

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

Board Case No. MD-00-0434
MD-00-0498

3
4 **RAKESH PATEL, M.D.**

5 Holder of License No. 24421
6 For the Practice of Medicine
In the State of Arizona.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Probation)

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8 This matter was considered by the Arizona Medical Board ("Board") at its public
9 meeting on August 7, 2002. Rakesh Patel, M.D., ("Respondent") appeared before the
10 Board without legal counsel for a formal interview pursuant to the authority vested in the
11 Board by A.R.S. § 32-1451(H). After due consideration of the facts and law applicable to
12 this matter, the Board voted to issue the following findings of fact, conclusions of law and
13 order.

14 **FINDINGS OF FACT**

15 1. The Board is the duly constituted authority for the regulation and control of
16 the practice of allopathic medicine in the State of Arizona.

17 2. Respondent is the holder of License No. 24421 for the practice of medicine
18 in the State of Arizona.

19 **MD-00-0434**

20 3. The Board initiated case number MD-00-0434 after receiving a complaint
21 regarding Respondent's care and treatment of a 45 year-old female patient ("C.W.").

22 4. C.W. presented to Respondent on June 8, 2000 for a preoperative
23 examination. According to the complaint, while C.W. was in the examination room with
24 her gown off from the waist up, Respondent noted that she seemed tense and started to
25 rub her shoulders and back. The complaint also alleged that Respondent asked C.W.

1 how her marriage was going and, after Respondent stopped rubbing her shoulders and
2 back, began to touch and rub her breasts. The complaint alleged that Respondent was
3 breathing hard and had become aroused. C.W. subsequently sued Respondent for
4 malpractice. Respondent denied C.W.'s allegations and settled the lawsuit.

5 5. On March 20, 2002, during the course of the Board's investigation,
6 Respondent was interviewed by investigative staff. Respondent indicated that he
7 examined C.W. prior to surgery and did a complete physical, including a breast
8 examination. Respondent stated that a breast examination is not usually part of the
9 physical, but he did the examination because C.W. mentioned a possible breast mass.
10 According to Respondent, C.W. was on anti-inflammatory medication for headaches that
11 he believed were caused by stress. Respondent states that he did demonstrate
12 massage therapy to help C.W. with her headaches. Respondent denied inappropriately
13 touching C.W. or discussing personal information with her.

14 **MD-0498**

15 6. The Board initiated case number MD-00-0498 after receiving a complaint
16 regarding Respondent's care and treatment of a female patient ("D.W.").

17 7. D.W. presented to Respondent on June 29, 2000 for a preoperative
18 examination. According to the complaint, while conducting the examination Respondent
19 noted that D.W. seemed tense and stated that he believed in massage therapy. The
20 complaint also alleged that after the pre-operative examination Respondent began to
21 massage D.W.'s neck and shoulders and then began to massage her back and chest
22 underneath her examination gown. The complaint stated that Respondent did not
23 massage D.W.'s breasts, but between her breasts. According to the complaint,
24 Respondent was breathing heavily after he completed D.W.'s massage and that his
25 hands were shaking as he filled out the examination paperwork.

1 8. On March 20, 2002, during the course of the Board's investigation,
2 Respondent was interviewed by investigative staff. In regard to case number MD-00-
3 0498, Respondent stated that he was aware that another complaint had been lodged
4 against him for inappropriate touching (complaint regarding C.W.). Respondent stated
5 that D.W. came for a pre-operative examination and was not expecting concerns about
6 her headaches to be addressed. According to Respondent, he views the examination as
7 a comprehensive evaluation and that because D.W. was in a gown she probably felt
8 vulnerable. Respondent stated that the only time D.W.'s gown was lifted was for the
9 abdominal examination. Respondent stated that he did massage D.W.'s back, neck and
10 front upper chest just below the neck. Respondent stated that he did not massage
11 D.W.'s breasts or between her breasts.

12 9. At the formal interview Respondent testified that his general approach to
13 patients was to provide a comprehensive evaluation to assess their readiness for surgery
14 and perform what he believes is either a Level 3 or Level 4 complete medical
15 examination. Respondent stated that because he practices as a locum tenens physician
16 he takes on various assignments at different locations and is asked to play different roles.
17 Respondent stated that in an effort to maintain his standard of care he keeps his
18 approach to each patient fairly consistent and that as an internist he believes that a pre-
19 operative medical examination is very similar to a physical examination with very few
20 exceptions. Respondent acknowledged that he went beyond what is normally expected
21 in a preoperative examination and stated that he had done so with other patients, for
22 instance he performed prostrate examinations on patients if the examinations were not
23 up to date, ordered prescription medication if refills were needed and ordered
24 mammograms.

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1 10. Respondent was asked if he could explain how two unrelated individuals
2 made similar complaints about Respondent's inappropriate touching. Respondent stated
3 that he did not believe that C.W.'s story was credible or believable, that it defied common
4 sense and that it was a story of exaggeration and hyperbole. Respondent stated that he
5 did not believe an intelligent, articulate woman would allow to happen what she alleges to
6 have happened. Respondent also stated that it is not believable that anybody would put
7 up with that.

8 11. Respondent was asked if he believed that during an examination a
9 physician is in a position of authority, power and respect. Respondent stated that he did.

10 12. Respondent was asked if in his current practice he has a chaperone
11 present when he performs breast and pelvic examinations. Respondent stated that his
12 current practice was to have a chaperone present if he is going to do both examinations,
13 however, if he is only going to do a breast examination he does not have a chaperone
14 present.

15 13. Respondent was asked in regard to C.W. how the examination he
16 conducted corresponded with the requirement that he conduct a preoperative evaluation
17 to see if C.W. was a suitable candidate for surgery? Respondent testified that his
18 dictation reflected a thorough examination and that if he had extra time with patients he
19 would listen to any other complaints and address them. Respondent indicated that
20 during the time he was performing the preoperative examinations at the location where
21 C.W. and D.W. were seen he performed massage on 5 or 6 patients.

22 14. Respondent acknowledged that the second complaint from D.W. lended
23 credence to C.W.'s complaint. Respondent admitted that in D.W.'s case he believed he
24 made her feel uncomfortable even though his intent was not of a sexual nature. With
25 regard to C.W.'s complaint Respondent indicated that her complaint was patently false

1 and noted that he believed her motive was financial and that she did not report the
2 incident for almost five weeks.

3 15. Respondent admitted that he did not mention that he gave C.W. a massage
4 as part of the physical. Respondent also admitted that he did not document C.W.'s report
5 of the breast cyst. Respondent stated that he did not mean to or derive any sexual
6 gratification from the demonstration of massage on either C.W. or D.W.

7 **CONCLUSIONS OF LAW**

8 1. The Arizona Medical Board possesses jurisdiction over the subject matter
9 hereof and over Respondent.

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

13 3. The conduct and circumstances above in paragraphs 4, and 7 through 15
14 constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(z) "[s]exual
15 intimacies with a patient."¹

16 **ORDER**

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

18 IT IS HEREBY ORDERED that:

19 1. Respondent is placed on Probation for one year with the following terms
20 and conditions:

21 (a) Respondent shall within one year of the effective date of this Order, obtain
22 20 hours of Board staff pre-approved Category I Continuing Medical Education (CME) in
23 sexual intimacy/boundary issues with patients. Respondent is to provide Board staff with
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¹ When Respondent's conduct occurred in 2000 A.R.S. § 32-1401(25)(z) read "sexual intimacies with a patient."

1 satisfactory proof of attendance. The CME hours shall be in addition to the hours
2 required for biennial renewal of Respondent's medical license.

3 (b) Respondent shall pay the costs associated with monitoring his probation as
4 designated by the Board each and every year of probation. Such costs may be adjusted
5 on an annual basis. Costs are payable to the Board no later than 60 days after the
6 effective date of this Order and thereafter on an annual basis. Failure to pay these costs
7 within 30 days of the due date constitutes a violation of probation.

8 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

9 Respondent is hereby notified that he has the right to petition for a rehearing or
10 review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or
11 review must be filed with the Board's Executive Director within thirty (30) days after
12 service of this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient
13 reasons for granting a rehearing or review. Service of this order is effective five (5) days
14 after date of mailing. If a motion for rehearing or review is not filed, the Board's Order
15 becomes effective thirty-five (35) days after it is mailed to Respondent.

16 Respondent is further notified that the filing of a motion for rehearing or review is
17 required to preserve any rights of appeal to the Superior Court.

18 DATED this 03 day of October, 2002.

19
20 ARIZONA MEDICAL BOARD



By Barry Cassidy
BARRY A. CASSIDY, Ph.D, PA-C
Executive Director

1 ORIGINAL of the foregoing filed this
2 3RD day of OCTOBER, 2002 with:

3 The Arizona Medical Board
4 9545 East Doubletree Ranch Road
5 Scottsdale, Arizona 85258

6 Executed copy of the foregoing
7 mailed by U.S. Certified Mail this
8 3RD day of OCTOBER, 2002, to:

9 Rakesh Patel, M.D.
10 9230 Sally Ln Apt 2E
11 Schiller Park IL 60176-2315

12 Copy of the foregoing hand-delivered this
13 3RD day of OCTOBER, 2002, to:

14 Christine Cassetta
15 Assistant Attorney General
16 Sandra Waitt, Management Analyst
17 Lynda Mottram, Compliance Officer
18 Investigations (Investigation File)
19 Arizona Medical Board
20 9545 East Doubletree Ranch Road
21 Scottsdale, Arizona 85258

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