FILED
February 28, 2012
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:

DAVID M. CORWIN, M.D.

ORDER CONDITIONALLY
REINSTATING LICENSE

This matter was reopened before the New Jersey State Board of Medical Examiners upon the Board's receipt of a request from respondent David M. Corwin, M.D., for reinstatement of his license to practice medicine and surgery in the State of New Jersey. Respondent's medical license was suspended, for an indefinite period of time, pursuant to the terms of a prior Order of this Board entered on May 12, 2010. For the reasons set forth below, we herein conclude that cause exists to presently grant respondent's request for reinstatement, but to so conditionally and with limitations. Specifically, although we herein reinstate respondent's license, respondent may not in fact engage in any practice of medicine in New Jersey unless and until he: 1) identifies and secures Board approval for a practice chaperone, who is to accompany respondent at all times that he engages in any medical practice involving a female patient; and 2) identifies and secures Board approval for a treatment provider(s), who is to provide treatment to Dr. Corwin in a manner consistent with

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recommendations made within a report dated May 28, 2010 (to include an addendum thereto dated April 19, 2011) prepared by Dr. Barry Zakireh of the J.J. Peters' Institute, and then commences securing treatment from the Board approved provider(s). Finally, while respondent may provide "short term" medical care to female patients provided that he is accompanied by a Board approved chaperone, he is precluded from providing any "long term" care to female patients. We set forth below a summary of the procedural history of this matter, and the basis for the conditions that we herein impose upon any resumed practice by respondent.

The background of this matter is fully set forth within two prior Orders of the Board entered on March 15, 2010 and on May 12, 2010, both of which are appended as Exhibits hereto (Exhibit "A" and Exhibit "B" respectively) and incorporated herein by reference. Briefly summarized, Dr. Corwin came to the attention of the Board after he was convicted, on March 3, 2008, in Municipal Court in Union County of the disorderly persons offense of "offensive touching." The municipal court action against Dr. Corwin had been pursued by D.H., who saw Dr. Corwin for an independent medical evaluation on September 27, 2005. D.H. made allegations that Dr. Corwin had committed an assault on her during the course of that evaluation by rubbing her stomach, putting his arms around her neck, kissing her neck and stroking her face. Dr. Corwin was found guilty in Municipal Court following a three day bench trial.

The Attorney General thereafter filed an administrative complaint against Dr. Corwin based on the Municipal Court conviction. While Dr. Corwin denied (both in the Municipal Court proceeding and throughout the pendency of the administrative proceeding) that he engaged in any inappropriate conduct, he agreed to the entry of a Board Order (the March 15, 2010 Order) wherein the Board found that his conviction in Municipal Court of having violated N.J.S.A. 2C:33-4(b) (the disorderly persons offense of offensive touching) constituted the conviction of an offense relating adversely to the practice of medicine, and thus a basis for disciplinary action by the Board. Based on those findings, the Board suspended Dr. Corwin's license for a period of one year, the entirety of which was stayed to be served as a period of probation, provided that Dr. Corwin complied with all conditions and terms set forth within the Board's Order. Those conditions included a requirement that Dr. Corwin treat female patients only if accompanied by a Board approved chaperone; that he submit to a psychosexual evaluation at the Joseph J. Peters' Institute; that he complete a course in professional boundaries; and that he be assessed costs totaling approximately $17,000.

Less than two months after the entry of the March 15, 2010 Order, the Attorney General filed a motion to enforce litigant's rights based on allegations that Dr. Corwin violated the express terms of the agreed upon Order by having continued to treat female patients without a Board approved chaperone being present.

Following a hearing before the Board, a second Order was entered on May 12, 2010 wherein we found that Dr. Corwin had indeed violated the terms of the March 15, 2010 Order by treating female patients without a Board approved chaperone being present. Based on that violation, Dr. Corwin's license was actively suspended for an indefinite term, with the suspension to continue until further Order of the Board. The May 12, 2010 Order provided that Dr. Corwin could seek reconsideration of the matter and to have the suspension vacated or stayed upon the Board's receipt of a report from the Joseph J. Peters' Institute detailing findings and recommendations made upon completion of a comprehensive psychosexual evaluation (as had been a requirement of the March 15, 2010 Order). The Board specifically reserved the right to impose conditions or limitations on any further practice of medicine by Dr. Corwin following receipt and review of the required report.

Subsequent to the entry of the May 12, 2010 Order, the Board received a confidential eleven page report from Barry Zakireh, Ph.D., of the Joseph J. Peters Institute, dated May 28, 2010, and an addendum thereto dated April 19, 2011, detailing the results of a comprehensive psychosexual evaluation of respondent that Dr. Zakireh conducted and including Dr. Zakireh's recommendations for further treatment and practice limitations.[1]

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[1] Although Dr. Zakireh's initial report was dated May 28, 2010, the report was not in fact received by the Board until September 13, 2010. At that time, Dr. Corwin's prior counsel

Dr. Zakireh's report detailed findings that he made following his evaluation, and included synopses of his interviews with Dr. Corwin, results of psychological testing which he performed upon Dr. Corwin, risk assessments made and diagnostic impressions. At the conclusion of his report, Dr. Zakireh opined that "Dr. Corwin's risk level would be best described as in the low range in terms of potential for sexual misconduct in the future."[2] Dr. Zakireh further opined that "this level of risk can be remedied and lowered considerably by the measures [recommended within the report]," which included:

1) that "Dr. Corwin be required to receive individual or group counseling for a flexible period with a designated professional or

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requested that the Board defer considering whether to reinstate Dr. Corwin's license, so as to allow Dr. Corwin to submit additional psychosexual reports that respondent had independently secured. On or about April 7, 2011, Dr. Corwin provided the Board with a copy of an independent report prepared by Philip H. Witt, Ph. D. (see footnote 3, infra).

[2] The psychosexual evaluation reports prepared by both Dr. Zakireh and Dr. Witt are considered by the Board to be confidential health care records, protected by both provider-patient privilege and federal and state laws and regulations, as those reports include detail regarding psychological testing performed and diagnoses made, as well as personal and intimate information gleaned from interviews that clearly falls within the sphere of individual privacy. We find it necessary, however, to cite herein to Dr. Zakireh's specific overall assessment of Dr. Corwin's risk level and to his treatment recommendations, in order to demonstrate that Dr. Zakireh's report does provide bedrock support for our conclusion that Dr. Corwin can presently be safely reinstated to the practice of medicine in New Jersey, and to demonstrate a basis for the chaperoning and treatment requirements that are imposed herein. While doing so, we continue to assert that all other portions of the report(s) are strictly confidential and not part of the public record herein.

an agency that has demonstrated specialty in providing treatment and counseling to professionals with a history of inappropriate sexual behavior or sexual offending." The treatment would be "intended to address issues specific to [Dr. Corwin] and beyond the particular circumstances that placed him at risk or triggered attempted sexual involvement with patients."

2) that Dr. Corwin "receive treatment specific to addressing his illegal sexual behavior. Such treatment should continue in the context of individual therapy involving similar offenders, use cognitive-behavioral strategies and address ... victim empathy, ... accountability, ... cognitive restructuring ... [and] relapse prevention."

3) that "treatment should also evaluate and address issues related to history of minor and possibly reactive maladaptive personality characteristics leading to professional interpersonal difficulties and impulsive or inappropriate behavior at work. Evaluation for and/or use of psychotropic interventions is also indicated."

4) that treatment be "documented and reports sent to the [Board] on a quarterly basis...".

5) that Dr. Corwin "be required to complete at least 15-30 hours of training in ethics of medical practice ..."; and

6) that "in case of any further formal or informal complaints involving Dr. Corwin, he should be referred back to the Joseph J. Peters Institute for further evaluation to assess his need for more intensive services."

Within the April 19, 2011 addendum, Dr. Zakireh restated all of the above treatment recommendations, and then addressed the issue whether he perceived a need for the Board to require Dr. Corwin to be accompanied by a female chaperone when treating female patients. Dr. Zakireh opined that:

"1. Dr. Corwin should ideally not treat female patients in long-term psychotherapy, medication management or counseling.

2. At the discretion of the Board, he may be permitted to conduct above practices on relatively short-term basis (e.g., evaluations or medication management), provided that he is accompanied by a chaperone during such sessions or

activities."

Dr. Corwin appeared before a Committee of the Board on April 27, 2011, and then offered testimony in support of his request for reinstatement of license. When appearing before the Board Committee, respondent testified that he has retired from clinical practice of medicine, and represented that he has no intention of resuming medical practice (respondent made the same representation in a letter to the Board's Executive Director dated April 7, 2011). Dr. Corwin does seek to have his license reinstated, as he "want(s) to have closure on this matter." Respondent continues to deny (as he did at the time that the March 15, 2010 Order was entered) that he did anything inappropriate when treating patient D.H.[3]

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[3] In addition to Dr. Corwin's testimony, Dr. Corwin supplied the Board with a second confidential report of findings made following an independent psychosexual evaluation (that respondent unilaterally elect to secure) conducted by Philip H. Witt, Ph.D., on September 24, 2010 (Dr. Corwin submitted Dr. Witt's report by way of a letter dated April 19, 2011). We have reviewed Dr. Witt's report, and are cognizant that Dr. Witt does not believe that the treatment recommendations that were made by Dr. Zakireh would be productive (that is, Dr. Witt does not perceive a need for Dr. Corwin to receive any treatment presently).

We cannot resolve the disparate recommendations that were made by Dr. Zakireh and Dr. Witt, however we have elected to rely upon those findings and recommendations that were made by Dr. Zakireh. In doing so, we point out that both our March 15, 2010 and May 10, 2010 Orders specifically required the psychosexual evaluation to have been conducted at the Joseph J. Peters Institute, that Dr. Corwin did not seek approval from the Board to have an evaluation conducted by Dr. Witt, and that Dr. Witt's report apparently is a revised report that was amended to remove

When appearing on April 27, 2011, respondent testified that he was aware of the treatment recommendations that had been made by Dr. Zakireh, however he conceded that he had not in fact followed any of those recommendations. Dr. Corwin then suggested that he believed that Dr. Zakireh made specific treatment recommendations not because he had reached any conclusion or finding that Dr. Corwin would present a danger to any female patient, but rather because he felt compelled to do so solely based on Dr. Corwin's Municipal Court conviction.

Upon review of available information and consideration of Dr. Corwin's testimony, we are satisfied that good cause exists to presently conditionally reinstate respondent's license to practice medicine in the State of New Jersey. In order to protect the public health, safety and welfare, we fully adopt and incorporate herein all recommendations made by Dr. Zakireh, to include his treatment recommendations and his recommendations for the imposition of chaperoning requirements and prohibitions against provision of "long-term" care to any female patient(s).[4]

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certain recommendations that Dr. Witt had initially made to which Dr. Corwin objected. Additionally, given that this Board's paramount obligation is to protect public health, safety and welfare, we find it prudent to adopt Dr. Zakireh's recommendations, as those were all made so as to lower any risks that may exist in any continued practice by Dr. Corwin.

[4] Given that Dr. Corwin has completed a Board approved boundaries course, we do not find it necessary to impose any additional course requirements, as had been suggested in paragraph 5 of Dr. Zakireh's recommendations.

As Dr. Corwin has not to date identified a proposed chaperone, nor yet followed any of the treatment recommendations that were made by Dr. Zakireh, the reinstatement of his license at this time is made conditionally. Specifically, Dr. Corwin shall not be allowed to resume any practice of medicine in New Jersey unless and until he identifies and secures Board approval for a treatment provider and begins receiving the mandatory treatment requirements imposed herein from a Board approved treatment provider.[5] Further, even upon securing that approval, Dr. Corwin shall not engage in any practice involving any female patient, unless and until he secures Board approval for a chaperone.

WHEREFORE, it is on this 28th day of Feb , 2012

ORDERED:

1. The license of respondent David M. Corwin, M.D., to practice medicine and surgery in the State of New Jersey is hereby conditionally reinstated, subject to his compliance with the terms and conditions ordered below. Notwithstanding the reinstatement herein effected, respondent shall not commence any practice of medicine in New Jersey until such time as he secures Board approval

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[5] Dr. Corwin was offered the opportunity (through Board counsel), prior to entry of this Order, to seek to identify and secure Board approval for treatment provider(s) and a designated chaperone. Had he done so, we were prepared to authorize Dr. Corwin to resume practice coterminously with the entry of this Order. Dr. Corwin, however, has declined to presently identify a chaperone or a treatment provider, and thus the Board cannot presently authorize him to resume the practice of medicine.

for a designated treatment provider (see paragraph 2 below) and commences securing the required treatment.

2. Prior to resuming any medical practice, respondent shall commence receiving treatment from a Board approved treatment provider(s), who shall be an individual with demonstrated specialty in providing treatment and counseling to professionals with a history of inappropriate sexual behavior or sexual offending. The proposed treatment provider(s) shall be provided with a complete copy of Dr. Zakireh's report and recommendations, and shall confirm in writing to the Board that he or she is able to provide all treatment that is recommended within said report, to include the following:

1) Dr. Corwin shall receive individual counseling for a period of at least one year, with counseling to address issues specific to Dr. Corwin and beyond the particular circumstances that placed Dr. Corwin at risk or triggered attempted sexual involvement with patients. After one year, treatment shall continue until such time as the treatment provider shall determine, in an exercise of his or her professional discretion and based on Dr. Corwin's progress in treatment, that further treatment is not required. At such time, the treatment provider shall submit a report to the Board recommending that treatment be discontinued, however treatment shall not in fact be discontinued until written approval to discontinue treatment is received from the Board.

2) Dr. Corwin shall receive treatment specific to addressing his prior inappropriate sexual behavior. Such treatment shall continue in the context of individual therapy involving similar offenders, use cognitive-behavioral strategies and address victim empathy,

accountability, cognitive restructuring and relapse prevention.

3) Treatment shall also evaluate and address issues related to any history of minor and possibly reactive maladaptive personality characteristics leading to professional interpersonal difficulties and impulsive or inappropriate behavior at work. Evaluation for and/or use of psychotropic interventions shall also occur.

4) Treatment shall be documented and written reports documenting Dr. Corwin's participation and progress in treatment shall be sent by the Board approved treatment provider to the Board on a quarterly basis.

5) In the event that there are any further formal or informal complaints involving Dr. Corwin's conduct, he is to be referred back to the Joseph J. Peters' Institute for further evaluation to assess his need for more intensive services.

3. Upon securing Board approval for a treatment provider and commencing the treatment required within paragraph 2 above, respondent may resume the practice of medicine in New Jersey. At said time, respondent may see, examine and/or provide treatment to male patients, but shall not see, examine and/or provide treatment to female patients unless he first complies with the requirements set forth in paragraph 4 below.

4. Respondent shall not see, examine and/or provide treatment to any female patient, unless he is accompanied at all such times by a Board approved chaperone. Respondent shall be required to nominate and secure written Board approval for any proposed chaperone(s) prior to seeing, examining and/or treating

any female patient. Any Board approved chaperone(s) shall be required to represent in writing that she will provide written quarterly reports to the Board attesting to Dr. Corwin's compliance with the conditions of this paragraph, and to make an immediate oral and written report to the Board in the event she receives any credible information that Dr. Corwin has seen, examined and/or treated any female patient at a time that she was not present.

5. Notwithstanding the authorization to provide care to female patients set forth within paragraph 4 above, respondent shall be prohibited from treating female patients for "long-term" psychotherapy, medication management or counseling. For purposes of this Order, "long term" shall mean any treatment that is reasonably anticipated to extend beyond, or in fact extends beyond, a period of sixty days.

6. In the event respondent engages in any medical practice prior to securing the required Board approval for a treatment provider and commences receiving treatment as required in paragraph 2 above, and/or engages in any practice involving any female patient other than in a manner consistent with the requirements of paragraphs 4 and 5 above, such conduct shall constitute a violation of this Order. Any violation of the terms of this Order shall be deemed to constitute "professional misconduct," and shall be expressly be recognized to be grounds to support the summary entry of an Order suspending or revoking respondent's medical license, and/or otherwise rescinding the

authorization herein granted to respondent to engage in any practice of medicine in the State of New Jersey.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: _____
Paul T. Jordan, M.D.
Board President

EXHIBIT
A

FILED

March 15, 2010
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:

DAVID M. CORWIN, M.D.
License No. 25MA04336100

ORDER

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") on October 29, 2009, upon the Attorney General's filing of an administrative Complaint seeking the imposition of disciplinary sanction against respondent David Corwin, M.D. The complaint was predicated upon respondent's conviction, following a bench trial in Municipal Court in Union, New Jersey, of having engaged in the disorderly persons offense of harassment, N.J.S.A. 2C:33-4(b).[1] The actions on which the conviction was based were found to have occurred during the course of an independent medical examination that Dr. Corwin performed

[1] The statute which respondent was convicted under provides as follows:

2C:33-4. Harassment. ... [A] person commits a petty disorderly persons offense if, with purpose to harass another, he:

...

(B) Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so.

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upon patient D.H. on September 27, 2005. Within the Administrative Complaint, the Attorney General alleged that grounds to suspend, revoke or otherwise sanction respondent existed based both on the fact of respondent's conviction (i.e., that the conviction was of an offense that involved moral turpitude and/or related adversely to the practice of medicine) and on the actions that respondent was found to have engaged in, which actions were alleged to constitute violations of the Board's sexual misconduct regulation, gross or repeated malpractice, professional or occupational misconduct, and/or failure to demonstrate good moral character.[2]

Respondent filed an answer to the complaint, wherein he admitted that he had been convicted and sentenced for the offense, but denied that he engaged in the acts which D.H. claimed constituted the offensive touching. Thereafter, the Attorney General filed a motion for summary decision in the matter, asking that the Board find no genuine issues of material fact and enter judgment on the Complaint. Respondent filed a brief in opposition to the motion, and the matter was scheduled for hearing on March 10, 2010. Respondent appeared at said hearing, represented by Gary L. Riveles, Esq. Deputy Attorney General Carla Silva appeared for complainant Paula Dow, Attorney General of New Jersey.

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[2] While the Complaint does not recite any specific actions of respondent during the course of the September 27, 2005 visit with D.H., it is generally alleged that during the course of that appointment, "respondent sexually touched D.H. with no medical purpose." Administrative Complaint, ¶3.

We initially entertained oral argument of counsel on the motion for summary decision. Ultimately, however, this matter was resolved prior to decision upon respondent's agreement to accept the entry of an Order including the findings set forth herein and the conditions and terms below. We note that all findings and conditions set forth herein were placed on the record, and that respondent, after being sworn, testified that he had considered and understood all of said findings and terms, that he had consulted with his attorney regarding the effect of the Board's entry of this Order, and that he expressly agreed to the Board's entry of an Order including said findings and terms.[3]

Findings

The Board finds that respondent was convicted, on March 3, 2008, following a bench trial in the Municipal Court of Union County, of violation of N.J.S.A. 2C:33-4(b), the disorderly persons offense of offensive touching. That conviction was affirmed, following a *de novo* review of the record, by the Superior Court of New Jersey, Law Division-Union County, on August 29, 2008, and again upheld on appeal by the Appellate Division on January 6,

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[3] Following respondent's acknowledgment that he agreed to the terms and conditions of this Order, Deputy Attorney General Silva moved for reconsideration by the Board, arguing that the penalty meted out was not sufficient to redress the conduct in which respondent was alleged to have engaged. We unanimously voted to deny the Attorney General's motion, based on our conclusion that the sanctions imposed herein are balanced and equitable, and will adequately protect the public health, safety and welfare.

2010.[4] The Board finds that respondent's conviction was of an offense relating adversely to the practice of medicine, and thus provides basis for the imposition of discipline pursuant to N.J.S.A. 45:1-2(f). In entering this Order, the Board is aware that Dr. Corwin denied all allegations against him when testifying under oath before the Municipal Court, that he continues to presently deny those allegations, and that his agreement to accept the conditions and sanctions imposed herein was made without admission on his part of any improper conduct.

Based on our independent review of the record, we are fully satisfied that the within resolution is adequately protective of the public, and that good cause exists for the entry of the within Order,

WHEREFORE

IT IS on this 15th day of March, 2010

ORDERED nunc pro tunc March 10, 2010:

1. The license of respondent David Corwin, M.D. to practice medicine and surgery in the State of New Jersey is hereby suspended for a period of one year, the entirety of which shall be stayed, subject to respondent's compliance with all conditions and terms herein.

2. Pending any further Order of the Board, respondent

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[4] Respondent was sentenced, following the Superior Court review, to complete sixty hours of community service, to pay a fine in the amount of $500 and costs in the amount of $30, and to pay a total of $125 in penalties.

shall see, examine and/or treat female patients only in the presence of a Board approved chaperone. Respondent shall be required to nominate and secure Board approval for any chaperone(s) within ten days of the date of entry of this Order, and any practice by respondent with female patients thereafter, other than in the presence of a Board approved chaperone(s), shall constitute a violation of the terms of this Order.

3. Respondent shall, within ninety days of the date of entry of this Order, submit to a comprehensive psychosexual evaluation, to be conducted by the Joseph J. Peters' Institute, or by such other entity that may be approved by the Board. Dr. Corwin shall fully authorize the Joseph J. Peter's Institute, or such other examining entity that may be approved by the Board, to prepare and submit an evaluation report to the Board. The report shall include, without limitation, detail of all findings and recommendations made upon evaluation of Dr. Corwin, and include a recommendation addressing whether a continuing need exists for a chaperone to be present when Dr. Corwin treats female patients.

4. The Board expressly reserves the right to take further actions, to include without limitation amending or imposing additional conditions and/or terms upon Dr. Corwin's practice, following the Board's review of the psychosexual report that is to be prepared in accordance with the terms of paragraph 3 above. Dr. Corwin may move to remove the condition that a chaperone be present whenever he treats a female patient, should the report

provide a basis for him to seek such relief.

5. Dr. Corwin shall, during the period of stayed suspension, complete a course, acceptable to the Board, in professional boundaries.

6. Any violation of any of the terms and conditions of this Order, to include without limitation any practice by respondent with any female patient outside of the presence of a Board approved chaperone, shall be grounds upon which the Board may activate the one year period of suspension that has otherwise been stayed herein.

7. Respondent is assessed costs in this matter, to include attorneys' fees in the amount of $2,281.50 and investigative costs in the amount of $14,774.31 (as detailed within, and supported by, attachments to the Certification of Deputy Attorney General Carla M. Silva dated January 21, 2010). Respondent shall pay said fees and costs, which total $17,025.81, in their entirety within thirty days of the date of entry of this Order, or pursuant to a schedule of payments (to include interest authorized by Court Rules) acceptable to the Board.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: Paul T. Jordan, M.D.
Paul T. Jordan, M.D.
Board Vice President

EXHIBIT
B

FILED

May 18, 2010
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS
Nunc Pro Tunc
May 12, 2010

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

In the Matter of:

DAVID M. CORWIN, M.D.
License No. 25MA04336100

ORDER ACTIVATING
SUSPENSION OF LICENSE

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") on April 27, 2010, upon the Attorney General's filing of a notice of motion to enforce litigant's rights. Therein, the Attorney General sought the entry of an Order activating a previously stayed suspension of the license of respondent David Corwin, M.D. The Attorney General's motion was predicated on claims that Dr. Corwin had treated female patients in his office, in violation of the express terms of an Order filed by the Board on March 15, 2010 requiring that he see, examine or treat female patients only in the presence of a Board approved chaperone.

The motion was considered by the Board on May 12, 2010. Respondent appeared at said hearing, represented by Michael J. Keating, Esq. Deputy Attorney General Carla Silva appeared for complainant Paula Dow, Attorney General of New Jersey. We then entertained oral argument of counsel on the motion, and considered testimony offered by Dr. Corwin.

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Upon review of the record[1], we conclude that cause exists to presently order the activation of the suspension of Dr. Corwin's medical license. There is no factual dispute in this matter. Respondent explicitly agreed, when he appeared before the Board on March 10, 2010, to the entry of a Board Order, including a term that he was only to see, treat or examine female patients in the presence of a Board approved chaperone (P-2). Respondent was sworn, listened while each term of the Order was read into the record, and then acknowledged his understanding of and agreement to the specified terms.[2]

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[1] Documents moved into evidence and/or considered by the Board are listed in the attached Appendix. With regard to P-6, we order that the identity of all individual patients thereon be protected. The names of any individual patients of Dr. Corwin that appear on P-6 thus should be redacted, and appear by initial only, on any copies of P-6 that may be made part of the public record.

[2] The Order memorializes that "all findings and conditions set forth herein were placed on the record, and ... respondent, after being sworn, testified that he had considered and understood all of said findings and terms, that he had consulted with his attorney regarding the effect of the Board's entry of this Order, and that he expressly agreed to the Board's entry of an Order including said findings and terms."

The two significant terms, for purposes of this motion, are the following:

> 2. Pending any further Order of the Board, respondent shall see, examine and/or treat female patients only in the presence of a Board approved chaperone. Respondent shall be required to nominate and secure Board approval for any chaperone(s) within ten days of the date of entry of this Order, and any practice by respondent with female patients thereafter, other than in the presence of a Board approved chaperone(s), shall constitute a violation

Respondent concedes that he continued to treat female patients after the ten day period to secure approval of a Board approved chaperone expired. He states, however, that he did so only if the female patient was seen in a group setting with a "significant other" present. Respondent's counsel argues that respondent did not intend to willfully or deliberately violate the Board's Order, but rather asserts that Dr. Corwin instead interpreted the Board's chaperoning requirement to apply only if he were to treat a female patient in a "one-on-one" setting.

We reject respondent's asserted interpretation as strained, unsupportable and contrary to the express language within the Order. The Board's Order made no distinction between various settings in which female patients might be seen, but instead imposed a blanket requirement that any such visits occur in the presence of a Board approved chaperone. The Order in no way suggests or implies that a "significant other" could substitute for a Board approved chaperone, or that the requirement that a chaperone be present whenever female patients are treated was limited to individual therapy sessions only.

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of the terms of this Order.

6. Any violation of any of the terms and conditions of this Order, to include without limitation any practice by respondent with any female patient outside of the presence of a Board approved chaperone, shall be grounds upon which the Board may activate the one year period of suspension that has otherwise been stayed herein.

Indeed, we point out herein that there are obvious reasons why a "significant other" would not be an appropriate substitute for a Board approved chaperone. A "significant other" would not have any reason to know anything about the allegations that led to the entry of the Board's chaperoning requirement. A Board approved chaperone, in contrast, would be fully familiar with the history of this matter, and would be expected to be sensitive and alert to any inappropriate conduct in which Dr. Corwin might engage. Additionally, a chaperone would be expected to be present through the entirety of any treatment session, whereas it is conceivable that a "significant other" in a group context might not be present during an entire session (that is, there may be occasions when the "significant other" is asked to leave the room or otherwise absent).

Our imposition of a chaperone requirement represented an interim measure designed to balance Dr. Corwin's interest in continuing to be able to maintain a full practice, to include all his patients, with our duty to protect the public health, safety and welfare.[3] Dr. Corwin's unilateral determination to disregard

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[3] When entering our prior Order, we required that Dr. Corwin secure a psychosexual evaluation at the Joseph J. Peters' Institute within ninety days. We expressly required that the report of that evaluation include a "recommendation addressing whether a continuing need exists for a chaperone to be present when Dr. Corwin treats female patients." We reserved our right to amend or impose additional conditions or limitations on Dr. Corwin's practice following receipt and review of the report, and also stated that Dr. Corwin could seek elimination of the chaperoning

the terms of our Order has stymied and frustrated our effort to assure the safety and well being of his female patients.[4]

Finally, we point out that, even were we to assume for sake of argument that respondent's interpretation of the Order might be entitled to some deference, the manner in which he unilaterally acted was not. Given the express language of the Order that any practice with female patients, other than in the presence of a Board approved chaperone, would constitute a violation of the Order, respondent should have sought and first secured explicit written approval from the Board before continuing to treat any female patient without a chaperone. His failure to have done so reflects a contumacious disregard for the authority of the Board.[5]

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requirement "should the report provide a basis for him to seek such relief."

[4] The Board has not found it necessary to make any findings as to whether Dr. Corwin's claim that he has seen female patients only when accompanied by a "significant other" is truthful, as we instead have concluded that, even accepting that claim, his actions constitute a violation of the terms of our March 15, 2010 Order. We note, however, that Dr. Corwin's appointment book (P-6) often lists individual patients by last name alone, or by last name and first initial (there is only one entry in the appointment book, for April 1, 2010, that lists a patient and a spouse ("1:00 - 1:45, C., R. and spouse"), and there is thus no way that the appointment book alone provides any support for his testimony.

[5] Respondent has suggested that his letters to the Board dated March 24, 2010 could be read as seeking clarification from the Board on the interpretation of the Order. We reject that

Conclusion

We conclude that respondent plainly violated the requirements of paragraph two of the Board's March 15, 2010 Order by continuing to see, examine and/or treat female patients after the ten day period for him to secure Board approval for a chaperone expired. The Board's Order expressly stated that any violation of the Order, to include the very violation which occurred, "shall be grounds upon which the Board may activate the one year period of suspension that has otherwise been stayed." Based thereon, we presently order that the stay of the suspension of respondent's license is to be rescinded, and the suspension shall instead be activated, and take full force and effect, immediately.

The suspension of Dr. Corwin's license shall continue until a further Order of the Board is entered. We will reconsider whether to allow respondent to resume the practice of medicine during the period of suspension (that is, whether to stay, for a

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contention, as the letter simply appears to communicate a decision by Dr. Corwin not to secure a chaperone and not to treat female patients pending further Order of the Board (Dr. Corwin stated that "with respect to the chaperone that will be required, I have decided that I will not see any female patients in my office who are alone for the three month period or until such time as this is approved by the Board.")

Additionally, there is uncontroverted evidence in the record that respondent was contacted by Colleen Callahan-Feldmann on April 14, 2010, and that he was then "informed" "that per the March 15, 2010 Order, he is not to see female patients without a Chaperone." Respondent's manifest disregard for the authority of the Board is evinced by the fact that he continued to see female patients even after his conversation with Ms. Callahan-Feldmann.

second time, the one year suspension of license we previously ordered) and, if so, whether to impose conditions or restrictions on such practice, only upon receipt of, and upon an opportunity to fully review and consider, the previously required report from the Joseph J. Peters' Institute.

Having concluded that basis to activate the suspension of respondent's license exists, and finding that good cause exists for the entry of the within Order,

IT IS on this 18th day of May 2010

ORDERED nunc pro tunc May 12, 2010:

1. The license of respondent David Corwin, M.D. to practice medicine and surgery in the State of New Jersey is hereby suspended, effective immediately. The suspension shall remain active until such time as further Order of the Board may be entered. Respondent shall make appropriate arrangements to transfer care of his patients to other licensed and qualified physicians, in order to ensure continuity of care for all his patients.

2. The Board shall reconsider this matter, and then determine whether cause exists to stay all or any portion of the remainder of the period of suspension and, if so, whether to impose conditions or limitations on continued practice by Dr. Corwin, upon the Board's receipt and review of the report and recommendations of the Joseph J. Peters' Institute. The parties are advised that,

upon the Board's receipt of the report, this matter will be scheduled for reconsideration by the Board, on the papers, at the next regularly scheduled monthly meeting of the Board, provided that the report is received not later than fourteen days before the scheduled date of the meeting.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: Paul T. Jordan, M.D.
Paul T. Jordan, M.D.
Board Vice President

APPENDIX

Documents in Evidence

P-1 Certification of William Roeder, Executive Director of the Board, dated April 27, 2010 (authenticating two letters that were received by the Board from Dr. Corwin, which letters were marked as Exhibits P-3 and P-4, respectively).

P-2 Order filed by the Board In the Matter of David M. Corwin, M.D., on March 15, 2010.

P-3 Letter dated March 24, 2010 from David Corwin, M.D., to Peggy Harris, Director, Public Filings, New Jersey Board of Medical Examiners.

P-4 Letter dated April 14, 2010 from David Corwin, M.D., to Peggy Harris, Director, Public Filings, New Jersey Board of Medical Examiners

P-5 Certification of Colleen Callahan-Feldmann, Customer Service Representative for the Board, dated April 27, 2010 (certifying to content of telephone conversation between Ms. Callahan-Feldmann and Dr. Corwin on April 14, 2010).

P-6 "Date Book for dcorwin," for dates between 3/25/10 and 5/8/10 (the book appears to include a log of patient appointments for said dates).

Additionally, when responding to the Attorney General's motion, respondent filed a letter brief and an Affidavit of David Corwin dated May 4, 2010. Although it appears that Dr. Corwin's Affidavit was not formally moved into evidence, the Affidavit was considered, along with the testimony offered, in the Board's deliberations on this matter.

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NOTICE OF REPORTING PRACTICES OF BOARD REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a license,
(2) Which censures, reprimands or places on probation,
(3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license(and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.