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NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS
Nunc Pro Tunc
December 27, 2012

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

In the matter of:

FREDERICK M. WEINTRAUB, D.P.M.

ORDER OF TEMPORARY LICENSURE SUSPENSION

This matter was opened before the New Jersey State Board of Medical Examiners on December 14, 2012, upon the filing of a two Count Verified Administrative Complaint by Jeffrey S. Chiesa, Attorney General of New Jersey, by David M. Puteska, Deputy Attorney General (a certification of Attorney General Puteska, and a supporting brief, were also filed in support of the application for temporary suspension). In Count 1, the Attorney General alleges that, during the course of an office visit on October 24, 2012, respondent podiatrist Frederick Weintraub, D.P.M., groped and fondled the breasts of patient L.S.C. Respondent was arrested the following day and has been charged with one count of criminal sexual contact in violation of N.J.S.A. 2C:14-3(b), a fourth degree crime. In Count 2, it is further charged that respondent, on multiple occasions, engaged in inappropriate behaviors with staff members of Spectrum for Living Development, Inc. ("Spectrum").[1] In

[1] Spectrum describes itself generally as a "New Jersey not-for-profit organization" which "helps adults with developmental disabilities attain their maximum potential by providing quality housing and clinical services in state-of-the-art facilities and in the homes of families

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one instance, it is alleged that respondent massaged the neck and then touched the breasts of a female apartment counselor identified as L.C. Respondent is also charged with having made multiple lewd and inappropriate comments of a sexual nature to three other female apartment counselors, identified by initial as N.M., M.M. and J.S. Spectrum notified respondent on June 12, 2012 that his conduct was being investigated and that his services at Spectrum (where he had been providing podiatric care to residents) had been terminated effective immediately.

Respondent filed a written Answer to the Complaint on December 20, 2012, wherein he admitted to having "inadvertently" touched the breasts of patient L.S.C. and generally denied the remainder of the allegations within the Complaint. This matter was scheduled for a hearing on the application for temporary suspension on December 27, 2012, which hearing was held before a Hearing Committee of the Board comprised of Board members George Scott, D.P.M., D.O., Sindy Paul, M.D. and Heather Howard. Senior Deputy Attorney General Steven Flanzman served as counsel to the Committee.

For the reasons set forth in greater detail below, the Hearing Committee concludes that the Attorney General has met his statutory burden of palpably demonstrating that Dr. Weintraub's

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caring for a disabled loved one." See http://spectrumforliving.org. Prior to June 12, 2012, respondent provided podiatric services to developmentally disabled residents at Spectrum facilities.

continued practice of podiatry presents clear and imminent danger to the public health, safety and welfare. The conclusion is fully supported by the evidence before the Committee that Dr. Weintraub has, on two separate occasions, touched the breasts of his podiatric patients[2] and that, in each instance, the touchings were entirely unrelated to the provision of podiatric care. The conclusion is further buttressed by the additional evidence supporting the charges that Dr. Weintraub repeatedly made lewd and sexually-harassing comments to employees of Spectrum, which comments were at times made in the presence of the residents that he was on site to treat. We find that the comments, at a minimum, created a charged and oppressive working environment for the counselors to whom the comments were directed, which in turn had the potential to adversely effect respondent's provision of care to residents.

Based thereon, we have ordered that Dr. Weintraub's license to practice podiatry is to be temporarily suspended, effective immediately. We will allow Dr. Weintraub to move for reconsideration of the action taken - specifically, for reconsideration whether the public could be adequately protected

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[2] As will be further detailed below, it was established during Dr. Weintraub's testimony at the temporary suspension hearing that Dr. Weintraub had provided podiatric care to one of the four counselors at Spectrum, L.C., prior to the incident where it is alleged that he massaged her neck and touched her breasts. Specifically, Dr. Weintraub testified that several weeks before that incident, he examined, diagnosed and treated L.C., and he thus clearly established a doctor-patient relationship with her prior to the incident.

were he to be allowed to practice with chaperoning and/or monitoring requirements - but only if he first secures a comprehensive psycho-sexual evaluation to be performed by an assessment entity pre-approved by the Board with recognized expertise in evaluating and assessing physicians charged with having engaged in sexually abusive behavior, and only if a written report of findings and recommendations made following that evaluation is first presented to the Board for review. Set forth below is a more detailed summary of the procedural history of this matter and of the evidence and testimony that was offered at the temporary suspension hearing, followed by the findings that the Hearing Committee has made to support the entry of this Order.

Procedural History

As noted above, the Attorney General filed his Complaint against respondent Weintraub on December 14, 2012, along with a Certification of Deputy Attorney General Puteska and a brief in support of the application for the temporary suspension of Dr. Weintraub's license. An Order to Show Cause was simultaneously entered and filed on December 14, 2012, requiring respondent to appear before a Committee of the Board on December 27, 2012. Within the Order to Show Cause, Board President Scott exercised his executive authority as agency head to establish and empower a Hearing Committee of the Board to hear this matter and consider the evidence presented, and authorized the Committee to exercise the

authority vested in the Board pursuant to N.J.S.A. 45:1-22. The Order to Show Cause provided that any Order entered by the Hearing Committee was to be fully effective upon entry, and that any action taken by the Hearing Committee would be subject to review by the full Board at the Board's next meeting (presently scheduled for January 9, 2013). Finally, the Order specified that such review would be limited to consideration of the hearing record and that following review, the Board is to vote to adopt, reject or modify any action taken and/or Order entered by the Hearing Committee.

Respondent filed an Answer to the Complaint on December 21, 2012, along with a Certification of respondent Frederick Weintraub and a brief in opposition to the application for the temporary suspension of respondent's license. Within his responsive papers, respondent admitted to "touch[ing] L.S.C. on the upper torso and lift[ing] upwards" (after having informed L.S.C. that he "thought she had gained some weight") and to having "inadvertently touch[ed] the bottom of the patient's breast with the tip of my finger." Certification of Frederick M. Weintraub, ¶14, See also Answer to Complaint, ¶13. Respondent denied intentionally touching or lifting L.S.C.'s breast, and denied the remainder of the allegations of misconduct during his visit with L.S.C. Respondent also denied all of the allegations made in Count 2 of the Complaint focused upon alleged inappropriate conduct with staff members at Spectrum.

A hearing on the application for the temporary suspension of respondent's license was held before the Board's Hearing Committee on December 27, 2012. At said hearing, Attorney General David Puteska appeared for complainant, and respondent appeared represented by Brach Eichler, L.L.C., Keith Roberts, Esq. appearing.

Evidence presented at Hearing

The Attorney General supported his application for the temporary suspension of respondent's license with the following documents (to include two video-taped statements), all of which were moved into evidence without objection:

> P-1 Video-taped statement of patient L.S.C., taken by the Northvale Police Department on October 25, 2012.
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> P-2 Video-taped statement of Frederick Weintraub, D.P.M., taken by the Northvale Police Department on October 25, 2012.
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> P-3 Criminal Complaint in State of New Jersey v. Fred M. Weintraub, Number 0240-W-2012-000088, charging respondent with having committed criminal sexual contact by committing an act of sexual contact with L.S.C. in violation of N.J.S.A. 2C:14-3(b).
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> P-4 Letter dated June 12, 2012 from Carmine G. Marchionda, President, CEO of Spectrum, to Dr. Frederick Weintraub (advising Dr. Weintraub of Spectrum for Living's "intentions to discontinue services effective immediately.")
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> P-5 Certification of Carmine Marchionda, dated October 19, 2012, certifying to authenticity of "Dr. Weintruab investigative files" (a document detailing statements made by N.M. in an interview with Laura Mazzella and Sharyn Matthews, respectively the Director and Vice President of Human Resources at Spectrum, conducted at Spectrum's Closter Apartments on June 14, 2012, was

attached to Mr. Marchionda's certification).

P-6 Certification of M.M., dated October 19, 2012 (certifying to truthfulness of statements made by M.M., as set forth in a document detailing statements made by M.M. in an interview with Laura Mazzella and Sharyn Matthews, respectively the Director and Vice President of Human Resources at Spectrum, conducted at Spectrum's River Vale Apartments on June 11, 2012).

P-7 Certification of J.S., dated October 19, 2012 (certifying to truthfulness of statements made by J.S., as set forth in a document detailing statements made by J.S. in an interview with Laura Mazzella and Sharyn Matthews, respectively the Director and Vice President of Human Resources at Spectrum, conducted at Spectrum's River Vale Apartments on June 11, 2012).

P-8 Certification of L.C., dated October 19, 2012 (certifying to truthfulness of statements made by L.C., as set forth in a document detailing statements made by L.C. in an interview with Laura Mazzella and Sharyn Matthews, respectively the Director and Vice President of Human Resources at Spectrum, conducted at Spectrum's River Vale Apartments on June 8, 2012).

Each of the two video-taped statements was played in its entirety for the Hearing Committee. Within her statement, L.S.C. stated that she visited Dr. Weintraub's office on October 24, 2012 for the purpose of obtaining podiatric care - namely, to have her toenails clipped in preparation for her daughter's wedding. L.S.C. recounted that, at approximately 3:15 p.m., Dr. Weintraub called her into his office. She entered the office, Dr. Weintraub followed behind her and Dr. Weintraub shut the office door. L.S.C. clearly recounts that Dr. Weintraub then told her to "open her jacket," and that when she did, Dr. Weintraub placed both his hands under her breasts, and grabbed and juggled her breasts. L.S.C.

exclaimed "what the fuck are you doing" to Dr. Weintraub, after which Dr. Weintraub opened the office door and yelled out to his receptionist, Stefanie, in a joking manner, "I checked her out, she is okay." L.S.C. repeatedly explained that she was "overwhelmed" by Dr. Weintraub's conduct, but she stayed because she needed to get her toenails clipped for the wedding. She did not engage Dr. Weintraub in conversation and essentially told Dr. Weintraub to "hurry up" and finish her toenails. L.S.C. stated that prior to her leaving the office, Dr. Weintraub asked Stefanie to get four jars of aloe cream to give to L.S.C. As there were only two jars, he asked Stefanie to order more, and he told L.S.C. that he would give her two more jars on her next visit. L.S.C. stated that she believed Dr. Weintraub gave her the creams to "cover up what he did."

Dr. Weintraub's own statement to the police is compelling - most markedly for the reason that during the course of the interview, he admitted that he placed his hands on L.S.C.'s breasts, and admitted that his doing so was not at all related to his podiatric treatment of L.S.C. According to Dr. Weintraub, after L.S.C. entered the examination room, they started having a conversation about her weight. Dr. Weintruab told the interviewing police officer that he then did something "silly" which he didn't think was a "big deal" - namely, he told L.S.C. that her problem was that she had "large boobs," placed his hands underneath her

breasts and lifted her breasts up. In the video-taped statement (and in his testimony before the Hearing Committee), Dr. Weintraub demonstrated that his arms were held out and bent at approximately 90 degree angles at the elbows, with fingertips on both hands outstretched and touching each other, and described moving his hands in an upward motion. Later during the police interview, Dr. Weintraub stated that he put his hands on L.S.C.'s waist and then lifted her breasts, and described his actions as a "stupid," "spur of the moment" thing.

Following the interview, Dr. Weintraub was arrested and charged with having engaged in criminal sexual contact, in violation of N.J.S.A. 2C:14-3(b) (see exhibit P-3). The criminal complaint alleges that Dr. Weintraub committed criminal sexual contact "by committing an act of sexual contact with L.S.C., for the purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade L.S.C., using physical force or coercion, specifically by entering the exam room of his medical practice located at Alpine Northern Valley Podiatry ... and placed his hands on the shirt of L.S.C. fondling her breasts without her consent."

The remainder of the Attorney General's evidence focused on the conduct that Dr. Weintruab engaged in with four female staff members of Spectrum, before he received written notice on June 12, 2012 that he was to discontinue providing any further podiatric services to residents of Spectrum (P-4). The termination letter,

written by Carmine Marchionda, President and CEO of Spectrum, advised Dr. Weintruab that Spectrum's discontinuation of his services "was taken swiftly after receiving multiple complaints regarding your alleged inappropriate behavior while visiting our sites and providing services to our residents."

Within her sworn statement, L.C. detailed an incident when Dr. Weintraub touched her breasts in an entirely unsolicited and unwelcomed manner (P-8). Specifically, L.C.'s statement recounts that approximately two months prior to June 8, 2012 (the date on which she was interviewed by Laura Mazzella, Director of Human Resources at Spectrum and Sharyn Matthews, VP of Human Resources at Spectrum):

> [L.C.was] sitting in [a resident's] apartment in the living room when Dr. Weintraub entered without knocking. [Dr. Weintraub] came up behind [L.C.] and put his hands on her neck and shoulders and began massaging them, telling her how tense she was. [L.C.] was not uncomfortable because he is a doctor, and he has always been so nice her (sic). While he was rubbing her shoulders, he slipped his hands into her shirt and briefly touched her breasts, taking his hands out again and making a comment to the effect of "These are nice." [L.C.] was shocked. She did not say anything. [Dr. Weintraub] went into [the resident's] bedroom where she was in her recliner and cut her toenails. Nothing else was said.

While L.C. stated that there were no further incidents with Dr. Weintraub, she pointed out that she thereafter "made sure that she wasn't around" "whenever she knew [Dr. Weintruab] was coming."

The three additional statements (each of which was also

given in the presence of Ms. Mazzella and Ms. Matthews) all detail instances where Dr. Weintraub is alleged to have made inappropriate comments of a sexual nature to staff working at Spectrum's assisted living facilities. Those comments include his having said to N.M., while walking behind her in a courtyard, "oh my gosh, you have a nice round booty;" (P-5); his having made comments on three to four occasions to M.M. that had "sexual innunendo" and which were generally described as being a "play on words" with "double meanings;" (P-6); and his having made many inappropriate comments to J.S. with "innuendos" "regarding her relationship with her husband," his having told J.S. that he was "horny," and his having told J.S. on one occasion (when she was sitting on a resident's bed supervising Dr. Weintraub's services) that "you look good on that bed." (P-7). Both M.M. and J.S. stated that Dr. Weintraub made some of the comments at times that he was providing care to or otherwise in the presence of disabled residents of Spectrum facilities.[3]

Respondent elected to testify before the Committee, first addressing the allegations regarding his conduct at Spectrum and

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[3] We note that none of the three Spectrum employees who reported inappropriate comments stated that they felt threatened or uncomfortable with Dr. Weintraub. N.M. thus stated that she "did not feel uncomfortable with the comment, but thought it was 'weird'"; M.M. stated that she "did not feel that Dr. Weintraub's comments to her were of a sexually harassing nature, but she felt his comments were inappropriate in front of the residents;" and J.S. stated that she "did not report the comments that Dr. Weintraub (sic) because she took what he was saying as a joke and didn't really know how to react," and "didn't want to make a big deal out of it."

then addressing the October 24, 2012 incident involving L.S.C. Respondent testified that he provided podiatric services to Spectrum residents for approximately 2 ½ years prior to June 2012, and stated that he had a good relationship with both staff and patients. Prior to receiving notice from Spectrum, he was not aware that there had been any complaints against him or any investigation of his conduct. Dr. Weintraub characterized what happened at Spectrum as a "witch hunt," claiming that he was totally shocked by his termination and stating that he thought everyone there was happy.

Dr. Weintraub testified on direct examination that he did not know who N.M. or M.M. were. On cross examination, he conceded that while he didn't recall N.M., he recalled an incident where he might have made a comment to a staff member in Closter to the effect of "you have a very strong body," and he suggested that the individual to whom the comment was made must have misheard his comment. With regard to M.M., Dr. Weintraub recalled knowing an individual named "Mary," but did not recall making any sexual comments to "Mary" other than perhaps some comment made in a joking manner.

Dr. Weintraub testified that he knew J.S. and stated that she was the staff member at Spectrum with whom he had the most contact. Dr. Weintraub characterized his relationship with J.S. as "good" and stated that they were both "relaxed." Dr. Weintraub

testified that he did not recall making any statements of the nature set forth in J.S.' statement. He further testified that if he had joked with J.S., she would have joked right back with him, and that any such comments would have been "totally innocuous."

With regard to L.C., Dr. Weintraub conceded to having some recollection of her and the alleged incident referred to in her statement. Dr. Weintraub testified that, a few weeks prior to the alleged incident, L.C. had told him that she had a problem with her heel. Dr. Weintraub told L.C. that he thought he could help her, and gave her a treatment (injection) on her heel. Dr. Weintraub testified that he did not charge L.C. because he knew she had no insurance. On additional questioning by Committee members, Dr. Weintraub further detailed that he examined L.C. (to include asking her about the pain she felt, palpating her feet, and asking if she had allergies prior to giving an injection) and made a diagnosis to include plantar fasciitis. He stated that the injection into her heel was made with a 30 gauge needle, and injected substances included B12 and lidocaine. Dr. Weintraub conceded that he didn't prepare or keep any patient records, and that he did not bill L.C. for the treatment.[4]

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[4] While the allegations in the Complaint focus upon alleged sexually abusive conduct by Dr. Weintraub rather than directly upon any patient care he provided, we point out that Dr. Weintraub's testimony would support a finding that he clearly violated standards of practice and requirements of Board regulations by failing to maintain patient records for L.C. See N.J.A.C. 13:35-6.5.

Moving to L.C.'s allegations of his having massaged her, touched her breasts and exclaimed "these are nice," Dr. Weintraub stated that the incident occurred when he saw L.C. a few weeks later and then asked her how she was feeling. Dr. Weintraub recalled that L.C. told him that her foot was much better. Dr. Weintraub admitted that he then put his hand on L.C.'s neck and "rubbed" or "massaged" her neck for " a second," which he described as having been done as a "friendship kind of thing." Dr. Weintraub conceded that he may have then told L.C. that she was tense, however he specifically denied placing his hand into L.C.'s shirt, denied that he fondled her breasts and denied having said "these are nice." Dr. Weintraub instead states that after rubbing L.C.'s neck, he told L.C. that he was going to treat a patient and left.

Finally, with regard to the allegations involving L.S.C., Dr. Weintraub continued to maintain in his testimony before the Committee that he did not intend to touch L.S.C.'s breasts. He instead claimed that he and L.S.C. had been having a conversation regarding her weight during which he made a comment to L.S.C. to the effect that "this is carb country," referring generally to her upper torso. Dr. Weintraub claimed that he placed his hands on her torso in order to make his point (generally regarding the carbohydrates), and that he then moved his hands upwards. He claimed that any touching of L.S.C.'s breast was "basically an

accident."[5] Dr. Weintraub conceded that he offered L.S,C. jars of cream for both her daughter and for L.S.C. to treat dry feet. Dr. Weintraub testified that Stefanie (his receptionist) entered the room after the incident, made a comment to the effect of "are you bothering my friend L.S.," and that L.S.C. did not say anything to Stefanie. Dr. Weintraub repeatedly claimed that L.S.C. did not appear mad at the time of the visit about what had occurred.

Dr. Weintraub also stated that he felt he had some qualifications in nutrition, as he had previously extensively studied issues related to fat and carbohydrates. Dr. Weintraub conceded, though, that he is not a licensed nutritionist. When further questioned on cross-examination, Dr. Weintraub claimed that his comments to L.S.C. were made generally to attempt to explain to her that fats were not what was causing her weight problem but rather that "carbs" were her problem.

Dr. Weintraub denied telling L.S.C. that her weight

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[5] In his Certification submitted in opposition to the application for temporary suspension, Dr. Weintruab explained the event as follows:

> After following L.S.C. into the examination room, I informed L.S.C. that I thought she had gained some weight. I touched L.S.C. on the upper torso and lifted upwards. I stated words to the effect that 'this is carb country' and that the weight gain affects the entire body including the feet. I absolutely did not intentionally touch or lift the patient's breasts. However, I did inadvertently touch the bottom of the patient's breast with the tip of my finger. Certification of Frederick M. Weintraub, ¶14.

problem was related to her "large boobs," despite his having made that statement to the Northvale police.[6] He testified that the whole incident lasted for not more than 15 seconds and that he went up and down with his hands for perhaps a second.

Findings

The evidence before the Committee supports findings that respondent has engaged in abusive, inappropriate and sexually exploitative behavior with two podiatric patients. Focusing on patient L.S.C., the Attorney General has presented convincing and compelling evidence to the Committee supporting the allegations that Dr. Weintraub fondled L.S.C.'s breasts during an office visit on October 24, 2012, and thereby sexually abused his patient. Both L.S.C.'s video-taped statement and Dr. Weintraub's own video-taped statement support a finding that he touched L.S.C.'s breasts - on a spectrum ranging from at a minimum lifting her breasts upwards to outright juggling and/or grabbing of her breasts - and that his doing so had nothing to do with the provision of podiatric care.

It is clear, from the video-taped statement of L.S.C., that she perceived his conduct to be both shocking and offensive.

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[6] Respondent claimed, in his submissions in opposition to the application for temporary suspension, that his statement to the police should not be considered to have been voluntary, and that the video-recorded interrogation contained elements of coercion and duress. Having watched the statement in its entirety, we find respondent's claims to be belied by the videotape, as it is clear that Dr. Weintraub was read his Miranda rights, considered his options and freely elected to give a statement to the police. It is additionally clear that Dr. Weintraub, at no time during the recorded interview, protested or claimed that he needed any sort of energy drink.

While respondent has claimed that his touching was somehow related to a concern regarding L.S.C.'s weight, and suggested or intimated that we should consider him to have been qualified to address weight with L.S.C. based on his having expertise in nutrition, we find that testimony to be self-serving and to ring hollow. Even were we to accept his claims regarding a background in nutrition, however, we point out that those claims would in no way mitigate or otherwise serve to condone any touching of L.S.C.'s breasts, as it is clear that such conduct would be unrelated to his provision of podiatric care and far beyond the scope of the practice of podiatry.[7]

Additionally, we find, based on Dr. Weintraub's own testimony, that Dr. Weintraub provided podiatric treatment to L.C.

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[7] The scope of podiatric practice is defined, at N.J.S.A. 45:5-7, to be:

> [T]he diagnosis or treatment of or the holding out of a right or ability to diagnose or treat any ailment of the human foot, including local manifestations of systemic diseases as they appear on the lower leg or foot but not treatment of systemic diseases of any other part of the body, or the holding out of a right or ability to treat the same by any one or more of the following means: local, medical, mechanical, surgical, manipulative and physio-therapeutic, including the application of any of the aforementioned means to the lower leg and ankle for the treatment of a foot ailment. Such means shall not be construed to include the amputation of the leg or foot. The term "local medical" hereinbefore mentioned shall be construed to mean the prescription or use of a therapeutic agent or remedy where the action or reaction is intended for a localized area or part.

(to include having conducted an examination, making a diagnosis and providing treatment) and thereby established a doctor-patient relationship with her. We also find that the Attorney General has presented evidence - namely L.C.'s sworn statement - that supports the allegations in the Verified Complaint that Dr. Weintraub touched L.C.'s breasts. Given that Dr. Weintraub had established a physician-patient relationship with L.C., we thus find that the Attorney General has presented evidence that Dr. Weintraub touched the breasts of not one, but two separate patients, on two separate occasions. Just as in L.S.C.'s case, the evidence suggests that the touching was wholly unrelated to any legitimate podiatric care then, or previously, provided.

It is apparent that Dr. Weintraub was able to be alone with, and then put himself in a position to touch the breasts of L.S.C. and L.C., because both perceived him to be a licensed physician, and placed implicit trust in him based on that status. We thus find it significant that L.C. stated that she was not initially uncomfortable when Dr. Weintraub began massaging her neck and shoulders "because he is a doctor, and he has always been so nice [to] her," see P-8 [8], and significant that L.S.C. had

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[8] The Committee notes (based on Weintraub's testimony) that the alleged incident with L.C. occurred after Dr. Weintraub asked L.C. how she was doing since the injection, and after L.C. told him that she was feeling good. Based thereon, it is evident that Dr. Weintraub initially engaged in conduct related to the practice of podiatry and directly related to podiatric care that he previously provided to L.C., before he began massaging her neck and/or shoulders and before L.C. claims he touched her breasts.

previously been comfortable being alone with Dr. Weintraub based on a long history (somewhere between three and ten years) of having received podiatric care from Dr. Weintraub. It is thus apparent to the Hearing Committee that Dr. Weintraub used his license to practice podiatry as a conduit to facilitate sexual misconduct, and thereby abused the trust and repose placed in him by his patients. The Committee finds that the evidence regarding Dr. Weintraub's having touched the breasts of both patients L.S.C. and L.C. is evidence which fully supports a finding that his continued practice would present clear and imminent danger to the public health, safety and welfare.

In addition to the findings regarding the unwanted touchings of both L.S.C. and L.C.'s breasts, we find that the evidence offered by the Attorney General is also sufficient to support the charges that Dr. Weintraub has repeatedly made lewd and inappropriate comments to female employees at Spectrum, and that he did so at times in the presence of Spectrum residents who were patients of Dr. Weintraub. In doing so, he necessarily created a hostile working environment, which in turn could have engendered risks to patients. Those findings, in turn, further support and buttress our prior finding that Dr. Weintraub's continued practice would present clear and imminent danger to the public health,

safety and welfare.[9]

We are cognizant that respondent has denied many of the allegations made against him, to include the allegations that his touching of L.S.C.'s breasts was anything more than accidental, and the allegations that he touched L.C.'s breasts at all. Ultimately, findings regarding the extent of any misconduct engaged in by respondent will have to be made following a plenary hearing, and those findings in turn will likely be dependent upon credibility determinations that will need to be made by the trier of fact.[10] For purposes of this hearing, however, our limited charge is to

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[9] Having found that the evidence presented regarding Dr. Weintraub's conduct involving patients L.S.C. and L.C. is sufficient, standing alone, to support a finding of clear and imminent danger, it is unnecessary for the Committee to make an independent finding whether or not the allegations regarding Dr. Weintraub's conduct with staff members N.M., M.M and J.S. would also independently support such a finding. As stated above, however, the Committee specifically finds that the evidence presented detailing Dr. Weintraub's having made lewd comments to three Spectrum employees is evidence which provides additional support for our conclusion that his continued practice would present imminent danger.

[10] Notwithstanding the above, however, we do note for the record that we find Dr. Weintraub's testimony regarding what occurred on October 24, 2012 with patient L.S.C. to be confusing and strained, and ultimately at odds with and belied by some of the statements that he made to the Northvale Police one day after the alleged incident (to include his having stated to police that he told L.S.C. that her weight problem was that she had "large boobs," as contrasted with his present denial of having made any such comment).

We further are constrained to note that respondent's credibility could be considered to be diminished by inconsistencies between the testimony that he offered before the Committee and statements he made in his written certification. Most notably, respondent categorically denied in his certification that he touched L.C.'s shoulders or neck, but then admitted when testifying before the Committee to having massaged her neck and shoulders.

determine whether the Attorney General has or has not met his statutory burden to palpably demonstrate that respondent's continued practice would present clear and imminent danger to the public health, safety and welfare, and that those findings are to be made based on the evidence that the Attorney General presents in support of the application for temporary suspension. For all the reasons set forth above, we unanimously conclude that the Attorney General has presented more than sufficient evidence to meet the statutory threshold.

Dr. Weintraub's counsel has argued that the public could be adequately protected during the pendency of this proceeding were we to require Dr. Weintraub to practice with a Board-approved chaperone, and ensure that all of his practice was monitored. He points out that all of the Spectrum employees suggested that they were in fact comfortable with Dr. Weintraub, and that most viewed his behavior as joking or non-threatening. The Attorney General has argued that any such chaperoning would not adequately protect the public interest, and that no chaperone could prevent Dr. Weintraub from making inappropriate comments or engaging in sexually harassing behaviors. The Attorney General further suggests that a chaperone is inappropriate for an individual such as Dr. Weintraub, who does not appreciate the seriousness of his misconduct.

At this juncture, we are satisfied that the findings we

have made are more than sufficient to support the entry of an Order temporarily suspending respondent's license (in full) pending the completion of plenary proceedings. There is insufficient evidence before us at this time to support respondent's claims that patients (as well as staff and any health-care workers with whom Dr. Weintraub might interact) could be adequately protected during the pendency of these proceedings by the imposition of a chaperoning and/or monitoring requirement, and we necessarily err on the side of acting in a manner that most comprehensively protects the paramount public interest. Nonetheless, we expressly hold that Dr. Weintraub may move for reconsideration of the need for a complete temporary suspension of his license, prior to the completion of the plenary proceedings in this matter, if he first submits to a comprehensive psycho-sexual evaluation to be conducted by an assessment entity, such as the Joseph J. Peters Institute, with proven expertise in evaluating and assessing physicians who have engaged in (or are alleged to have engaged in) sexually abusive behaviors and/or boundary crossings. Should Dr. Weintraub submit to such an evaluation, he would need to expressly consent and authorize (in advance of evaluation) the assessing entity to provide a comprehensive written report directly to the Board detailing all findings made upon evaluation, to include a recommendation whether, in the opinion of those conducting the assessment, the public interest could be adequately protected

through the imposition of a chaperoning requirement. The Board would then review the findings made within such a report, and reconsider whether Dr. Weintruab could be allowed to engage in podiatric practice during the pendency of these proceedings with a chaperoning and/or monitoring requirement and, if so, to determine and set requirements for such chaperoning and/or monitoring.

WHEREFORE, it is on this 3rd day of January 2013

ORDERED (effective as of December 27, 2012):

The license of respondent Frederick Weintraub, D.P.M., to practice podiatry in the State of New Jersey is hereby temporarily suspended, pending the conclusion of plenary proceedings in this matter. Respondent is directed to immediately cease and desist from engaging in any practice of podiatry, and to immediately commence making arrangements for the transfer of care of all of his patients and for the transfer of the records of all of his patients to a subsequent treating podiatrist.

Dr. Weintraub may move for reconsideration of the action taken herein, prior to the completion of plenary proceedings in this matter, provided that he first submits to a comprehensive psycho-sexual evaluation to be conducted by the Joseph J. Peters Institute or by another entity with comparable expertise, provided that such other entity is pre-approved by the consultant Medical Director of the Board. The evaluative entity is to be provided with the complete record in this matter, to include a copy of the

transcript of the hearing held on December 27, 2012 and copies of all exhibits entered into evidence at said hearing. Dr. Weintraub shall authorize the assessing entity, in advance of any evaluation, to prepare a comprehensive written report of evaluation and to submit said report to the Board, which report shall include all findings made upon evaluation and shall include a recommendation directly addressing the issue whether the public could be adequately protected by the imposition of a monitoring and/or chaperoning requirement upon any practice of podiatry by Dr. Weintraub.

This Order was effective upon its pronouncement on December 27, 2012, and will remain in full force and effect until such time as any further Order of the Board may be entered in this matter. The Order shall be subject to review by the full Board of Medical Examiners at the next meeting of the Board, presently scheduled to occur on January 9, 2013. That review shall occur on the record established as of December 27, 2012.

HEARING COMMITTEE OF NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

George J. Scott, D.P.M., D.O.
Board President

Sindy Paul, M.D.

Heather Howard

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