to practice medicine. Dr.
16 Hughes believed that Respondent felt the severity of what he had done to S.S. and how it could
17 have affected her and he "gave the appearance of genuine remorse."

18 27. In October 1996, Respondent asked Dr. Hughes to write a report to the Utah
19 judge supervising Respondent's visitation rights. In his letter to Judge Shumate, Dr. Hughes
20 wrote:
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24 It appears that over the past several years Mr. Patton has
25 successfully faced a number of professional and personal
26 challenges. In this process he has gained some insight into
27 difficult personality features that currently present in
28 treatment as relatively benign. Specifically, Mr. Patton has
shown fear of both intimacy and emotional vulnerability
and has tended in the past to find relationships attractive
where he feels particularly admired or in relative control.

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Partly as a result of these dynamics, Mr. Patton has in the past attracted, and been attracted to, those who tend to see their partners in either black or white terms – as wholly admirable or as wholly villainous. Finding relationships where both parties equally and maturely express and accept strengths and vulnerabilities has been a struggle with which Mr. Patton has grappled. I believe these somewhat adolescent characteristics and relationship expectations, out of which Mr. Patton was late to develop, led to poor impulse control in the corroborated fondling allegations of several years ago. Specifically, as some of the disillusionments common to marriage came to bare in his own relationship, Mr. Patton may have displaced erotic feelings on one who (by Mr. Patton’s report) initially perceived him with admiration and trust. It appears that over the past years Mr. Patton has come to develop a particularly strong core professional identity as a physician. The on-going process of Mr. Patton developing his career has had the effect of largely channeling and sublimating his needs for admiration and control in relationships. Rather, Mr. Patton currently shows much evidence of possessing parallel but more benign characteristics as a competent and mature caretaker . . . While Mr. Patton has some neediness and ambivalence relative to relationships with women, there is no sign of anger or rage in his perceptions of them. Mr. Patton is tenuous, careful, and somewhat personally over-controlled in his approach to relationships may cycle from being somewhat passive to controlling. Also, Mr. Patton’s tendency toward cognitive over-control and perfectionism is consistent with one who may currently have problems with cycles of impulsiveness and guilt on a scale that is socially, but not personally, acceptable. Overall, Mr. Patton reveals a psychological profile indicating several strengths, but also characteristics leading to conflict, guilt, and inner tensions. While somewhat problematic, these characteristics are maintained within a normal, or average, range of psychological and social functioning. Mr. Patton’s profile is not at all consistent with one having sadistic or violent characteristics. I cannot find from Mr. Patton’s history, past assessments, and my own work with him, anything that suggests or is even consistent with the possibility that Mr. Patton would use force, or would desire to use force, in meeting sadistic or sexual interests. That he can be “passive-aggressive” in his approach to others is a possibility and even a probability, but he is not one to be directly aggressive and clearly not violent.

1 28. While treating with Dr. Hughes, Respondent was evaluated by Dr. Richard
2 Moody, Ph.D. in St. George, Utah. The purpose of the evaluation was to determine “any
3 threat to his children in visitation with them and determining whether he can have
4 unsupervised access to his children or whether he may be a danger to them in any manner.”
5 After administering standard psychological tests to Respondent and after interviewing
6 Respondent, Dr. Moody concluded that “While most reports indicate Mr. Patton does have
7 some personality problems, quirks in his behavior, and struggles to maintain a balance in his
8 life, all consistently and strongly indicate he is incapable of harm to his children, as does this
9 evaluator. Mark tends to be guided strongly by his moral system, and while he admits he has
10 done some inappropriate behaviors in the past, there is no indication he would ever do
11 anything to harm his children in any way. To the contrary, he would do everything in his
12 power to see they would be well cared for, protected, and treated with respect.”
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14 29. Respondent’s visitation rights continued to be contested and the Utah court
15 scheduled further proceedings. Dr. Michael Cox, a clinical psychologist at Baylor University
16 in Houston, Texas, was appointed by the Utah court as an expert to the Court. Earlier,
17 Respondent’s ex-wife’s new husband had seen Dr. Cox about the child visitation issues since
18 Dr. Cox’ program at Baylor concentrates on sexual assault, sexual abuse and sexual offense
19 issues. Dr. Cox had established therapeutic relationships with S.S., Respondent’s ex-wife and
20 the ex-wife’s new husband, John Trembath.
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22 30. As part of Dr. Cox’s appointment as an expert, Respondent was ordered to be
23 evaluated by Dr. Cox and Respondent appeared for an evaluation in January 1997. Even
24 before evaluating Respondent, Dr. Cox had concluded that Respondent was a sex offender
25 based on Respondent’s admissions about the earlier incidents with S.S. The evaluation
26 consisted of various standardized psychological tests and a clinical interview. Dr. Cox
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1 concluded that Respondent possessed the characteristics of a sex offender. He appraised
2 Respondent with an Axis I diagnosis of pedophilia and an Axis II diagnosis of personality
3 disorder with narcissistic traits in predominance.

4 31. Dr. Cox concluded that Respondent was a risk for recidivism based on his
5 continued denial, minimization and rationalization, his lack of commitment to and
6 involvement in a long term sex offender treatment program, his personality trait disturbance,
7 his continued contact with and access to the targeted victim population, his continued deficient
8 stress management, his continued indulging and reinforcing deviant sexual fantasies, urges and
9 behaviors, his continued deficient impulse control, his continued lowered frustration tolerance
10 and a pathologic continued contact with children. Dr. Cox never made a formal opinion for
11 the Utah court about his evaluation of Respondent and he never told the Utah court that he
12 believed that Respondent was a pedophile.
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14 32. After returning to Phoenix from Houston, Respondent told Chris Hughes that
15 he wished to obtain therapy in a sex offender program and Respondent thereafter engaged in
16 services of one Marvin Hillyard, M.S. at Mountain Valley Counseling Associates in Phoenix,
17 Arizona.
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19 33. In his initial screening note, Mr. Hillyard wrote: "Mr. Patton stated that the
20 reason that he come (sic) in was because he had sexually molested his then sister-in-law. Mr.
21 Patton stated that he was concerned about getting visitation with his children, and that the
22 court had ordered him to obtain counseling for the sexual molestation. He also stated that he
23 had also been charged with raping his sister-in-law, and that he was innocent of these charges.
24 Mr. Patton was accepted into counseling, on an individual basis."
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26 34. The elements of the sex offender treatment program employed by Mr. Hillyard
27 include a sex offender workbook where assignments are regularly given to the clients, an
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1 assessment using the ABEL Assessment which seeks to identify deviant sexual behaviors,
2 individual therapy sessions and weekly group therapy.

3 35. When Respondent engaged Mr. Hillyard's services, he agreed to individual
4 therapy session, the ABEL Assessment and the workbook but he did not wish to participate in
5 group therapy because of his schedule. Mr. Hillyard did not insist that Respondent participate
6 in group therapy because the composition of the group was sex offenders who were on
7 probation for their offenses and Mr. Hillyard believed that Respondent would be disruptive to
8 the group. Dr. Hillyard did not tell Respondent that he, Respondent, did not need group
9 therapy.
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11 36. On August 11, 1977 (sic), Respondent completed the ABEL Assessment. The
12 ABEL Assessment consists of 116 slide shown to the testing subject involving various sexual
13 situations and scenes. Scoring on the ABEL Assessment contains both objective and
14 subjective components in that the computer's assessment of the length of time a person looks
15 at a particular picture before moving to the next slide is the objective component and the
16 scorer's determination of the subject's level of interest in any particular slide is numerically
17 scored from one to seven as the subjective component. The scoring from the August 11, 1997
18 ABEL Assessment showed that Respondent had an interest in young females 8 to 10 years old.
19 Respondent insisted that the test was wrong and that he had no interest in 8 to 10 year old girls
20 so Mr. Hillyard agreed to re-administer the ABEL Assessment. On August 18, 1997,
21 Respondent completed the ABEL Assessment which showed a light to moderate sexual
22 interest in 14 to 17 year old girls and a high sexual interest in adult females.
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25 37. Respondent saw Mr. Hillyard approximately every other week from March
26 1997 until March 1998. Mr. Hillyard gave Respondent assignments from the workbook that
27 Respondent completed and, by March 1998, he had gotten as far as lesson 34 or 35. Even
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1 though Mr. Hillyard had initially diagnosed Respondent as a pedophile, by March 1998, he
2 had changed his assessment and did not consider Respondent to be a pedophile as Respondent
3 demonstrated normal sexual interests. By March 1998, Mr. Hillyard concluded that
4 Respondent had developed empathy towards S.S. but Mr. Hillyard also concluded that
5 Respondent was not "cured."

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7 38. In the early part of 1998, Mr. Hillyard was served with a subpoena for his
8 records of Respondent's treatment, Respondent told Mr. Hillyard not to respond to the
9 subpoena but Mr. Hillyard sent his records to the Utah attorney from who the subpoena was
10 sent. Mr. Hillyard had obtained information about Respondent's background from Utah and,
11 after reviewing that information, concluded that Respondent was not truthful in his history.
12 Mr. Hillyard told Respondent that he, Mr. Hillyard, had concerns about Respondent's honesty
13 because he came to believe that Respondent had given him information "what he wanted me to
14 hear." Because of the disagreement about Mr. Hillyard's release of his records, Respondent
15 discontinued the relationship between himself and Mr. Hillyard.
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17 39. At the conclusion of their relationship, Mr. Hillyard did not have an opinion
18 about whether Respondent was a risk to reoffend, however, he believed that Respondent
19 requires weekly group therapy for at least two hours each session.

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21 40. After ending the relationship with Mr. Hillyard, Respondent began a
22 therapeutic relationship with one Dr. Black in May 1998. Because Dr. Black did not conduct
23 group therapy sessions, Respondent asked Dr. Black for the name of another psychologist and
24 Respondent was given the name of one Dr. Steven Gray. Respondent began treatment with
25 Dr. Gray in mid-June 1998 in both individual and weekly group therapy sessions. The therapy
26 group is composed of professionals and is scheduled to run for eighteen months.
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1 41. One May 21, 1998, an evidentiary hearing on the Board's Third Amended
2 Complaint began.

3 42. At the hearing into the Board's complaint, Dr. Michael Cox testified that
4 weekly group therapy for a period of at least two years is the "cornerstone" of treatment for
5 sex offenders.

6 43. At the hearing into the Board's complaint, Dr. Richard Irons testified that group
7 therapy is an important element of sex offender treatment.

8 44. At the hearing into the Board's complaint, Mr. Hillyard testified that all sex
9 offenders need group therapy.

10 45. At the hearing into the Board's complaint, Respondent testified that his patient
11 population consists mostly of infants and toddlers. Respondent also testified that he does not
12 perform pelvic exams and that he refers adolescent girls to the obstetrics-gynecology office
13 next door to his office. Respondent further testified that he does not perform sexual abuse
14 evaluations and that he always has a chaperone present when examining any patient.

15 46. At the hearing into the Board's complaint, Martin Berger, the Medical Director
16 of the Maryvale Pediatric Clinic, testified that he thought Respondent was "forthright" in his
17 explanation of his conduct with S.S. and that, since hiring Respondent, he has "kept an eye" on
18 Respondent but that he had not had any complaints about Respondent and he has received
19 positive responses about Respondent. Dr. Berger further testified that Respondent abides by
20 the restrictions placed on him by the Board, that the patient's parent is ordinarily the chaperone
21 in the room with Respondent and that neither he nor anyone else in the practice audits
22 Respondent's records for compliance. Dr. Berger also testified that Respondent sees other of
23 the Maryvale Pediatric physicians' patients during their absence. Dr. Berger also testified that
24 all of the physicians in the group know about the allegations made against Respondent but that
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1 he has not received any reports from any of the physicians concerning pedophilia tendencies
2 by Respondent. Dr. Berger testified that, because the allegations made by S.S. were more than
3 ten years old and Respondent had completed medical school, internship and residency without
4 any other complaints against him, he, Dr. Berger, did not regard Respondent to be a pedophile.

5 47. At the hearing into the Board's complaint, Dr. Richard Irons testified that he
6 believed that Respondent's paraphilia interests peaked at age 23-24 and that it is "statistically
7 unlikely" for those interests to re-emerge in the future.

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9 48. At the hearing into the Board's complaint, Dr. Cox testified that Respondent
10 remains a risk for recidivism because he has not participated in long-term therapy, his pediatric
11 practice allows him to maintain contact with the target population and Respondent has a
12 personality trait disorder which makes him continue to deny and minimize.

13 49. By the conclusion of the evidentiary hearing on August 11, 1998, no evidence
14 was presented to show the total number or frequency of group therapy sessions Respondent
15 had attended with the Steven Gray sex offender group to that point in time.

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17 **In order to more accurately reflect the hearing testimony, the Board adopted the**
18 **following additional Findings of Fact:**

19 50. When Respondent was interviewed by Detective Jacobson in Utah, Respondent
20 stated that he had "bad intent" when he lifted S.S. up out of the Jacuzzi. Respondent also told
21 the detective that when Respondent's wife confronted him about his sexual conduct with S.S.,
22 he denied it at first. He also told the detective that when his wife confronted him about his
23 sexual contact with S.S. in the van, he denied it. He also told the detective that he may have
24 touched S.S.'s hand with his penis while they were in the van on the California trip.

25
26 51. Dr. Irons testified that the reference to Respondent's paraphiliac interests in the
27 Menninger report means "interests by an adult male in his mid-20's in a pubescent woman,
28

1 that is a woman around the age of puberty. It's considered in this society and by our
2 definitions of mental disorders to be deviant or in the paraphiliac area." Dr. Irons also stated
3 that pedophilia is a type of paraphilia.

4 52. Dr. Irons testified that at the time of the Menninger evaluation, the evaluators
5 saw Respondent's previous conduct with S.S. as sexual abuse of a child and felt that the
6 licensure board would better understand this as sexual abuse of a child as what had occurred
7 rather than trying to get into the technicalities of whether it met a pedophilic diagnosis." He
8 also testified that Respondent met the criteria for the DSM-IV diagnosis of pedophilia at the
9 time his sexual conduct occurred with S.S.

10
11 53. Dr. Irons testified that according to general guidelines, long-term
12 psychotherapy is commonly performed by a Ph.D. level or higher with at least five years of
13 clinical experience.

14
15 54. Dr. Irons also testified that Respondent should not have primary female patients
16 in the post-pubertal age group, and that as Respondent's patients neared puberty, he should
17 refer them to other practitioners.

18 II.

19 CONCLUSIONS OF LAW

20
21 1. This matter is within the jurisdiction of the Board as Respondent is the holder
22 of a license issued by the Board.

23 2. Respondent's admitted expressions of paraphilia, whereby, on three or four
24 occasions, Respondent sexually molested his sister-in-law between 1986 and 1987, at a time
25 when his sister-in-law was a 12 and 13 and more than ten years younger than him,
26 demonstrates deviant sexual conduct amounting to classification of Respondent as a sex
27 offender who requires long term treatment and therapy, irrespective of diagnostic label.
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3. The Board deleted the ALJ's proposed Conclusion of Law three.⁸

4. Insufficient evidence exists in the record of this matter on which to conclude that, despite Respondent's obsession with his pre-teen sister-in-law in 1986 and 1987, Respondent is a sexual predator or that Respondent *currently* meets the diagnostic criteria set forth in the DSM-IV for a diagnosis of pedophilia.⁹

5. Sufficient evidence exists in the record of this matter on which to conclude that Respondent *might be a risk to the health and safety of teenage girls between the ages of 12 through 17.*¹⁰

6. *The conduct and circumstances described in Findings of Fact 12 above constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(d) (commission of a felony), to wit: Section 76-5-404.1(1)(3)(b)(g), Utah Code Annotated 1953, as amended.*¹¹

7. *In his license application, when Respondent was asked whether he had ever been charged with a violation of any statute, he stated, in pertinent part, as follows:*

In November 1993 I was falsely accused of sexual assault by a woman in Utah.

Respondent's statement was misleading in that Respondent was not accused of sexual assault by a woman. Respondent was accused (and charged) with rape of a child. Respondent knew that the charge was rape, not sexual abuse; he testified at hearing that he had a copy of the amended information charging him with rape of a child. It is true that at the time

⁸ The Board found that the factual statements contained in this Conclusion of Law were not supported by the record.

⁹ In order to accurately reflect the evidence, the Board inserted the word "current" to this paragraph.

¹⁰ The Board modified the ALJ's proposed conclusion of law in this paragraph to more accurately reflect the evidence and to set forth its conclusion that the Respondent might pose a risk to certain patients. The new text appears in italics.

¹¹ The Board deleted the ALJ's proposed conclusion of law in this paragraph and replaced it with the italicized text. This change reflects the Board's conclusion that Respondents past conduct with S.S. constitutes the commission of a felony, for which the Board may issue a sanction.

1 *Respondent applied for a license, Board investigators had a newspaper article in their files*
2 *that showed Respondent had been charged with rape of a child. The existence of the*
3 *newspaper article does not make Respondent's statement true or false. Respondent's*
4 *application stated that he had been accused of sexual assault by a woman. Respondent's*
5 *conduct constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(jj) (knowingly*
6 *making a false or misleading statement to the board or on a form required by the board or in a*
7 *written correspondence, including attachments, with the board.).*¹²

8
9 8. *Respondent's molestations of S.S. in 1986 and 1987 described above constitute*
10 *unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) (any conduct that is or may be*
11 *harmful or dangerous to the public).*¹³

12 9. Respondent's violation of A.R.S. §§ 32-1401(25)(d), (q) and (jj) constitutes
13 grounds on which Respondent may be disciplined by the Board.¹⁴

14
15 III.

16 ORDER

17 Based upon the Findings of Fact and Conclusions of Law as adopted the Board hereby
18 enters the following Order:

- 19 1. Respondent is placed on probation for a minimum of five years;
20 2. Respondent shall always have a female chaperone present when he examines
21 female patients and the chaperone shall initial the patient's chart at the time of the
22 examination;

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24
25 ¹² To accurately reflect the evidence, the Board deleted the ALJ's proposed conclusion of law in this paragraph
26 and replaced it with the italicized text. These changes also reflect the Board's conclusion that Respondent was
27 not truthful with the Board in his license application.

27 ¹³ The Board adopted Conclusion of Law 9 after it determined that Respondent's inappropriate sexual contact
28 with S.S. constituted conduct that is harmful to the public.

28 ¹⁴ Amended to accurately reflect changes to conclusion of law.

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3. Respondent shall undergo psychotherapy with a Board approved therapist.

The therapist shall provide the Board with quarterly reports;

4. Respondent shall practice in a structured practice setting; and

5. Respondent is prohibited from examining the breast and genitalia of female patients 10 years of age and older.

IV.

RIGHT TO PETITION FOR REVIEW

The parties are hereby notified that they have the right to petition for a rehearing.

Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed with the Board's Executive Director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient reasons for granting a rehearing. Service of this Order is effective five (5) days after the date of mailing.

The parties are further notified that the filing of a petition for rehearing is required to preserve any rights of appeal to the superior court that they may wish to pursue.

DATED this 3rd day of February, 1999.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA



By: Claudia Foutz
CLAUDIA FOUTZ
Executive Director
MELISSA S. CORNELIUS
Deputy Director

Original "Findings of Fact, Conclusions of Law and Order" filed this 3rd day of February, 1999, with the:

Arizona Board of Medical Examiners
1651 E. Morten, Suite 210
Phoenix, Arizona 85020

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Cliff J. Vanell, Director
Office of Administrative Hearings
1700 W. Washington, Suite 602
Phoenix, Arizona 85007

Copies of the foregoing mailed by
certified, return receipt requested
this 3rd day of February, 1999, to:

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Attorney for Respondent

Copies of the foregoing via interagency
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