RE: GANGARAM RAGI, M.D

ORDER OF SUMMARY DECISION FILED MARCH 9, 2009. NOTE - THIS ORDER HAS BEEN STAYED BY THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION ON FEBRUARY 23, 2009 PENDING APPEAL OF THE BOARD'S DECISION.

ORDER ON EMERGENT APPLICATION

I/M/O SUSPENSION OR
REVOCATION OF THE LICENSE
OF GANGARAM RAGI, M.D.
License No. MA567750

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-
MOTION NO. M-
BEFORE PART: A
JUDGE(S): GRALL
ASHRAFI t/a

EMERGENT APPLICATION
FILED: February 18, 2009

BY: Benjamin Clarke
Decotiis, Fitzpatrick,
Cole & Wisler

ANSWER(S) FILED:
February 23, 2009

BY: Kim D. Ringler, D.A.G.
Office of the Attorney
General

ORDER

THIS MATTER HAVING BEEN PRESENTED TO THE COURT, IT IS ON THIS 23rd DAY OF FEBRUARY, 2009, HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
EMERGENT APPLICATION FOR A STAY PENDING APPEAL	(X)	( )	( )

SUPPLEMENTAL:

The appeal shall be accelerated and calendared upon the filing of all briefs.

FOR THE COURT:

JANE GRALL, J.A.D.

FILED

March 9, 2009
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF **GANGARAM RAGI, M.D.** License No. MA 567750 TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY	Administrative Action **ORDER OF SUMMARY DECISION**

This matter was opened to the New Jersey State Board of Medical Examiners ("the Board") upon the filing of an Administrative Amended Complaint by Anne Milgram, Attorney General of New Jersey by Kim Ringler, Deputy Attorney General on October 30, 2008. The Complaint alleged in ten (10) counts that respondent Gangaram Ragi, M.D., a dermatologist, engaged in inappropriate and unwarranted touching of the breasts of nine (9) female patients while rendering care for other conditions. The inappropriate touching is alleged to evidence:

1) a violation of the Board's sexual misconduct rule, N.J.A.C. 13:35-6.3(c) and (d) and thus a failure to comply with a regulation administered by the Board in violation of N.J.S.A. 45:1-21(h);

2) gross or repeated acts of malpractice in violation of N.J.S.A. 45:1-21(c) and (d);

CERTIFIED TRUE COPY

3) professional misconduct in violation of N.J.S.A. 45:1-21(e);

4) an incapacity of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare in violation of N.J.S.A. 45:1-21(i);

5) a failure to fulfill the ongoing statutory requirement of good moral character, pursuant to N.J.S.A. 45:9-6.

The Complaint also alleged in two counts that respondent submitted reappointment applications in August 2003 and December 2003 and addenda or follow up letters to two hospitals in which he answered "no" to the questions asking if his medical license has ever been the subject of discipline or investigation, even though he had entered into a June 11, 2003 Interim Consent Order with the Board regarding the then pending investigation. The 2003 Interim Order imposed on respondent the limitation of an independent monitor being present whenever respondent treated any female

patient.[1] The Complaint alleged that the provision of false information on the privilege applications is evidence of:

1) the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of N.J.S.A. 45:1-21(b);

2) an incapacity of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare in violation of N.J.S.A. 45:1-21(i);

3) a failure to fulfill the ongoing statutory requirement of good moral character, which is a requirement of licensure, pursuant to N.J.S.A. 45:9-6.

On December 12, 1008 respondent through his counsel Benjamin Clark, Esq., of the firm of DeCotiis, Fitzpatrick, Cole & Wisler, filed an Answer and Affirmative Defenses in which he generally denies the material allegations of the inappropriate breast touching alleged in the Complaint as to Count I, II, IV, VII, VIII, IX and X. In regard to the essential allegations of Count III he specifically admits that it was medically necessary to

---

[1] The Board has entered the following additional Orders I/M/O Ragi:

Order II - Second Interim Consent Order of November 15, 2004 precluding respondent from treating female patients.

Order III - Final Consent Order of March 16, 2006 imposing a reprimand for violation of the Board's sexual misconduct regulation N.J.A.C. 13:35-3, requiring a boundary course, assessing fines and costs and barring respondent from treating female patients.

examine the skin beneath that patient's breasts and responds that a chaperone was present during examination of the patient implicated in Count V.

In his Answer to Count XI respondent admits the facts of the filed Board of Medical Examiners Disciplinary Order, that he submitted the application and a subsequent letter to the hospital and admits the contents of the application. He generally denies any intent or knowing submission. Respondent's Answer does not address Count XII.

On or about December 24, 2008, the Attorney General filed a Motion for Summary Decision, Certification and Brief in this matter pursuant to N.J.A.C. 1:1-12.5(a) asserting that there were no material issues of fact to be decided at a hearing. Supporting the Motion are the following exhibits:

A. Amended Administrative Complaint I/M/O Gangaram Ragi and Transmittal Letter to Respondent's Counsel dated October 30, 2008

B Consent Orders between respondent and the New Jersey State Board of Medical Examiners
   - B-1 Interim Consent Order of June 2003
   - B-2 Second Interim Consent Order of November 15, 2004
   - B-3 Final Consent Order of March 16, 2006

C. Respondent's Renewal Application to Jacobi Hospital of December 2003

D. Respondent's Renewal Application to Hackensack Hospital of August 2003

E. State of New York: Department of Health, State Board for Professional Medical Conduct, Consent Agreement and Order I/M/O Gangaram Ragi, June 21, 2006

F. Indictment No. S-616-06 of April 2006 the State of New Jersey v. Gangaram Ragi, Indictment No. S-999-07

G. Criminal Action Order, State of New Jersey v. Gangaram Ragi, Superior Court of New Jersey, Criminal Case, Law Division Docket No. 576-06, Indictments S-999-07, S-867-03

H. Transcript of Grand Jury Proceedings Dated May 29, 2007, Bergen County Docket No. 576-06, Indictment No. S-999-07

I. Sworn statement of JRZ

J. JRZ Grand Jury Testimony, Transcript, pp. 27-33

K. Sworn statement of LP

L. LP Grand Jury Testimony, Transcript pp. 34-40

M. Sworn Statement of MB

N. MB Grand Jury Testimony, Transcript pp. 4-17

O. Sworn Statement of PP

P. Sworn Statement of LPF

Q. LPF Grand Jury Testimony, Transcript pp. 17-27

R. Sworn Statement of EHG

S. Sworn Statement of LB

T. Sworn Statement of SL

U. Sworn Statement of DV

V. Respondent's Answer and Affirmative Defense filed December 12, 2008

The Attorney General argued in her brief, and at the February 11, 2009 motion hearing before the Board three main points regarding Count I through X. First, the documentary evidence, consisting of nine (9) graphic, strikingly similar sworn statements of nine women victim/patients detailing respondent's

"groping", "manhandling" and "copping a feel" during a medical examination, may be relied upon by the Board in granting the motion. Second, the Attorney General asserts that the express and broad language embodied in respondent's 2008 Pre-Trial Intervention (PTI) Agreement, coupled with his apology, precludes respondent from objecting to the victim statements before the Board. Because respondent is barred from opposing the statements, there are no genuine issues of material fact necessitating an evidentiary hearing.[2] Finally, the Attorney General argues that as respondent failed to answer the Summary Decision Motion with responding affidavits detailing specific facts at issue, the motion should be granted.

As to Counts XI and XII the Attorney General argues that the June 2003 Board Consent Order and the two hospital reappointment applications dated December 2003 and August 2003 at

---

[2] The relevant PTI conditions are as follows:

> ORDERED that as a condition of PTI, Gangaram Ragi stipulate that all statements and/or Grand Jury testimony from each of the above-listed victims may be presented to the Medical Board without objection and/or without the need for any of these women to be present and/or testify.
>
> ORDERED that as a condition of PTI, on April 8, 2008 Gangaram Ragi formerly extend and read in open court to each of the above listed victims the following apology: In Medical School the first thing we learn is "do no harm." I stand before you today to apologize for harm that my actions have caused you. You each deserve my sincere apology.

a minimum clearly demonstrate misrepresentation and require no evidentiary hearing. She argues that respondent admits in his Answer as to Count XI the undisputed fact of the entry of the Board Order and that he responded in the negative to the question on the application concerning disciplinary action as to Count XI. The Attorney General points out that respondent merely generally contests that his conduct was intentional and thereby does not constitute fraud. She argues that he provides no responding affidavit with specific facts sufficient to require an evidentiary hearing. Nowhere in his response is there an explanation for the clear misrepresentation in the context of a privilege application to a licensed facility in which he certified all information was complete, true and accountable. He provides no answer at all to Count XII which the Attorney General argues is therefore unopposed and deemed admitted.

Respondent provided within his papers a Brief and the Certifications of Gangaram Ragi, M.D., respondent, Mr. Clark, Esq., counsel in the administrative forum, Mr. Robert Galantucci, Esq., respondent's criminal defense attorney and the following exhibits:

A - October 5, 2004 letter from Anthony LaBue, Esq., to then President of the Board Dr. Robins, proposing a Consent Order permanently limiting respondent's practice to male patients, with an attached proposed Consent Order signed by respondent.

B - Respondent's first PTI Order dated March 7, 2005 which includes a permanent bar to engaging in medical practice with any female patient ever, an apology to victims, a requirement of random compliance visits, monetary contributions to victim funds.

C - Respondent's December 12, 2008 Answer, and Affirmative Defenses.

D - Interrogatories and Document Requests propounded on the State by respondent dated January 19, 2009.

Respondent in a letter dated December 30, 2008 first sought to postpone the Board's consideration of the matter and requested that the Board refer the matter to the Office of Administrative Law for the conduct of a plenary hearing. He argued the matter had not been determined by the agency head to be a contested case within the meaning of N.J.A.C. 1:1-4.1. Respondent in his brief and during oral argument reasserted that procedural objections. In addition he made the assertion that summary decision is premature as there has been no discovery. Finally he maintained that there is a procedural flaw in the Attorney General's submission in that a Statement of Material Facts pursuant to R. 4:46-2(a) governing Summary Judgment is required.

The Board found the procedural issues raised by respondent unavailing for the following reasons. The Board has discretion regarding whether or not to transmit a case to the OAL N.J.S.A. 52:14F-8 and exercised its discretion to retain the case for the purpose of a Summary Decision Motion. Respondent's primary argument is that he should be allowed to exercise discovery rights and ultimately be afforded a plenary hearing with cross-examination of the victims whose certifications and Grand Jury testimony provided the basis for the grant of PTI. This argument goes to the heart of respondent's due process challenge and the reasons

supporting the Board's denial will be more fully addressed in the discussion to follow. As to his assertion that the motion is flawed because of the lack of a Statement of Material Facts, it is N.J.A.C. 1:1-12.5 which governs summary decision motions in an administrative forum. That rule does not call for the provision of such a statement. In any event the submission of the State does provide a Statement of Facts in its motion papers.

Having denied respondent's various applications the Board, at its February 11, 2008 meeting, moved forward to the merits of the Attorney General's motion. The Attorney General has maintained that because of the overwhelming evidence, respondent's agreement not to object to the victim statements and respondent's failure to raise specific genuine issues of material facts in dispute, this matter is amenable to resolution by Motion for Summary Decision and that an evidentiary hearing is neither warranted by the facts, nor required by law. Respondent maintains that to grant the motion sought herein without a full evidentiary hearing, complete with discovery and the right to cross-examine witnesses, would deprive him of the due process to which he is entitled. He bases the argument on his belief that the PTI Agreement did not include an admission and the language did not constitute an agreement barring his opposition to the accuracy of the victim statements.

During oral argument the parties reiterated the arguments found in their briefs. Following oral argument on the motion, the

twelve (12) Board members present voted with one (1) abstention, to grant the motion for summary decision and found that even when viewed in the light most favorable to respondent, there were no genuine issues of material fact to be determined and that the moving party was entitled to prevail as a matter of law pursuant to N.J.A.C. 1:1-12.5(b).

Discussion

The Board in making this determination considered the July 2008 PTI Criminal Consent Order entered into by respondent. In exchange for the extraordinary grant of PTI a second time, which resulted in respondent's waiving his rights to confront the victims and face a criminal trial, he agreed to several requirements which are pivotal to this matter.[3] First and foremost he agreed in plain, unequivocal language to the presentation to the Medical Board of all of the victim statements and/or Grand Jury testimony **without objection** and he also agreed that there is no need for any of these women **to be present or testify** before the Board.

> ORDERED that as a condition of PTI, Gangaram Ragi stipulates that all statements and/or Grand Jury testimony from each of the above-listed victims may be presented to the Medical Board without objection and/or without the need for any of these women to be present and/or testify.

---

[3] Respondent's criminal defense attorney testified in mitigation of penalty that respondent is the only person in the State of New Jersey to ever be granted PTI twice.

This provision is coupled with an ordered point embodying his apology read in open court to all nine (9) victims.

> In Medical School the first thing we learn is "do no harm." I stand before you today to apologize for harm that my actions have caused you. You each deserve my sincere apology.

The same PTI agreement also required that he pay $50,000 as charitable restitution to a rape crisis/therapy center.

Respondent agreed to these conditions with benefit of competent criminal counsel and weighed the option of confronting his accusers and trying the criminal case. He averted having the victims testify and breathe life into the accusations before a criminal jury and the risk of a criminal penalty against agreeing not to object to the introduction of those statements or require testimony in an administrative tribunal. His assent meant that the State would not need to produce the victims. Respondent cannot have it both ways. The plain language of the PTI agreement **"without objection"** to the presentation of statements before the Medical Board and not to **"require testimony of the victims"** read in conjunction with the apology for the **"harm my actions have caused you"** is damning. His claim now that he should have an opportunity to respond to statements would require their testimony.

Summary Decision is a tool designed to achieve judicial economy while protecting due process rights. The conditions imposed on respondent as a predicate to the grant of a second PTI would be devoid of meaning if the victims are required to testify

as respondent would then be permitted to explain or contradict each witnesses' sworn statement. The expectation and purpose of the combined force of the conditions barring him from opposing the statements and requiring him to apologize is that the Attorney General should not have to litigate to establish this serious conduct. Respondent's counsel would like us to believe that the language of the PTI Agreement should be interpreted in a way that is meaningless. He argues he can now object to the accuracy of the statements. He contends hearsay is admitted in administrative proceedings therefore the PTI language "adds nothing to the normal rules that pertain to administrative proceedings." Nowhere in the PTI document is that limiting, constrained language found.

As the Appellate Division recently concluded in another case with the Board, involving the import of a consent agreement and interpretation of statutory language, the meaning of language is to be derived in context (I/M/O Kim, 403 N.J. Super. 378, 958 A. 2d 485, (2008)) citing Schierstead v. Brigantine, 29 N.J. 220, 231, 148A 2nd 591 (1959). Appellant in Kim argued a rigid nonsensical reading of a statutory provision governing the Board's authority, suggesting the Board cannot place conditions on initial licensure despite his agreement to the conditions in a Consent Order. In Ragi we interpret the meaning of the condition and apology in the context of the PTI Agreement and conclude that it bars respondent from opposing the sworn statements before the Board.

The PTI agreement allowed Ragi to avoid criminal trial, and the risk of criminal sanction in exchange for not objecting to the victim statements in a licensure proceeding. Respondent had an opportunity, with able counsel, to weigh the risk of proceeding with a criminal prosecution and agreed with counsel to allow the nine (9) patient victims statement to be provided to the Board of Medical Examiners with the broad statement **without objection.** The agreement explicitly provides that there is **no need to testify.** Moreover it compelled him to give a public apology for the **harm I have caused you**. The State should not be forced to litigate a matter in which respondent got the benefit of his bargain in the criminal arena and now claims it was only an agreement not to object to hearsay which is admissible anyway in an administrative proceeding. The PTI language does not limit, qualify or condition the ban on objection to the victim statements in any way. We believe that to read a qualification into the provision is to make a mockery of the grant of a second PTI and allow respondent to avoid and/or delay any consequences for his abhorrent conduct by requiring the State to devote scarce resources to establishing facts that were not to have been subject to challenge.

We considered respondent's affidavit, the facts of which are corroborated by Mr. Galatucci, Esq., his criminal defense counsel. Respondent asserts that he was advised that the negotiated PTI language would not foreclose him from a plenary

trial before the Medical Board where he would be entitled to oppose the victim statements. We are not persuaded that the advice given within the context of the attorney/client privilege regarding the import of settlement language is at issue here. At issue is what the conditions mean in the context of the document. We find interpretation of the language does not require an evidentiary hearing.

Further, and importantly, the Attorney General's motion has not been met with affidavits containing specific denials of the facts alleged in the Complaint. The affidavits for the most part address respondent's interpretation of the PTI conditions and include general denials of inappropriate touching as to the conduct involving the patients. Respondent's affidavit references his Answer which contains scant explanations as to the essential allegations regarding only two of the nine victims. In regard to the counts concerning provision of false information there is only a general denial of engaging in fraudulent conduct. Absolutely no specifics have been provided.

In order to defeat a motion for summary decision respondent must provide responding affidavits which set forth specific facts demonstrating that there is a genuine issue "which can only be determined in an evidentiary proceeding." Frank v. Ivy Club, 120 N.J. 73, at pp. 99 (1990); See also Cunningham v. Dep't. of Civil Serv. 69 N.J. 13, at pp. 25 (1975). Furthermore, the genuinely disputed fact must be essential to the decision in the

case. Frank, 120 N.J. at pp. 98. Bare conclusions in the pleadings without factual support in affidavits will not defeat a motion for summary judgment. Brae Asset Fund L.P. v. Newman, 327 N.J. Super. 129, at pp. 134 (App. Div. 1999).

As to Count XI and XII the documents prove that respondent admits he was the subject of a Board Order at the time he answered no on two applications. That he now asserts there was no intent to deceive so therefore no fraud is of no moment. Respondent's blatant misrepresentations of significant negative information in the context of re-applications and subsequent submissions for facility privileges constitute clear statutory violations. The Attorney General need not show that he had intent. The Jacobi Hospital application is a sworn certification as to the accuracy of the content and both applications place a continuing obligation on respondent to apprise the facility if there is any change in status. Although respondent provided followup information to both facilities, he did not inform them of the uncontroverted fact of the public Board Order limiting his practice. It follows that there are no genuine issues of material fact at issue regarding these two counts which would require an evidentiary hearing.

Trust is at the core of what is expected of a medical licensee - trust in representations to medical insurance companies, in billings, in patient records which have life and death impact and trust sufficient for other health care providers to rely on

information provided. Facilities have an absolute right to know whether licensing boards have taken action against a staff member. The fact of the public discipline is germane to the facility's review of the candidate. Such misrepresentation is a character trait which runs across the gamut of obligations requiring trust of a medical licensee.

Respondent had ample time if he wished to provide certifications specifically addressing the allegations central to the Motion for Summary Decision or to otherwise corroborate his own generalized denial. However, he did not. Instead the certification of the criminal attorney and counsel in this forum focus on a strained, implausible interpretation of the PTI conditions relevant to Counts I through X. Both Mr. Galatucci and Mr. Clark admit this interpretation renders the condition absolutely meaningless. There is only a generalized denial as to intent in regard to count XI and nothing regarding count XII.

We find that in an administrative proceeding where the requirements of summary decision are met as they are here then it is an appropriate way to resolve a contested matter. It is not unconstitutional for a licensing board to grant summary decision when the respondent does not provide responding affidavits setting forth specific facts showing that

> there is a genuine issue which can only be determined at an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

In reaching its decision, the Board finds the statements of the nine victims strikingly similar, compelling and credible. We find that respondent has agreed in the context of the criminal proceeding not to object to their admission in this administrative proceeding, and has not provided answering affidavits specifically countering the facts set forth in the Complaint. Moreover he has apologized for the harm he has caused his patient/victims. Taken together in our view this is a case appropriate for Summary Decision as to Counts I through X.

An examination of the content of the patients' statements is appropriate.

- M.B. certified respondent "fondled" both of her breasts moving his hands after asking "do you mind". She went home, told her husband this was not a medical exam. Although she apprehensively returned to respondent for a follow-up visit as she had no other dermatologist, when the conduct reoccurred she never went back.
- L.P. swears she told her husband "I think I was just felt up by the dermatologist that I went to this man obviously looked like he was getting sexual satisfaction from what he was doing."
- JZ swore "he had no reason to lay his hands on me. There were no medical reasons for him to literally touch my breasts, I had, you know, you could just tell. A woman senses it was wrong."

- PP had eczema on her thigh. "I remember him touching, rubbing up against my left breast with his hand and I just knew he had no reason to be there or no reason to touch it for that matter." However, she went back because she was desperate as a result of the itch of eczema.
- EG swore she experienced a "grope" by respondent through her clothes while her husband was in a corner of the room reading a magazine and was unable to see the examination.
- LB states respondent put his hand into my bra as I told him "No, Dr. Ragi, up here" as she was there for skin tags on her neck. "It felt like he was coping a feel." She told the nurse "he felt me up."
- SL asserts respondent "cupped his hand on my right breast then next breast." She was "shocked and flabbergasted."
- DV certified he was rubbing his forearm against my chest and started moving it.
- LPF certified that she had a "funny feeling" about the whole thing, that it wasn't right and she walked out and told my husband" She told him "no" the next time he attempted to touch her breasts.

All were upset and did not expect to be treated in that manner by one entrusted with a medical license.

In response, Respondent submitted nothing specific or sufficient to counter the statements other than a generalized denial. In reaching the findings herein, the Board viewed

respondent's apology for the harm he caused to his nine patients and his negotiated language not to object to the victims' statements or require the victims to testify in the administrative forum in the context of the entire PTI document, and finds that when read together, with the content of the nine similar detailed statements, that the proofs are overwhelming. We also find that respondent has submitted nothing but affidavits containing general denials of the allegations which are recognized as insufficient to defeat a Motion for Summary Decision. In light of the foregoing we therefore find:

In regards to Counts I though X, based on the submissions, the Board finds there are no material facts in dispute. The Board finds that respondent's conduct constitutes sexual contact with a patient with whom respondent had a physician/patient relationship in violation of N.J.A.C. 13:35-6.3(c) and (d) professional misconduct in violation of N.J.S.A. 45:1-21(e) and evidence of an incapacity to discharge the functions of a licensee in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i). We find respondent's actions violative of N.J.A.C. 13:35-6.3, the regulatory prohibition against a "knowing touching of a person's body directly or through clothing where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification." We have long held that sexual

contact with a patient is in conflict with the fundamental duties owed to the patients who place trust in their physicians.

In regards to Count XI, the Board grants Summary Decision and finds the use or employment of misrepresentation. We do not find the need to address the issue of intent. As to Count XII, the Board accepts respondent's counsel's statement during oral argument that the lack of an answer to that count is a clerical error, and accepts his representation that the answer to that count is consistent with the answer he provided to Count XI. The Board finds Summary Decision on Count XII is appropriate and further finds that respondent, engaged in the use of or employment of misrepresentation in violation of N.J.S.A. 45:1-21(b).

Having determined that grounds exist for disciplinary action, the Board then proceeded over respondent's objection to the prescheduled and noticed mitigation phase of the hearing. [4] Respondent sought an adjournment of the mitigation hearing which the Board denied. Respondent had been notified in a January 27, 2009 letter from the Executive Director of the Board that "if Summary Decision should be granted and that a statutory basis exists to take disciplinary action against Dr. Ragi then the matter will immediately continue to a penalty phase where the parties will be afforded an opportunity to provide testimony and make arguments

---

[4] Respondent's application for a stay of the Board's finding on liability was denied at this juncture as premature. The Board denied the motion when reasserted at the conclusion of the mitigation phase of the hearing.

upon the question of what sanctions ...." Additionally, prior to commencement of argument on the motion, counsel informed the tribunal that if liability was found and we reached the need for a mitigation hearing, respondent, his wife and his criminal defense attorney would testify.

Upon commencement of the hearing respondent produced, with no objection by the State, a volume for each Board member which consisted of a respondent's Curriculum Vitae, letters of; appreciation, recommendation, and thank you, 2003 practice monitor reports and resident evaluations. Although the documents were uncertified the Board accepted them into evidence.

Respondent testified initially reading from a prepared statement. He demonstrated absolutely no remorse, no understanding of or insight regarding what he did. Instead he claimed the victims were prejudiced against him because of his ethnicity, dark skin and Hindu faith. In the alternative, he argued that the victims misunderstood his English, claiming he is a poor communicator. Despite the PTI apology and the agreement not to object to the sworn victims' statements, he nonetheless did and made every attempt to argue that the Board could not rely upon them. He blamed the victims for misunderstanding him and insinuated they were in collaboration. Although as a predicate to gaining PTI he was sorry for the actions his harm caused, before the Board he expressed sorrow only for the harm he caused to himself and his family with a nod to he's sorry if he inadvertently

offended anyone. He testified at great length as to his good works in the community, successful dermatological practice including other physician licensees and the lives he has saved. He mischaracterized as "voluntary" his practice limitation to treat only males. In reality the criminal court as a condition of the first PTI agreement mandated a permanent ban on the treatment of female patients. The Medical Board Consent Order which resolved the first case against respondent involving two womens' allegations of inappropriate breast touching only mirrors the limitation put in place by virtue of the requirements of the initial PTI agreement. Respondent's testimony demonstrated that despite respondent's mandated ethics course and boundary course he has gained no insight into the egregious nature of his conduct.

Respondent's wife Margaret Ragi, Esq., also testified. She views her husband as an accomplished, respectable, caring physician with a busy open practice. She reports that he consistently calls his patients after surgery, attends funerals of former patients and treats some without insurance. She testified that he has paid for fourteen (14) relatives in India to attend medical school. Additionally, he is "a loving husband and involved father whose shortcoming is that he is not a great communicator." She testified that the attorney in the criminal case advised them that they had negotiated a "wonderful agreement and he assured them that when this matter would ever go forward to a trial-type hearing, through the board process, i.e., Office of Administrative

Law, that we would have the opportunity, at that juncture, to present witnesses, affidavits, nurses who were present in the room, a host of evidentiary material, but that was the forum we would do that, not in that agreement." They signed the agreement based on his advice. She supports her husband "one thousand percent."

Finally, respondent's criminal defense attorney of six and one-half years, Robert Galantucci, Esq., testified. He asserted that he was not testifying in his capacity as respondent's attorney but only as to his character. His opinion is that respondent is a wonderful person and doctor who he trusts to treat his own family. The Attorney General's objection was repeatedly sustained that his testimony was to be limited to character and not involve attorney client communications regarding the PTI agreement. However Mr. Galantucci did state that it was because of respondent's character that he was the only person in New Jersey granted PTI a second time.

In our consideration of the entirety of the evidence, the Board is mindful of the mitigating circumstances presented. Although the allegations are numerous, the last was 2003, and respondent has been practicing since that time without reported incident. We believe that the likelihood of reoccurrence is low because respondent is under a criminal Consent Order and Board Order which both forbid him treating any female patients. We are also aware that he has hired another doctor in the practice who sees his female patients. Additionally, during any active

suspension period, the Board does not foresee a public safety issue or harm to his patients as respondent has testified there are other dermatologists practicing in his office. As plenary physicians their practice can continue without modification. If respondent is suspended they need not be supervised by a practice owner or director and can continue to provide patient care for the practice.

The Board also balances the aggravating circumstances, the conduct regarding the nine victims which respondent cannot now be heard to disavow, is among the very worst that can be committed by a physician - sexual groping, manhandling, - all in the guise of a medical exam. An additional aggravating factor is respondent's lack of remorse or recognition of his wrongdoing and lapses despite boundary and ethics courses, two PTIs resolving conduct involving his patient/victims. We also find his steadfast shifting of blame to the victims and/or excusing himself unconscionable and calls into question his judgment. The sexual misconduct paired with the dishonesty in submissions to hospitals we view as a dangerous combination in one licensed to practice medicine.

In determining the penalty, the Board individually weighs each case's specific mitigating and aggravating factors. Although, the Board considered that the violations occurred years ago, the Board believes the conduct is sufficiently serious to warrant a period of active suspension, a period of probation, along with a psychosexual evaluation, and any needed treatment, re-education on

medical ethics and maintaining appropriate boundaries and control over nefarious impulses with patients.

IT IS THEREFORE ORDERED ON THIS 9th DAY OF March, 2009,

1. Respondent's license to practice medicine and surgery in the State of New Jersey shall be and hereby is suspended for a period of three (3) years beginning March 16, 2009. The first year of the suspension shall be active, with the remainder to be served as a period of stayed suspension. No credit shall be given toward the active suspension for any period of time during which the doctor is practicing medicine in another jurisdiction or state.

2. Prior to resumption of active practice in this State, respondent shall:

(a) submit to a psychosexual evaluation at his own expense by the J. Peters Institute and agree to abide by any recommendation by the evaluators;

(b) Respondent shall successfully complete new courses in boundary issues and ethics to be pre-approved by the Board;

3. Respondent is hereby assessed civil penalties in the amount of $40,000 for the conduct described herein, $10,000 is for the misrepresentation in the context of the privilege applications and $30,000 for the sexual misconduct involving nine (9) patients. Payment of the civil penalties shall be submitted within 30 days of the effective date of the Order by certified check or money order

made payable to the State of New Jersey and shall be sent to William Roeder, Executive Director, Board of Medical Examiners, P. O. Box 143, Trenton, New Jersey 08625. In the event the penalty is not timely submitted a certificate of debt will be filed.

4. The Board reserves the right to award reasonable costs and attorneys fees in this matter. The Attorney General is directed to file any application for costs and attorneys' fees no later than February 25, 2009 and respondent shall have fifteen (15) days thereafter to respond to the application. The Board will consider the application on the papers, and a subsequent Order will issue.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: Karen Criss

Karen Criss, R.N., C.N.M.
Vice President

made payable to the State of New Jersey and shall be sent to William Roeder, Executive Director, Board of Medical Examiners, P. O. Box 143, Trenton, New Jersey 08625. In the event the penalty is not timely submitted a certificate of debt will be filed.

4. The Board reserves the right to award reasonable costs and attorneys fees in this matter. The Attorney General is directed to file any application for costs and attorneys' fees no later than February 25, 2009 and respondent shall have fifteen (15) days thereafter to respond to the application. The Board will consider the application on the papers, and a subsequent Order will issue.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____
Karen Criss, R.N., C.N.M.
Vice President