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**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

EFFECTIVE NUNC PRO TUNC JANUARY 14, 2009

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

In the Matter of:

CHOWDHURY AZAM, M.D.
License No. MA06382200

ORDER IMPOSING
MONITORING REQUIREMENTS
AND REQUIREMENT FOR
PSYCHOSEXUAL EVALUATION

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") on December 18, 2008, upon the Attorney General's filing of a verified administrative complaint with the Board. Within said complaint, the Attorney General generally alleges that on October 16, 2008, respondent Chowdhury Azam, M.D. engaged in acts of sexual misconduct during the course of a psychotherapy session with patient E.Y., to include "asking E.Y. to remove her top, placing his hands on the side of her left breast outside her clothing, massaging her shoulders and placing his hands under her shirt to fondle her breast." Verified Complaint, ¶6. The Attorney General claimed that bases for the imposition of disciplinary sanction against respondent may be found pursuant to N.J.S.A. 45:1-21(c) (gross negligence), (d) (repeated acts of negligence), (e) (professional misconduct), (f) (engaging in acts constituting moral turpitude or conduct relating adversely to activity regulated by the Board), (h) (violation of Board

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regulations) and/or 45:9-6 (continuing requirement of good moral character), and further alleged that respondent's continued practice would present clear and imminent danger to public health, safety and welfare, warranting the immediate temporary suspension of his license pending the completion of plenary proceedings in this matter pursuant to N.J.S.A. 45:1-22.

Respondent, through his counsel Steven I. Kern, Esq., filed an answer to the verified complaint on January 12, 2008, wherein he specifically denied that he touched either of E.Y.'s breasts (either directly or through clothing), that he massaged her shoulders, or that he asked her to remove her top. Answer to Verified Complaint, ¶6. While respondent admitted that he treated E.Y. for opioid dependency, he denied that he "ever rendered any 'psychotherapy' to E.Y." Id., ¶7. Respondent also generally denied many of the allegations within the complaint, and repeatedly claimed that allegations within the Attorney General's complaint "misconstrue[d]" and "embellish[ed]" upon evidence that was submitted in support of the complaint. Id., ¶6, 8, 13.

A hearing on the application for the temporary suspension of respondent's license was held before the Board on January 14, 2008. Deputy Attorney General David M. Puteska appeared on behalf of respondent Anne Milgram, Attorney General of New Jersey. Respondent appeared, but did not testify at the hearing, represented by Steven I. Kern, Esq.

At the hearing, the Board entertained oral arguments made by counsel, and considered documents and audio tapes that were admitted into evidence. The lynchpin of the Attorney General's presentation to the Board were three audio tapes that were recorded at the Edison Police Department on October 17, 2008 - namely, audio recordings of: (1) a sworn statement that E.Y. gave to the Edison Police Department; (2) a telephone conversation placed by E.Y. to Dr. Azam; and (3) Dr. Azam's statement to the Edison Police. We had opportunity to listen to each of the tapes, and also to consider evidence submitted on behalf of Dr. Azam, to include two psychological reports (one from Dr. Philip Witt, setting forth the results of a psychological evaluation that he conducted on October 29, 2008, and a second from Dr. Michael Nover, to whom Dr. Azam was referred following his evaluation by Dr. Witt) and a copy of the medical record that Dr. Azam maintained for patient E.Y.

It is abundantly clear, based even on consideration of that which Dr. Azam admitted (within the recorded statements) occurred alone, that Dr. Azam exercised flawed judgment during the course of providing treatment to E.Y. on October 16, 2008. It is likewise clear that, when he "massaged" E.Y.'s shoulders and neck, he inappropriately crossed permissible boundaries between a physician and his patient. The extent to which boundary lines were crossed, and the extent of Dr. Azam's misconduct, are issues which are difficult to determine in the context of a proceeding as

focused as an application for temporary suspension. We trust that those questions, and related issues concerning the credibility of Dr. Azam and of E.Y., will be fully explored and analyzed at the plenary hearing which is to follow at the Office of Administrative Law.

Upon consideration of the limited evidence before us, we cannot presently conclude that the Attorney General has met her burden of making a palpable demonstration of clear and imminent danger sufficient to predicate the entry of an Order temporarily suspending respondent's license. The Attorney General has, however, more than adequately demonstrated that respondent's continued unrestricted practice may pose a risk to the public health, safety and welfare, sufficient to warrant the imposition of monitoring requirements upon respondent's continued practice, and sufficient to support the imposition of a requirement that respondent secure a comprehensive psychosexual evaluation, so as to allow the Board to further evaluate whether respondent's continued practice may jeopardize the safety and welfare of the public. Set forth below is more detailed discussion of the procedural history of this matter and the evidence presented at the temporary suspension hearing, the findings that we have presently made, and the specific terms that we have placed upon any continued practice of medicine at this time by respondent.

Procedural History and Summary of Evidence Presented

As noted above, the Attorney General's application for the temporary suspension of respondent's license was made simultaneously with her filing of a verified administrative complaint on December 18, 2008. Within the complaint, the Attorney General alleges that E.Y. began seeing Dr. Azam for psychotherapy in January 2008, and that the initial reason she did so was for counseling on substance abuse issues and to receive prescriptions for Suboxone to curb her narcotic addiction. Verified Complaint ¶7.

The focal point of the complaint concerns a visit that occurred on October 16, 2008 at approximately 7:00 p.m. The Attorney General alleges that, during the course of that visit, Dr. Azam approached E.Y., began to touch her left side under her arm and then touched her left breast over clothing. Verified Complaint ¶8. Thereafter, it is alleged that Dr. Azam asked E.Y. to lift her top so that he could see a scar from a prior surgical procedure, and that E.Y. showed Dr. Azam a small portion of her chest.¹ Id.

The complaint further charges that, at a later time during the same visit (after Dr. Azam had returned to his seat and

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The complaint also alleges that Dr. Azam had previously, during a therapy session which occurred shortly after E.Y.'s breast surgery, requested her to lift her top to show him the scar on her breasts. Id. The Attorney General maintains that "at no point was Dr. Azam treating E.Y. for any medical condition related to her breasts." Id.

resumed conversation with E.Y. regarding her marital and family situation), Dr. Azam stood up, told E.Y. to sit down, and began to massage her shoulders. Verified Complaint ¶9. It is claimed that Dr. Azam next "reached across E.Y. and placed his hands under her shirt and bra and began to fondle her right breast. Dr. Azam then attempted to pull E.Y. towards him at which point she left the office." Id.

The complaint thereafter details three telephone conversations which occurred between E.Y. and Dr. Azam following the office visit. The first call was one placed by E.Y. (on a speaker phone) to Dr. Azam, with a friend present, following the visit. It is alleged that during that call, "Dr. Azam told E.Y. that he was sorry and had done it because he felt sorry for her." Verified Complaint, ¶10.

On the following day, E.Y. received a phone call from Dr. Azam while she was on her way to the Edison Police Department. It is claimed that this call (also put on a speaker phone) occurred in the presence of a friend of E.Y.'s identified as J.B. The Attorney General charges that, during the second call, Dr. Azam "begged E.Y. to forgive him for his actions and told her that he was sorry for what he had done."

A third call was placed by E.Y. to Dr. Azam while E.Y. was at the Edison Police Department - that call was in fact recorded, as the Edison Police had obtained authorization to

conduct a telephone intercept. The Attorney General alleges that during that call, Dr. Azam repeatedly told E.Y. that he was sorry, stated that he was "nervous and ... very attracted towards you," suggested that his actions occurred in a "moment of weakness" and told E.Y. that he is "so regretful and so depressed, ashamed." Verified Complaint, ¶12. (see below for additional discussion of statements made by Dr. Azam during the third call).

Finally, the complaint details that on October 17, 2008, Dr. Azam was arrested and charged with criminal sexual contact in violation of N.J.S. 2C:14-3B. Dr. Azam then gave a voluntary statement to the police. Among other purported admissions, it is alleged that Dr. Azam then "admit[ted] that he purposely fondled E.Y.'s breast." Verified Complaint, ¶13.

Respondent, through his counsel, Steven Kern, Esq., filed an answer to the complaint on January 12, 2009, wherein he generally either denied the allegations of the administrative complaint, or claimed that statements within the complaint either "misconstru[ed]" and/or "embellish[ed]" upon the evidence presented in support of the charges. Respondent specifically denied the most significant charges within the complaint, namely, that he touched either of E.Y.'s breasts (either directly or through clothing), that he massaged her shoulders, or that he asked her to remove her top. Answer to Verified Complaint, ¶6. Dr. Azam cited to E.Y.'s own statements to police to support his denial of the claims that

he touched her left breast and that he fondled her right breast. Dr. Azam also claimed that all of the alleged conduct did not occur in the course of any psychotherapy sessions, but rather in the course of Dr. Azam's providing Suboxone treatments to a patient addicted to Percodan. Finally, Dr. Azam claimed that he repeatedly apologized to E.Y. during the three phone conversations in order to placate her, because he believed her to have a borderline personality disorder.

Within his answer, respondent also denied that his continued practice would present clear and imminent danger to any patient. In making that claim, respondent relied on an assessment of risk conducted by Philip H. Witt, Ph.D., who concluded that, even if the allegations made by E.Y. were true, Dr. Azam would fall into a low risk range were he to be scored on the RRAS, New Jersey's official risk assessment scale.

Finally, respondent suggested in his filed answer (and thereafter during the course of oral arguments of counsel) that he was willing to allow his practice to be monitored. Dr. Azam thus stated that he was willing to limit his practice "to working in a multi-physician facility under the supervision of another physician." Answer, ¶15.² James Drury, D.O., the Medical Director

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Within ¶15 of his filed answer, respondent specifically detailed a proposal for practice in a monitored setting:

In addition, Dr. Azam is willing to limit his practice pending further order of this Board, to working in a

of Insights Behavioral Health in Point Pleasant, New Jersey, a practice limited to behavioral health, submitted a certification outlining monitoring precautions which would be in place were Dr. Azam to practice at Insights, and offered to serve as "Dr. Azam's supervising physician, to monitor Dr. Azam's care and treatment, to provide periodic reports to the Board and to notify the Board of any complaints or problems with Dr. Azam." see Answer to Complaint, ¶15 and Certification of James Drury, D.O. (Exhibit "E" to Answer to Complaint). During oral arguments, respondent's counsel further stated that respondent would be willing, at least until a comprehensive psychosexual evaluation could be obtained and reviewed by the Board, to limit his practice to practice on male patients only.

multi-physician facility under the supervision of another physician. Based upon their knowledge of his work, and past dealings with him, Insights Behavioral Health, LLC., a mental health facility that treats as many as 120 patients per day, has offered Dr. Azam a full time position, and has expressed a willingness to have its Medical Director, James Drury, D.O., a Board Certified Psychiatrist, provide medical supervision and monitoring of Dr. Azam.

Dr. Azam would only be seeing patients when other licensed physicians were present in the office. At any point in time, there will be no fewer than two other physicians present, as well as a minimum of three ancillary staff members. Dr. Drury will agree to immediately report any complaints concerning Dr. Azam to the Board, and provide any additional reports that the Board may require. Dr. Azam is willing to agree to these conditions ...

A hearing on the Attorney General's application for temporary suspension was held before the Board on January 14, 2008. During the hearing, the Attorney General moved the following documents into evidence:

- P-1 Edison Police Department Report re: Investigation of Dr. Chowdhury Azam, prepared by Investigator Michael S. Michalski, dated October 27, 2008.
- P-2 Audio recording of E.Y.'s sworn statement to the Edison Police, given on October 17, 2008.
- P-3 Transcript prepared by Middlesex County Prosecutor's Office of P-2.
- P-4 Audio recording of telephone call placed by E.Y. to Dr. Azam, from the Edison Police Department, on October 17, 2008.
- P-5 Transcript prepared by Middlesex County Prosecutor's Office of P-4.
- P-6 Audio recording of Dr. Azam's statement to the Edison Police Department, given on October 17, 2008.
- P-7 Transcript prepared by Middlesex County Prosecutor's Office of P-6.
- P-8 Edison Police Department Arrest Report, detailing arrest of Dr. Chowdhury Azam, dated October 17, 2008.

The primary evidence supporting the Attorney General's complaint are the audio recordings of statements obtained by the Edison Police from E.Y. and Dr. Azam, and of the phone conversation that was placed (from the Edison Police Department) by E.Y. to Dr. Azam. Within her sworn statement, E.Y. recounted the events which occurred during her session with Dr. Azam on October 16, 2008.

E.Y. stated that, when she first entered Dr. Azam's office, she handed him a thank you card, wherein she thanked Dr. Azam for being a good doctor and expressed appreciation for his kindness to her. P-3, 6:8-15. She stated that, during the course of the visit, she felt that Dr. Azam was asking her questions so as to extend the visit and keep her there until there was nobody there. P-3, 6:16-21.

E.Y. claimed that Dr. Azam twice approached her during the visit and engaged in inappropriate acts. The first instance occurred after Dr. Azam asked E.Y. about her prior breast surgery, to which E.Y. responded that she sometimes gets pain under her arm. P-3, 7:6-9. E.Y. recounts that Dr. Azam then:

felt underneath my armpit and stuff and close you know to my um, bra. He touched, it was my left side and uh, he asked to see, basically see my breasts or the scar and I didn't show, I didn't like fully show him I showed him the top part and that's about it and then he sat back down." P-3, 7:9-13.

E.Y. stated that Dr. Azam had previously asked her to see the scar on her breast, but that this was the first time Dr. Azam touched her. P-3, 7:14-19. E.Y. stated that Dr. Azam then asked her a few more questions regarding her marriage, her family and her husband. P-3, 8:15-19. Dr. Azam next stood up, at which time E.Y. "stood up cause I thought it was time to leave." P-3, 8: 19-21. E.Y. claims that Dr. Azam then told her to sit down, approached her and started massaging her shoulders and her neck, with his right hand on her right shoulder and his left hand on her left shoulder.

P-3, 8:21 - 9:5. Dr. Azam then reached his hand under E.Y.'s bra and touched her right breast, and then tried to pull her toward him:

[Dr. Azam then] went across my chest and into my bra and touched my right breast and asked me if I had pain there and I said no and um, then he took his hand out and put his arms like around my right shoulder and pulled me, tried to pull me towards him and after that I just got up and left. P-3, 9: 6-9.

E.Y. clearly stated that Dr. Azam's hand reached under her bra, as she recounted that his hand was "touching my skin." P-3, 9:20 - 10:1. See also P-3, 14:16 - 15:14.

The second tape which was presented and played at the Board meeting was a tape of a telephone conversation which E.Y. placed to Dr. Azam, recorded in the Edison Police Department. In the intercepted call, Dr. Azam did not make any specific affirmative statements regarding his actions during the course of the visit.³ Nonetheless, Dr. Azam repeatedly makes comments that can only be reasonably interpreted to infer that he engaged in inappropriate conduct during the course of the visit. Dr. Azam thus stated, at various points during the call, that he was "nervous and kind of very attracted towards [E.Y.]," P-5, 9 - 13; that what occurred "was a mistake," P-5, 5: 9 - 10; that "there was a moment of weakness and I really appreciate the card you gave me,"

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Dr. Azam specifically denied E.Y.'s claim that she felt as though he was pulling her toward his "private area." P-5, 4: 9 - 14.

P-5, 6: 5 - 6⁴; that he was "so regretful and so depressed, ashamed," P-5, 7: 4 - 5; and that he "felt real bad for [E.Y.], sorry for [E.Y.] and then, kind of lost it." P-5, 7: 17 - 19. During the course of the conversation, Dr. Azam repeatedly apologized to E.Y. and repeatedly asked her to give him another chance. P-5, passim.

Finally, in his own statement to the police, Dr. Azam admitted that he touched E.Y.'s neck and shoulder⁵ and gave E.Y. a "massage," see P-7, 5: 14 - 17, 11:4; 20: 17-18. Dr. Azam also conceded that he "touched her cheek with my cheek." P-7, 6:17. Dr. Azam claimed that E.Y. showed him her breast scar, P-7, 22: 1 -10, and stated that, on a prior visit, he had asked E.Y. to look at her breast scar. P-7, 9: 14 - 16.

Dr. Azam initially denied that his hand touched E.Y.'s breast. P-5, 5: 16-18; 6: 19 - 21, When pressed by the police

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It should be noted that this statement was made directly after E.Y. had stated that Dr. Azam "put [his] hand down my bra [and] touched my breast." P-5, 5: 20 - 21.

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Dr. Azam explained that E.Y. told him "she had pains, you know in her body in the neck in her shoulders so at one point I said okay let me help you to relax so I just touched her neck, her shoulder but I, but I didn't touch the breast or anything." P-7, 5: 14 - 17.

At a later point in the statement, Dr. Azam stated that he massaged E.Y.'s shoulders and neck because "I was just trying to help her because she was complaining of pain and really that's why I was regretful and that's why I said I'm very sorry that I did that, that I shouldn't have done it." P-7, 10: 15 - 17.

investigators, however, Dr. Azam conceded that his hand could have "accidentally" or "mistakenly" touched E.Y.'s breast during the course of the massage. See P-7, 11:10 - 12:1; 14:20 - 15: 15, 18: 15 - 17; 20: 6 - 8. Dr. Azam also suggested that what occurred was "an error of judgment." P-7, 17: 11.

Dr. Azam has submitted no sworn information (i.e., a certification or testimony) in his defense, and did not testify before the Board because of the pending criminal charges. Dr. Azam instead predicates his defense on statements from mental health professionals who evaluated Dr. Azam after his arrest, on a statement from his office receptionist, and upon information that appears within the patient record that he maintained for patient E.Y. During the hearing, Dr. Azam moved the following documents into evidence:

R-1 Answer to Verified Complaint, with exhibits to include:

- Dr. Azam's curriculum vitae (Exhibit "A")
- the patient record Dr. Azam maintained for E.Y. (Exhibit "B")
- Certification from Dr. Azam's receptionist, Allison Dicanto, dated January 9, 2009 (stating generally that E.Y. arrived for her appointment on October 16, 2008 at 7:25 p.m., that Ms. Dicanto entered Dr. Azam's office at about 7:45 p.m. to give him certain paperwork and receipts, at which time E.Y. was "sitting in the chair and Dr. Azam was seated at his desk," that Ms. Dicanto did not then observe E.Y. to be upset, and that she then "left the building for the day.") (Exhibit "C").

- A psychological report, dated October 29, 2008, prepared by Philip Witt, Ph.D., following an evaluation of Dr. Azam conducted on October 29, 2008 (Exhibit "D"),

- Certification of James Drury, D.O. dated January 12, 2009 (re: proposed monitoring and oversight of Dr. Azam's practice at Insights Behavioral Group) (Exhibit "E").

R-2 Report of Michael Nover, Ph. D., dated January 12, 2009.

R-3 Letter from Louis Baxter, M.D., Executive Medical Director of the Professional Assessment Program to Steven I. Kern, dated January 13, 2009 (stating that Dr. Azam had been seen by Dr. Baxter on January 5, 2009, at which time Dr. Azam was referred to the J.J. Peters Institute in Philadelphia for a complete psychosexual evaluation).

Within his psychological report, Dr. Philip Witt details the results of an evaluation that he conducted on October 29, 2008.

Dr. Witt states that Dr. Azam has denied any sexual intent, and:

[Dr. Azam] indicated that in the context of examining the woman for "trigger points" related to fibromyalgia, his hand may have inadvertently brushed her breast area when she made an unexpected movement in the chair. He indicated that he was apologetic during a few telephone conversations with her shortly afterwards only because he wanted to help restore her trust in him, and she was obviously distressed.

Dr. Witt acknowledges that he cannot reach an opinion or factual conclusion about the allegations themselves, and states that any determination "whether Dr. Azam did or did not touch the breast of his female patient and, if he did, whether that action was sexually intended or accidental contact is beyond my ability or purview." Dr. Witt does suggest, however, that the incident

"appears to be an isolated event, not part of a broader pattern of sexually exploitive or intrusive behavior with patients."⁶ Dr. Witt recommended that Dr. Azam engage in supportive psychotherapy because he and his family were "experiencing considerable stress."⁷

Michael Nover, Ph.D., states in his report dated January 12, 2009, that he first saw Dr. Azam after Dr. Azam was referred to him for supportive psychotherapy by Dr. Witt, with an initial consultation on November 3, 2008 and seven sessions thereafter through January 12, 2009. Dr. Nover notes that Dr. Azam has consistently denied the allegation that he fondled his patient's

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Dr. Witt continues:

Consequently, I do not see his present behavior, if a finding of fact is made in this regard, to be part of a pattern, but rather it appears to have been an isolated event.

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In an effort to conduct a risk assessment on Dr. Azam, Dr. Witt evaluated Dr. Azam on the "RRAS." (RRAS is an acronym for the Registrant Risk Assessment Scale, which is a scale generally designed to assess the risk that a convicted sex offender presents of engaging in recidivist conduct, for the purpose of determining the level of community notification that is to be made pursuant to "Megan's Law."). Dr. Witt conducted his assessment "based on the assumption that the woman's allegations are accurate, and suggests that Dr. Azam would score in the "low risk range." At this juncture, we point out that we are in no position to gauge the relevancy of the assessment conducted by Dr. Witt, as there has been no development of the issue whether the score assessment would be at all useful or relevant in assessing the risk that a licensed psychiatrist (who has previously engaged in sexually inappropriate conduct in the course of a physician-patient relationship) would re-offend.

breast.⁸ Like Dr. Witt, Dr. Nover also recognizes that he is "not a finder of fact and cannot determine the factual basis of either the allegation against Dr. Azam or his denial." Dr. Nover states that "there is no history of inappropriate contact with patients prior to the current allegation, no clinical evidence of any deviant sexual behavior pattern (paraphilia), or any indication of any intent to touch patients for his own sexual gratification. Given this history, it is my professional judgement that he presents a very low risk of engaging in inappropriate sexual contact with his patients."

Significantly, neither Dr. Witt nor Dr. Nover suggest that they are in any position to know whether or not the allegations made by E.Y. are true, or that they have any knowledge of what actually occurred in Dr. Azam's office on October 16, 2008.. Indeed, not a single piece of evidence submitted by respondent at the hearing includes an affirmative denial of E.Y.'s claims, as Ms. Dicanto's statement cannot be said to provide any evidence about what occurred between Dr. Azam and E.Y. (other than for the brief

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Dr. Nover goes on to state that Dr. Azam:

... acknowledges that in an effort to console her he reached toward her to pat her shoulder and may accidentally brushed her breast at that time, although he states that he is uncertain of even this level of contact. He emphasized that if he did inadvertently touch her breast, it would have been fleeting, not sexually motivated or gratifying, and definitely not under her clothing.

moment that she entered Dr. Azam's office), particularly after she left the building for the day.⁹

Respondent called one witness, John Parana, to provide additional information to the Board on Dr. Azam's proposal for limiting his practice during the pendency of these proceedings to practice in a supervised location. Mr. Parana is the administrator of Insights Behavioral Health ("Insights"), which is a group practice which includes "at least four psychiatrists on a predominantly full-time basis" where 100 to 120 patients are seen daily. Mr. Parana testified that Dr. Drury is the "medical director [of Insights] who oversees all doctors, all operations and all procedures." Mr. Parana further testified that Insights had made Dr. Azam an offer of employment prior to the incident with E.Y., and that following a meeting after the incident, there was unanimous agreement to continue the offer of employment to Dr. Azam. Mr. Parana stated that were Dr. Azam to be employed, his practice would be under the supervision of the medical director and that the practice could adequately monitor Dr. Azam's practice. On cross examination, Mr. Parana conceded that he had no direct or

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We do not find it necessary herein to discuss the patient record that Dr. Azam has submitted, as there is nothing to suggest that the record is directly relevant to the question whether Dr. Azam engaged in sexual misconduct during the course of the visit that occurred on October 16, 2008. We instead anticipate that, if the record is in fact relevant, the relevancy thereof can be explored and related issues developed during the plenary proceeding which will follow at the Office of Administrative Law.

indirect knowledge concerning what occurred between Dr. Azam and E.Y.

At the conclusion of the hearing, Mr. Kern argued that the Board should not temporarily suspend Dr. Azam's license, because the State had failed to make a demonstration that Dr. Azam's continued practice would pose clear and imminent danger to public health, safety and welfare. Mr. Kern argued that the Board consider that Dr. Azam is the subject of a single complaint over his 12 year career, that E.Y. herself has admitted that there was no "fondling," that E.Y. has since hired attorneys to pursue a civil claim against Dr. Azam, and that the conduct did not occur in the course of Dr. Azam's provision of psychotherapy to E.Y.

The Attorney General argued that sexual misconduct is perhaps the singular worst violation of the physician-patient relationship, and that Dr. Azam's conduct in the case showed an "appalling lack of medical judgment." The Attorney General urged that the Board should presently find Dr. Azam not to be credible, based on his having told multiple different accounts of what occurred on October 16, 2008.¹⁰ The Attorney General further argued that Dr. Azam had demonstrated fundamentally flawed judgment which

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Specifically, the Attorney General suggests that Dr. Azam's accounting of what transpired to Dr. Witt (namely, that his hand may have accidentally "brushed" her breast area during the course of an examination for "trigger points" related to fibromyalgia) is inconsistent with his statement to the Edison Police, where he conceded that he was then giving E.Y. a "massage."

palpably demonstrates that he represents an imminent danger.

Board Findings

On or about January 17, 2008, E.Y. commenced a physician-patient relationship with respondent Chowdhury Azam. It appears that the primary reason E.Y. sought Dr. Azam's services was for help with her addiction to pain medication. Dr. Azam's medical chart records office visits on January 17, 2008, January 29, 2008, March 6, 2008, August 5, 2008 and October 16, 2008.

It is apparent that, on the evening of October 16, 2008, E.Y. was seen by Dr. Azam, in his office, for a visit which commenced between 7:00 p.m. and 7:30 p.m. Dr. Azam and E.Y. were the only two individuals who were in the room at that time, although Dr. Azam's receptionist, Allison Dicanto, entered the room during the course of the visit to hand Dr. Azam paperwork. Ms. Dicanto recounts, in her certification, that she then left the building for the day (at approximately 7:45 p.m.).

It is undisputed that, at the beginning of the visit, E.Y. handed Dr. Azam a thank-you card, thanking him for his prior kindness to her. Thereafter, at some point during the visit, Dr. Azam stood up and approached E.Y. E.Y. claims that Dr. Azam placed his hand near her armpit close to her bra, and that he asked her to show him the scar on her breast. Whether any "examination" of E.Y.'s breast scar was in any way medically justified, based on her claims of pain and her general treatment for abuse of pain

medications, is a point presently in dispute.¹¹

It is also undisputed that, towards the very end of the visit (at a time when E.Y. states that she stood up because she thought the visit was over), Dr. Azam approached E.Y. a second time. At this point of the visit, Dr. Azam began massaging E.Y.'s shoulders. Indeed, that a "massage" occurred is not in dispute, as Dr. Azam so conceded in his statement to police, offering as an explanation that he then felt "sorry" for E.Y.

What happened thereafter is disputed. E.Y. states that Dr. Azam then reached his hand forward, underneath her bra, and touched her left breast. When giving her statement to the Edison Police, E.Y. unequivocally stated that Dr. Azam's hand touched her skin. Dr. Azam denies that he touched or fondled E.Y.'s breast. While giving his statement to the Edison Police, Dr. Azam suggested that if his hand touched E.Y.'s breast, it was accidental.

After the office visit (and prior to Dr. Azam's arrest at approximately 8:00 p.m. on October 17, 2008), E.Y. and Dr. Azam had three phone conversations. The first call occurred later that evening (or early the next morning), and was placed by E.Y. to Dr. Azam. Dr. Azam next called E.Y., while E.Y. was en route to the Edison Police Department to give her statement to police. The

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It is also undisputed that E.Y. had, on one prior visit (likely occurring in August 2008), shown her breast surgery scar to Dr. Azam. In both instances, whether E.Y. showed Dr. Azam her breast in response to a request made by Dr. Azam, or on her own volition, is a point seemingly in dispute.

final call was placed by E.Y. to Dr. Azam from the Edison Police Department.

Because it was recorded, we in fact know what was said by E.Y. and by Dr. Azam during the third call. During the call, Dr. Azam is heard to repeatedly apologize to E.Y. and to repeatedly ask her for another opportunity to regain her trust. He is also heard to make a series of comments that, at a minimum, strongly support an inference that his conduct in the examination room was inappropriate. When confronted with an allegation that he touched her breast, Dr. Azam stated that "he was very attracted to" E.Y., and suggested that whatever occurred was in a "moment of weakness." He also claimed that what occurred was a "mistake," and stated that he "felt bad for you, sorry for you and then, kind of lost it."

Analysis and Determination

At this juncture, we must decide whether cause exists to order that respondent's license be temporarily suspended, or otherwise limited, pending the completion of plenary proceedings in this case. N.J.S.A. 45:1-22 provides that an order precluding practice - that is, temporarily suspending a license - can only be entered upon a palpable demonstration of clear and imminent danger to public health, safety and welfare:

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such Order. If, upon review of the Attorney General's application, the board determines that, although no palpable demonstration of a clear and imminent danger has been made, the licensee's continued unrestricted practice pending plenary hearing may pose a risk to the public health, safety and welfare, the board may order the licensee to submit to medical or diagnostic testing and monitoring, or psychological evaluation, or an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety.

While the Board cannot impose a temporary suspension in cases where a palpable demonstration of clear in imminent danger is

not found to have been made, the statute provides that the Board may act to protect the public where a demonstration is made that a licensee's continued practice may pose a risk to the public health, safety and welfare. In such cases, the Board can order the imposition of monitoring requirements on a licensee's practice, and can order that a licensee be assessed to determine whether the licensee can continue to practice with reasonable skill and safety.

The conduct that Dr. Azam is alleged to have engaged in is brazen and grave misconduct, which can have no legitimate medical purpose nor any place within the context of a physician-patient relationship. Even if, on a fully developed record, we were to conclude that Dr. Azam only did that which he has thus far conceded in recorded statements, it is undoubtedly the case that Dr. Azam would be found to have exercised flawed judgment and crossed appropriate boundary lines between a physician and a patient. Indeed, we point out that our concerns are only heightened in this case because Dr. Azam is a Board Certified Adult Psychiatrist and Board Eligible in Child and Adolescent Psychiatry, and review of Dr. Azam's patient records (and the statements offered to police by both E.Y. and Dr. Azam) would suggest that, while Dr. Azam may have been prescribing E.Y. Suboxone to treat opioid dependency, he may also have been providing mental health

care to her.¹²

Notwithstanding the gravity of the charges against Dr. Azam, we cannot conclude that what has thus far been palpably demonstrated to have occurred on the evening of October 16, 2008, is conduct sufficiently egregious to support a finding that respondent's continued practice would present clear and imminent danger to public health, safety and welfare. In making that determination, we are mindful that the complaint against Dr. Azam involves one patient alone, and one office visit alone, and that the most egregious misconduct alleged to have occurred has been denied by Dr. Azam. While the Attorney General urges us to draw credibility determinations at this juncture based on the suggestion that Dr. Azam's explanation to Dr. Witt of what occurred is inconsistent with the explanation that he gave the Edison police, we are hesitant to presently make credibility determinations. We instead suggest that the question whether Dr. Azam has given inconsistent accountings of what occurred in his office, and, if so, whether that should bear on determinations regarding his

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The Board's policy statement on sexual relations draws distinctions between permissible conduct by a general practitioner and a psychiatrist - clearly, as a practicing psychiatrist, Dr. Azam should be even more sensitive to, and aware of the need to, establish and maintain boundaries between himself and his patient. See generally N.J.A.C. 13:35-6.3. See also Appendix to N.J.A.C. 13:35-6.3 (Policy Statement regarding sexual activity between physicians and patients and in the practice of medicine), section B (ii) ("a licensee bears an even greater responsibility to establish and maintain boundaries between physician and patient in psychotherapeutic relationships.")

credibility, are questions that can be presently deferred and instead subject to more comprehensive development in proceedings at the Office of Administrative Law.

While we do not presently find that a palpable demonstration of clear and imminent danger has been made, we do find that a showing adequate to support a finding that Dr. Azam's continued practice may present danger to the public has been made. Accordingly, we next consider what level of monitoring should be required to be imposed on Dr. Azam's continued practice pending the completion of plenary proceedings in this case, and whether to require that Dr. Azam submit to evaluations to seek to assess whether his continued practice would present risks to the public.

Dr. Azam has repeatedly expressed a willingness to limit his practice to practice in a monitored setting, where other physicians and office staff will be present. Dr. Azam has further expressed a willingness to assuage any concerns the Board may have about his continued practice by offering at this juncture to limit his practice to male patients alone. We have reviewed the certification of Dr. Drury, and are satisfied that Dr. Drury may presently serve as a practice monitor for Dr. Azam, provided that Dr. Azam's practice is limited to practice only at times when at least one other physician, and two members of "Insights" office staff, are present, and that Dr. Azam's practice is limited to male patients alone (see below for specific requirements and limitations

presently imposed on Dr. Azam's practice).

Both Dr. Witt and Dr. Nover suggest, in their reports regarding Dr. Azam, that (even assuming the allegations of E.Y. are true) there is a low risk that any further inappropriate conduct will occur. We are not satisfied that either evaluation was sufficiently comprehensive.¹³ We therefore will presently require that Dr. Azam obtain a comprehensive psychosexual evaluation, to be completed at the Joseph J. Peters Institute in Philadelphia, Pennsylvania, within sixty days of the date of this Order. The purpose of that evaluation is to obtain additional information to allow the Board to more fully consider whether Dr. Azam presently presents risks to the public. We expressly reserve the right, upon review of any findings or recommendations made within the report to be generated, to place additional restrictions and/or limitations on respondent's practice.

WHEREFORE, it is on this 3RD day of February, 2009

ORDERED, nunc pro tunc January 14, 2009:

1. For the period from January 14, 2009 through and including January 24, 2009, respondent shall make all appropriate arrangements to transfer care of all his existing patients. In the event that respondent sees any existing female patients during said time period, such visits shall occur only in the presence of a

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Indeed, we note that the Professional Assistance Program also has suggested that a need exists for a more comprehensive evaluation. See R-3.

chaperone.

2. After January 24, 2009, and until further Order of this Board, respondent shall practice only in a monitored practice setting, with a physician practice monitor, to be approved by the Board. The Board presently approves respondent's practice at Insights Behavioral Health in Point Pleasant, New Jersey, and further approves Dr. James Drury to serve as respondent's practice monitor. Dr. Azam shall only practice at times where there is at least one other physician working in the office, and at least two members of the office staff working in the office at the same time. In his capacity as practice monitor, Dr. Drury shall provide monthly written reports to the Board detailing respondent's compliance with the terms of this Order. Dr. Drury shall further make an immediate report to the Board in the event he receives information from any source to suggest that Dr. Azam has engaged in any inappropriate conduct, to include (without limitation) any complaints from any patients of Dr. Azam that may be made or any information suggesting that Dr. Azam has engaged in any medical practice at a time when at least one other physician and two members of the office staff were not present.

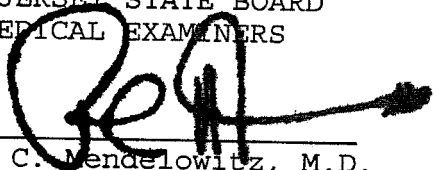
3. Respondent shall limit his practice to male patients only.

4. Respondent shall submit to a complete psychosexual evaluation, to be completed at the J.J. Peters Institute in

Philadelphia, Pennsylvania. The evaluator at the Peters Institute is to be provided with a copy of this Order, copies of all papers filed in this case, all evidence admitted into the record, and a transcript of the hearing upon the application for the temporary suspension of respondent's license. The evaluation process is to be completed within sixty days (that is, not later than March 15, 2009), with a report to be prepared at the conclusion of the evaluation and to be provided to the Board. The Board expressly reserves the right to place additional limitations and/or restrictions upon respondent's practice, based on any findings or recommendations that may be made by the Peter's Institute at the conclusion of Dr. Azam's evaluation.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: _____


Paul C. Mendelowitz, M.D.
Board President