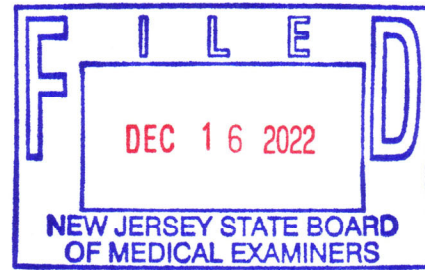


MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101



By: Michelle Mikelberg
Deputy Attorney General
Tel. (973) 648-2894
Attorney ID: 031572007

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

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

PETER DRISCOLL, M.D.
LICENSE NO. 25MA09610700

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

**ORDER TO SHOW CAUSE
NOTICE OF HEARING AND
NOTICE TO FILE ANSWER**

TO: Peter Driscoll, M.D.
525 Hopkins Lane
Haddonfield, NJ 08033

This matter was opened to the New Jersey State Board of Medical Examiners (the "Board") by Verified Complaint of Matthew J. Platkin, Attorney General of New Jersey, by Michelle Mikelberg, Deputy Attorney General, together with supporting documents and exhibits, seeking the temporary suspension of the license of Respondent, Peter Driscoll, M.D. ("Respondent"), to practice medicine and surgery and for such other relief deemed appropriate, pursuant to the authority conferred on the Board by N.J.S.A. 45:1-21 et seq. and related administrative regulations. It being alleged in the Verified Complaint that the Respondent committed serious violations of the statutes governing the practice of medicine, and it being further alleged that the continued practice

of medicine by the Respondent pending final disposition of the Verified Complaint would represent a clear and imminent danger to the public health, safety, and welfare, in accordance with N.J.S.A. 45:1-22; and for good cause shown:

IT IS ON THIS 16th day of DECEMBER 2022,

ORDERED that the Respondent, either in person or by attorney, show cause before the New Jersey State Board of Medical Examiners, or a Committee thereof, on **11th day of January, 2023 at 10:00 a.m.** or as soon thereafter as the parties may be heard, **at the Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey, 08625, Fourth Floor or via telephone/videoconference or at another location as directed, to show cause,** why an Order should not be entered temporarily suspending Respondent's license to practice medicine in this State, or imposing such other restraints as the Board deems necessary; and it is further

ORDERED that a copy of this Order, together with the Verified Complaint and exhibits and materials in support thereof be served upon Respondent forthwith; and it is further

ORDERED that Respondent shall file an Answer to the charges contained in the Verified Complaint, and a Response to the Order to Show Cause, **on or before** JANUARY 9, 2023 said Answer and Response to be delivered to the New Jersey State Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625, with a copy delivered on that same date and time to Michelle Mikelberg, Deputy Attorney General, Division of Law, 124 Halsey Street, 5th Floor, P.O. Box 45029, Newark, New Jersey 07101; and it is further

ORDERED that failure to respond to this Order to Show Cause or failure to file an Answer to the Verified Complaint or failure to appear before the New Jersey State Board of Medical Examiners in person or through an attorney, as is herein required, may result in this matter being

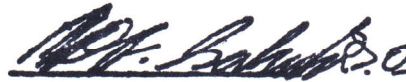
considered in Respondent's absence on the proofs presented and an Order may be entered against Respondent for any and all relief demanded in the Verified Complaint; and it is further

ORDERED that an admission of the charges will indicate that Respondent does not wish to contest the charges stated, rendering a plenary hearing unnecessary in this matter. The case will then be presented to the New Jersey State Board of Medical Examiners within thirty (30) days of the receipt of Respondent's Answer or on an adjourned date, together with any written materials he may wish to submit with the Answer in alleged mitigation of penalty, for a determination as to whether disciplinary actions, including suspension or revocation of Respondent's license to practice medicine or other sanctions should be imposed and whether monetary penalties and costs should be assessed and, if so, the amount thereof, pursuant to the authority conferred on the Board by N.J.S.A. 45:1-1 et seq. and N.J.S.A. 45:9-1 et seq.; and it is further

ORDERED that a denial of the charges will result in a formal plenary hearing which may be conducted by the Board or by an administrative law judge, who, upon notice to Respondent, will hear the Complaint and consider the imposition of disciplinary sanctions. Respondent may appear at the hearing either in person or by attorney or both, and shall be afforded an opportunity at the time to make defense to any and all charges.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By:

A handwritten signature in dark ink, appearing to read "Otto Sabando", is written over a horizontal line.

Otto Sabando, D.O.
Board President

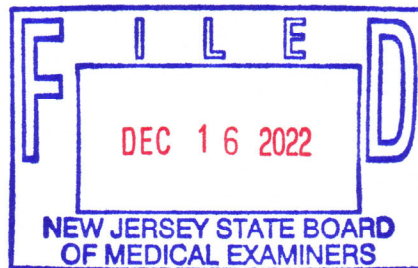
KINDLY ADDRESS AN ORIGINAL AND ONE COPY OF RESPONDENT'S ANSWER SPECIFICALLY RESPONDING TO EACH PARAGRAPH OF THE VERIFIED COMPLAINT AND THE RESPONSE TO THE ORDER TO SHOW CAUSE TO:

ANTONIA WINSTEAD
EXECUTIVE DIRECTOR
BOARD OF MEDICAL EXAMINERS
P.O. BOX 183
TRENTON, NEW JERSEY 08625

and

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTN: MICHELLE MIKELBERG, DAG
124 HALSEY STREET, 5TH FLOOR
P.O. BOX 45029
NEWARK, NEW JERSEY 07101

MATTHEW J. PLATKIN
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By: Michelle Mikelberg
Deputy Attorney General
Tel. (973) 648-2894
Attorney ID: 031572007

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

IN THE MATTER OF THE SUSPENSION OR
REVOCATION OF THE LICENSE OF

PETER DRISCOLL, M.D.
LICENSE NO. 25MA09610700

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

**CERTIFICATION OF MICHELLE F.
MIKELBERG**

I, Michelle F. Mikelberg, of full age, hereby certify as follows:

1. I am an attorney admitted to practice law in the State of New Jersey and am the Deputy Attorney General assigned to prosecute the above-referenced matter. As such I am fully familiar with the facts and circumstances pertaining thereto. The Verified Complaint in this matter is based upon the facts as set forth in the information contained in Exhibits A through F. Upon my review of all of these facts, it is my belief that they form the basis for the temporary suspension of Respondent to practice medicine in the State of New Jersey, and for such other relief deemed appropriate, pursuant to N.J.S.A. 45:1-22, pending plenary hearing.

CERTIFIED TRUE COPY

2. Attached hereto as Exhibit A is a true and complete copy of Patient 1's medical record.
3. Attached hereto as Exhibits A-1 through A-17 are true and complete copies of the audiovisual recordings and photographs of Patient 1 taken by the staff at My Goals Solutions ("Goals").
4. Attached hereto as Exhibit B is a true and complete copy of the Ridgefield Police Investigation Report dated and Supplemental Report.
5. Attached hereto as Exhibit C is the certified statement of Patient 1.
6. Attached hereto as Exhibit D is a true and complete copy of the affidavit of Nikolija Drobnjak, the practice manager of Goals.
7. Attached hereto as Exhibit E is a true and complete copy of the certification of Ronnie Parker, surgical technician.
8. Attached hereto as Exhibit F is a true and complete copy of Enforcement Bureau Investigator Winni Quizon's certification regarding her interview of Omoni Walker.

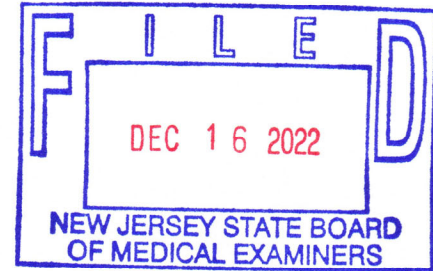
I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 
Michelle Mikelberg
Deputy Attorney General

Date: December 15, 2022

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Attorney ID: 031572007

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

IN THE MATTER OF THE SUSPENSION OR
REVOCATION OF THE LICENSE OF

PETER DRISCOLL, M.D.
LICENSE NO. 25MA09610700

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

VERIFIED COMPLAINT

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, by Michelle Mikelberg, Deputy Attorney General, with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey 07101, by way of Verified Complaint, says as follows:

1. Pursuant to N.J.S.A. 52:17A-4(h), Complainant, Matthew J. Platkin, Attorney General of New Jersey ("Attorney General"), is charged with the duty and responsibility of enforcing the laws of the State of New Jersey, and, pursuant to N.J.S.A. 45:1-14 to -27 is empowered to initiate administrative disciplinary proceedings against persons licensed by the New Jersey State Board of Medical Examiners ("Board").

2. Pursuant to N.J.S.A. 45:9-1 to -27.9, the Board is charged with the duty and responsibility of regulating the practice of medicine and surgery in the State of New Jersey.

3. Pursuant to N.J.S.A. 45:1-22, the Board may enter a temporary order of suspension of licensure, pending the conclusion of plenary proceedings, upon consideration of a “duly verified application of the Attorney General” that alleges “an act or practice violating any provision of an act or regulation administered” by the Board, provided, however, that the Attorney General’s application “palpably demonstrates a clear and imminent danger to the public health, safety and welfare[.]”

4. Respondent, Peter Driscoll, M.D., is a plastic surgeon who at all times relevant hereto, has been licensed to practice medicine and surgery in the State of New Jersey, and possesses license number 25MA09610700. The current status of Respondent’s license is “Active.”

5. On or about August 2021, Respondent began providing services for Perkins Medical, which is owned by Anthony Perkins, M.D. Perkins Medical has a contract with My Goals Solutions, Inc. ("Goals"), a medical management company that provides administrative and other non-medical care services to various medical practices. (Certification of Nikolija Drobnjak attached to the Certification of Deputy Attorney General Michelle Mikelberg (“Mikelberg Cert.”) at Exhibit D, Bates Stamp AG - 101.)

6. From August 2021 to approximately June 8, 2022, Respondent performed surgery and other medical services at 605 Broad Avenue, Suite 201, Ridgefield, New Jersey. (Mikelberg Cert. at Exhibit D, AG - 101.)

7. During this time period, Respondent, at times, appeared unkempt and wore surgical scrubs with animal hair on them. In addition, Respondent's conduct became erratic and inappropriate. (Mikelberg Cert. at Exhibit D, AG-102.)

8. Respondent repeatedly failed to comply with practice protocols by leaving the office prior to patients being out of recovery post procedure. (Mikelberg Cert. at Exhibit D, AG - 103.)

9. Respondent, during the "numbing break" (the period of time between when the tumescent anesthesia is injected into a patient and before the patient becomes fully numb), frequently left the office or took long breaks. Ibid. Sometimes he was found in his car. On other occasions, staff could not locate Respondent, who would often not answer his phone. Ibid.

10. On March 3, 2022, staff could not locate Respondent while a patient was on the table and ready to begin surgery. (Mikelberg Cert. at Exhibit D, AG - 103.) When Respondent was reminded of the practice protocols and the inappropriateness of his conduct, he sent a text message to the practice manager saying, "This won't happen again." Ibid. Later that day, Respondent proceeded to leave the office before that patient was discharged following surgery. Ibid.

11. In May 2022, Respondent was caught watching pornography during his numbing breaks. (Mikelberg Cert. at Exhibit D, AG-105.) Respondent's phone was connected to a speaker, which was used to play music during the surgical procedures. Ibid. While Respondent's phone was still connected to the Bluetooth system, he left the operating room and went into the restroom. Moments later, the sound of pornography started playing through the Bluetooth speaker. Ibid. The volume was so loud that other staff members, including those not in the surgical room, heard it and ran to turn it off. Ibid. This occurred on more than one occasion. Id. at AG-108.

12. As of May 6, 2022, a surgical assistant, K.M., requested to no longer work with Respondent because she felt uncomfortable in his presence. (Mikelberg Cert. at Exhibit D, AG - 106.) Respondent had been pursuing K.M. romantically and had put his hands around her waist in an inappropriate manner while in the operating room. Id. K.M. requested to only work with

another surgeon in the practice even though that physician worked fewer hours resulting in a significant reduction in K.M.'s compensation. Id.

13. On June 7, 2022, Respondent performed cosmetic surgery on Patient 1. (Mikelberg Cert at Exhibit A, AG- 053-095; Mikelberg Cert. at Exhibit C, AG-099; Mikelberg Cert. at Exhibit D, AG-106.)¹ Patient 1 entered into a Cosmetic Surgery Agreement with Goals for liposuction of the abdomen and a double Brazilian Butt Lift ("BBL"), which is the name for transdermal subcutaneous transfer of fat as removed from the body into the buttocks area. (Mikelberg Cert. at Exhibit A, AG-003-016; Mikelberg Cert. at Exhibit D, AG - 106.)

14. Patient 1 had requested the procedure known as Lipo360, which involves liposuction being performing fully around the abdomen as well as the front, back and sides of the patient. Id. at AG-106. However, her body mass index ("BMI") at 32 was too high to safely perform Lipo360. Also performing liposuction on Patient 1's back would result in an unsafe amount of fat removed and/or would require the removal of fat in excess of the legally permissible amount in New Jersey. Ibid.

15. In preparation for the procedures, at approximately 8:04 a.m. on June 7, 2022, Patient 1 ingested the following medications: oxycodone / 650 m.g., cephalexin 1000 m.g., Xanax 2 m.g., Diphenhydramine 50 m.g. and Clindamycin, 900 m.g. (Mikelberg Cert. at Exhibit A, RX Video; Mikelberg Cert. at Exhibit A Operation Room Orders, AG - 059.)

16. Prior to the start of the procedure, Patient 1 requested that Respondent perform liposuction on her back. (Mikelberg Cert. at Exhibit D, AG- 107.) Despite the contractual and safety limitation, Respondent marked her back for this procedure. Id.

¹ Pursuant to Board policy the name of the victim has been redacted. Respondent has been provided with the identity of the victim.

17. Once the "prepping" was completed and the surgery began, only Respondent, a surgical assistant and Patient 1 were in the operating room. (Statement of Patient 1, attached to Mikelberg Cert. as Exhibit C, AG -099).

18. Patient 1 was not placed under general anesthesia and was conscious during the entire procedure.

19. While the procedure was taking place, the surgical assistant left the operating room. There was a period of time during the procedure when Respondent and Patient 1 were alone in the operating room, specifically between the time when the first assigned surgical assistant needed to leave work and the replacement surgical assistant arrived. (Ibid.; Certification of Ronnie Parker, attached to Mikelberg Cert. as Exhibit E, AG -109-110; Certification of Winnie Quizon attached to Mikelberg Cert. as Exhibit F.)

20. During the procedure, following the abdominal liposuction, but prior to the fat transfer, and while no other staff were present in the surgical room, Respondent solicited sexual favors from Patient 1. (Mikelberg Cert. at Exhibit B, AG -96-98; Mikelberg Cert. at Exhibit C, AG - 099; Mikelberg Cert. at Exhibit D, AG -107.)

21. Respondent asked Patient 1 what she could do to "motivate" him to give her the Double BBL and Lipo360 with hips. (Mikelberg Cert. at Exhibit B, AG - 098.) Patient 1 then asked Respondent what he meant. Ibid. At that point, Respondent took Patient 1's hand and put it on his inner thigh and asked her to rub his genitals. Ibid.

22. Respondent then asked Patient 1 if she would perform fellatio on him. Ibid. When she told Respondent that she would not perform oral sex, he instructed her to continue rubbing and stroking his genitals so that he could "get motivated" to finish her procedure "so he could sculpt [her] body like a goddess." Ibid. Patient 1, feeling "trapped" because she was "on the table in the

middle of [her] procedure," complied. (Mikelberg Cert. at Exhibit B, AG - 098; Mikelberg Cert. at Exhibit C, AG -99 .)

23. The post-operative care record reflects that Respondent performed liposuction of Patient 1's abdomen and back as well as the double Brazilian Butt Lift. The total amount of fat aspirated was 6000 ml and 4200 ml of supernatant fat was removed. (Mikelberg Cert. at Exhibit C, AG - 063.)

24. On June 7, 2022 at approximately 8 p.m., Patient 1 reported the sexual assault by Respondent to the Ridgefield Police Department. (Mikelberg cert. at Exhibit B, AG - 096).

25. On June 8, 2022, Patient 1 went police headquarters where she filed a detailed statement regarding Respondent's non-consensual sexual contact with her during the procedure the previous day. (Mikelberg Cert. at Exhibit A, AG -097.) She informed law enforcement officers that she does not want what happened to her to happen to other women. Ibid.

26. On June 8, 2022, Patient 1 contacted the main office of Goals and, in person, reported the incident to the practice manager. (Mikelberg Cert. at Exhibit B, AG -097; Mikelberg Cert. at Exhibit D, AG- 106.)

27. The same day, Goals and Perkins Medical suspended Respondent's surgical privileges. (Mikelberg Cert. at Exhibit D, AG - 107.)

COUNT I

28. The allegations set forth above are repeated and re-alleged as if set forth at length herein.

29. Respondent's conduct constitutes gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person within the meaning of N.J.S.A. 45:1-21(c); repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) and a failure to conduct himself as a professional of good moral character as required by N.J.S.A. 45:9-6.

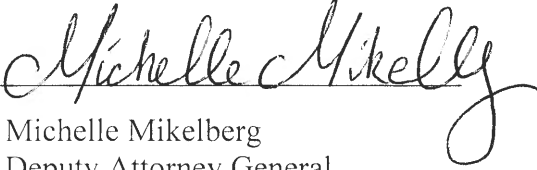
30. Respondent's conduct constitutes a violation or failure to comply with the provisions of any act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h), specifically engaging in sexual misconduct in violation multiple portions of N.J.A.C. 13:35-6.3. More precisely, Respondent's violated N.J.A.C. 13:35-6.3(c) by engaging in sexual contact with a patient while rendering medical treatment; he further violated section (d) by seeking and or soliciting sexual contact with a patient in exchange for professional services and violated N.J.A.C. 13:35-6.3(h) and (i), by watching pornography while at work as well as making repeated, unwanted sexual advances upon Goals staff, which constitute sexual harassment.

31. Respondent's persistent deviations from practice protocols, untoward conduct prior to procedures, sexual advances toward co-workers and revolting sexual contact with a patient evidences a physician on a downward spiral whose violations of Board statutes and regulations places the public's health, safety, and welfare in clear and imminent danger and warrants the temporary suspension of his license to practice medicine and surgery pursuant to N.J.S.A. 45:1-22.

WHEREFORE, Complainant demands the entry of an Order:

1. Temporarily suspending Respondent's license to practice medicine and surgery in the State of New Jersey pending the conclusion of a plenary hearing in this matter, pursuant to N.J.S.A. 45:1-22;
2. Revoking or suspending Respondent's license to practice medicine and surgery in the State of New Jersey following a plenary hearing;
3. Assessing civil penalties against Respondent for each and every separate unlawful act as set forth in the individual counts above, pursuant to N.J.S.A. 45:1-22;
4. Requiring Respondent to pay costs, including investigative costs, attorney's fees and costs, expert and fact witness fees and costs, costs of trial, and transcript costs, pursuant to N.J.S.A. 45:1-25(d); and
5. Ordering such other and further relief as the Board of Medical Examiners shall deem just and appropriate under the circumstances.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 
Michelle Mikelberg
Deputy Attorney General

Dated: 12/15/22



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
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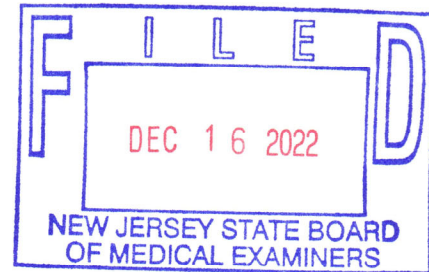
MATTHEW J. PLATKIN
Attorney General

MICHAEL T.G. LONG
Director

December 15, 2022

VIA ELECTRONIC MAIL ONLY

New Jersey State Board of Medical Examiners
P.O. Box 183
Trenton, New Jersey 08625



Re: **In the Matter of Peter V. Driscoll, M.D.**
License No. 25MA09610700

Dear Honorable Members of the Board:

Please accept this letter brief in support of the Attorney General's Verified Application seeking the Temporary Suspension of plastic surgeon Peter V. Driscoll, M.D.'s (hereinafter "Respondent") medical license for soliciting and engaging in sexual misconduct with Patient 1¹, as well as other gross deviations from the accepted standards of professional practice. The Respondent's egregious actions and deviations represent a clear and imminent danger to the public, and, as such, the Attorney General urges the Board to immediately suspend Respondent's license to practice medicine pursuant to N.J.S.A. 45:1-22.

¹ Pursuant to Board policy the victim's name has been redacted. The identity of the patient is known to Respondent.



CERTIFIED TRUE COPY

PRELIMINARY STATEMENT

In June 2022, Respondent subjected a current patient to non-consensual sexual contact. The patient, referred to as Patient 1, first reported the incident to law enforcement on June 7, 2022, the same day the abuse occurred. She informed officers that during the course of undergoing a cosmetic surgery, liposuction and a Brazilian Butt Lift ("BBL"), and while no other medical staff were present in the room, Respondent solicited sexual contact with her.¹

Specifically, Respondent asked Patient 1 what she could do to "motivate" him to give her additional services. Patient 1 then asked Respondent what he meant. At that point, Respondent took Patient 1's hand and placed it on his inner thigh while asking her to rub his genitals. Respondent, whose groin was positioned a few inches from Patient 1's face, then asked her to perform fellatio on him. When she told Respondent that she would not do that, he instructed her to continue rubbing and stroking his private area so that he could "get motivated" to finish her procedure "so he could sculpt [her] body like a goddess." Patient 1, feeling understandably "trapped" as she was "on the table in the middle of [her] procedure" and fearing that Respondent would "ruin" her surgery or otherwise harm her if she refused, complied in manually stimulating Respondent.

Later, the same day, Patient 1 reported the incident to law enforcement and the following day informed Nikolija Drobnjak, the practice manager of the surgical facility where she underwent her procedure.

¹As Patient 1 was not under general anesthesia, but rather tumescent anesthesia, which is the practice of injecting a very dilute solution of local anesthetic combined with epinephrine and sodium bicarbonate into tissue, she was awake at the time of Respondent's sexual contact with her.

Prompted by the referral, the Enforcement Bureau ("EB") of the Division of Consumer Affairs conducted an investigation into the allegation and Respondent's practice of medicine. As part of that investigation, the EB interviewed staff at My Goals Solutions, Inc. ("Goals"), a medical management company which operates surgical facilities and with which Respondent was affiliated. Goals staff provided disturbing information about Respondent's conduct, which had become erratic and inappropriate beginning in approximately April 2022. Staff reported complaints about Respondent ranging from concerns about Respondent's hygiene and failure to follow practice protocols to creating a hostile work environment by engaging in sexually inappropriate behavior.

The practice manager reported Respondent coming to work disheveled and with animal hair on his scrubs, disappearing for periods of time while he was supposed to be working as well as leaving the facility before patients were out of recovery, which endangered their health and safety. In addition, Respondent made persistent and unwanted romantic advances on a staff member, K.M., prompting the employee to request to no longer work with Respondent. And finally, Respondent was reported to have watched pornography on multiple occasions while at work. Despite staff addressing these numerous issues with Respondent, the problems persisted and ultimately culminated in the incident of sexual misconduct on June 7 after which Respondent's privileges at Goals were revoked immediately.

Respondent abandoned all decency on the day of Patient 1's procedures. His coercive and depraved actions that day as well as his general carelessness, sexual harassment and the extreme lack of professionalism exhibited at the surgical facility on multiple occasions palpably demonstrates that Respondent's continued practice of medicine constitutes a clear and imminent danger to the

public health, safety and welfare. The Board should, therefore, temporarily suspend Respondent's license to practice medicine.

STATEMENT OF FACTS

The Attorney General relies upon the facts set forth in detail in the Verified Complaint accompanying this application for the immediate temporary suspension of Respondent's medical license pending a plenary hearing.

ARGUMENT

RESPONDENT'S CONTINUED PRACTICE OF MEDICINE PRESENTS A CLEAR AND IMMINENT DANGER TO THE PUBLIC HEALTH, SAFETY, AND WELFARE, THUS WARRANTING A TEMPORARY SUSPENSION OF HIS LICENSE.

N.J.S.A. 45:1-22 authorizes the Board to temporarily suspend or limit any license issued by the Board upon a showing that the licensee's continued practice would constitute a clear and imminent danger to the public. The statute states, in relevant part:

A board may, upon a duly verified application of the Attorney General that . . . 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.

N.J.S.A. 45:1-22.

Such authority is granted to the Board because the "State has a substantial interest in the regulation and supervision of those who are licensed to practice medicine." In re Polk, 90 N.J. 550, 566 (1982). The State, through the Board, "must be vigilant and competent to protect these interests

fully.” Ibid. The Board’s obligations in this respect are paramount to the qualified right of the individual practitioner claiming the privilege to pursue his or her licensed profession. Ibid. The Legislature, moreover, has granted the Board broad authority to regulate the practice of medicine. In re Zahl License Revocation, 186 N.J. 341, 352 (2006) (citing, Polk, 90 N.J. at 565).

The Board may use its “experience, technical competence, and specialized knowledge” in evaluating whether a physician is competent to practice medicine. In re Silberman, 169 N.J. Super. 243, 256 (App. Div. 1979) (internal citation and quotation marks omitted); see also, In re Heller, 73 N.J. 292, 308 (1977).

In this matter, the Respondent’s conduct clearly warrants the temporary suspension of his license to practice medicine.

A. Respondent committed gross acts of negligence by engaging in sexual misconduct with Patient 1 during a surgical procedure and is therefore incapable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare.

For sound reasons, the Board regulations prohibit a physician from engaging in any type of sexual contact with a current patient. See N.J.A.C. 13:35-6.3(c). As the policy statement in the appendix to N.J.A.C. 13:35-6.3 explains, "It is beyond dispute that sexual contact with patients is in conflict with the very essence of the practice of medicine." Section A of the appendix instructs, "It is well established that sexual activity between physicians and patients is almost always harmful to the patient and is prohibited." The rationale for the limitation on sexual activity is evident, "A patient must have absolute confidence and trust in his or her physician. Insertion of sexual activity into the professional relationship destroys such trust because the personal interest of the physician is in conflict with the interest of the patient." See Appendix A(i).

Here, not only did Respondent engage in sexual contact with Patient 1 during the existence of a doctor-patient relationship, but it was under duress and during an actual surgical procedure.

(Police reports and statement, attached as Exhibit B to the Certification of Deputy Attorney General Michelle Mikelberg ("Mikelberg Cert."), Bates Stamp AG-096-098.) It is hard to conceive of a situation where a patient is more vulnerable and unable to consent than while being operated upon. Indeed, Patient 1, medicated with a surgeon standing over her and instruments inside her body, explained how she felt "trapped" and had "no choice" but to comply, when Respondent propositioned her. (Mikelberg Cert. at Exhibit C, AG- 099.) In seeking sexual favors from Patient 1 in the midst of her liposuction/BBL procedures, Respondent exploited both his power and her vulnerability to an extreme degree. Moreover, even if Patient 1 had been in a position to offer voluntary consent, which she was not, in the context of a doctor-patient relationship, the patient's consent is never a defense to sexual contact by a licensee under N.J.A.C. 13:35-6.3(l).

Under N.J.A.C. 13:35-6.3(d), a licensee is precluded from seeking or soliciting sexual contact with the patient and also prohibited from doing so in exchange for professional services. In the case of Patient 1, Respondent violated both parts of section (d). He first solicited oral sex from Patient 1, which she declined. (Mikelberg Cert. at Exhibit B, Bates Stamp AG-098.) And then, he coerced her to manually stimulate him in exchange for additional liposuction for which she did not qualify for due to her Body Mass Index ("BMI") being too high. (Ibid; Certification of Nikolija Drobnjak attached to Mikelberg Cert. as Exhibit D., Bates Stamp AG-106). In asking for fellatio and other sexual favors, Respondent likewise violated section (e) of the regulation, which prohibits the licensee from engaging in any discussion of an intimate sexual nature with an existing patient.

Because the medical records as well as the practice manager's and investigator's certifications corroborate Patient 1's account of Respondent's misconduct, this is not a "he said, she said" situation. The interviews of the two surgical assistants working that day, Ronnie Parker

and Omoni Walker, substantiate Patient 1's report that she was alone with Respondent when the abuse occurred. (Certification of Ronnie Parker, surgical technician, attached to Mikelberg Cert. as Exhibit E, AG-110; Certification of EB Investigator Winni Quizon's attached to Mikelberg Cert. as Exhibit F, AG -111-112.) Both assistants confirm that because of a staffing change there was a period of time when Respondent was alone with Patient 1 giving him an opportunity to engage in the reported misconduct. Ibid.

In addition, Ms. Walker informed the investigator that the duration of Patient 1's surgery was longer than the procedure(s) usually takes, which aligns with the victim's statement providing further support for Patient 1's account. (Mikelberg Cert. at Exhibit F, AG-112.) If Respondent left the operating room multiple times during her procedures because he was aroused, as she represents he did, it logically follows that Patient 1's surgery would have taken more time than the same procedures usually require.

Further strengthening Patient 1's credibility are her actions following the abuse. First, she promptly reported the incident to law enforcement. (Mikelberg Cert. at Exhibit B, AG-096-098.) Although still in pain from the procedures, Patient 1 prioritized the need to report Respondent's misconduct over her own comfort. Id. at AG- 096. She then returned to police headquarters the following day to give a more detailed account reflecting her commitment to ensuring that "what happened [not] happen to other women." Id. at AG-097. Second, she only returned to Goals once more, on June 8, when she reported the incident to the practice manager and received her post-operative drainage. (Mikelberg Cert. at Exhibit D, AG-106-107). Although she had post-surgical massages scheduled for June 9, 10 and 11, Patient 1 never returned to Goals. (Mikelberg Cert. at Exhibit A, AG-091-092.) Her cancellation of those appointments -- which would benefit her recovery -- again bolsters her believability. It makes sense that if a medical professional at Goals

sexually exploited her, she would be loath to return to that facility. Indeed, when a Goals employee made contact with Patient 1 on June 9 to confirm her post-operative massage appointment the following day, Patient 1 canceled telling the receptionist she had been "violated." Id. at AG-091.

In sum, compelling facts corroborate Patient 1's account. First, the unusual absence of a surgical assistant from the operating room due to the shift change created the opportunity for Respondent to abuse Patient 1 unobserved. (Mikelberg Cert. at Exhibits E and F, AG -109-112.) Second, the extended duration of the procedure aligns with the victim's statement that Respondent took multiple breaks while being manually stimulated. Third, Patient 1's behavior is consistent with someone who was violated. Despite the pain she was experiencing and the embarrassment of detailing what happened, she immediately reported Respondent's misconduct and never returned to Goals--understandably avoiding the risk of further abuse and re-traumatization. See generally Exhibit B; Exhibit A, AG-091-092.

B. Respondent engaged in gross negligence, gross malpractice and gross incompetence during Patient 1's surgical procedures on June 7, 2022.

Not only did Respondent abuse his authority and traumatize Patient 1 by extracting sexual favors from her, but he also risked her physical health and safety that day. First, by engaging in sexual contact with Patient 1 during the surgical procedure, Respondent contaminated the sterile environment, which negligently put Patient 1, who had multiple incisions on her body, at risk of an infection. (See generally Mikelberg Cert. at Exhibit A.) Second, while Patient 1 manually stimulated Respondent, he continued to perform the surgery on her! (Mikelberg Cert. at Exhibit C, AG-99.) Disturbingly, Patient 1 recalls there being "surgical tools" inside her body during the entire sexual encounter. Ibid. The dangers of such conduct are evident and cannot be understated. Respondent obviously could not have been focused on his tasks or monitoring her vital signs, while engaging in sexual activity.

C. Respondent's sexual advances toward a coworker as well as his viewing of pornography in the office constitute violations of N.J.A.C. 13:35-6.3(h) and (i).

In the months preceding the egregious misconduct with Patient 1, Respondent's behavior at work had become highly problematic. While Respondent's abuse of Patient 1 alone justifies temporary suspension of his license, Respondent's persistent pursuit of K.M., a female coworker, and his pornography-viewing at work, which also violated the law, further validates the need for this Board to take immediate and decisive action.

Pursuant to N.J.A.C. 13:35-6.3(h), a licensee shall not engage in sexual harassment, whether in a professional setting or elsewhere.

Sexual harassment jurisprudence generally divides sexual harassment cases into two categories. *Quid pro quo* sexual harassment occurs when an employer attempts to make an employee's submission to sexual demands a condition of his or her employment... Hostile work environment sexual harassment, by contrast, occurs when an employer or fellow employees harass an employee because of his or her sex to the point at which the working environment becomes hostile.

[Lehmann v. Toys 'R' Us, 132 N.J. 587, 602 (1993).]

In this case, Respondent's unwanted advances toward one of the Goals staff members, including touching her body in an inappropriate manner, constitutes sexual harassment. (Mikelberg Cert. at Exhibit D, AG- 105-106.) K.M.'s request to no longer work with Respondent even if it resulted in a significant reduction in her hours evidences how hostile and intolerable the working environment had become. Ibid.

Further, Respondent's acts of watching pornography while at work violates N.J.A.C. 13:35-6.3(i), which precludes a licensee from engaging in "any other activity which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient."

Perhaps more than any other professional setting, a medical office should be a safe and respectful environment. The repeated instances of Respondent viewing pornography in the medical office, while patients were being prepared for surgery, demonstrates an extreme lack of judgement by Respondent and created an unprofessional and highly uncomfortable environment for both the medical staff and patients present. (Mikelberg Cert. at Exhibit D, AG-105, 108.)

Indeed, the District of New Jersey has acknowledged that, where a female pilot for a major airline encountered repeated instances of pornography in the cockpit, and endured demeaning comments, such an atmosphere may violate Title VII. Blakey v. Continental Airlines, Inc., 992 F. Supp 731, 742 (D.N.J. 1998). In addition, the Second Circuit has held that "the mere presence of pornography in a workplace can alter the 'status' of women therein and is relevant to assessing the objective hostility of the environment." Patane v. Clark, 508 F.3d 106 (2nd Cir. 2007).¹

Beyond the issue of the potentially hostile environment his pornography viewing created, Respondent's crass and cavalier behavior reflects a distracted and self-absorbed physician. Instead of reviewing or completing records or otherwise preparing for the surgery he was about to perform, Respondent used the numbing period for his sexual arousal and entertainment. Moreover, the fact that the incident happened more than once underscores Respondent's unwillingness to recognize the indecency of his behavior and change it. Ibid. Moreover, Respondent's preoccupation with prurient interests heightens the believability of Patient 1's account.

¹ "The Equal Employment Opportunity Commission's Policy Guidance on Sexual Harassment, 8 FEP Manual at 405:6681 (issued on March 19, 1990) that states that proliferation of pornography and demeaning comments, if sufficiently continuous and pervasive, may be found to create an atmosphere in which women are viewed as men's sexual playthings rather than as their equal coworkers. Depending on the totality of circumstances, such an atmosphere may violate Title VII of the Civil Rights Act of 1964." Blakey 992 F. Supp at 742 citing 8 FEP Manual at 405:6692.

CONCLUSION

In order to protect the health, safety, and welfare of the public, this Board should temporarily suspend Respondent's medical license pending a plenary hearing pursuant to N.J.S.A. 45:1-22.

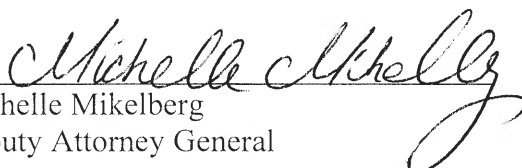
As evidenced by Patient 1's credible and corroborated account of sexual misconduct as well as the statements of Goals staff, he engaged in, among other things, sexual misconduct and acts of gross negligence.

Respondent's actions flagrantly violated the law as well as have harmed both the medical community and the public. His sexual exploitation of a patient on the operating table so shocks the conscious that it not only destroys Respondent's reputation, but diminishes the reputation of all physicians and the trust patients have in their health care professionals.

Such an appalling lack of judgment should not be countenanced by the Board. Respondent's inability to conduct himself in an ethical manner and to grasp the very fundamentals of medicine demonstrate that he presents an imminent danger to the public health, safety, and welfare and warrants the temporary suspension of his license to practice medicine pursuant to N.J.S.A. 45:1-22.

Sincerely yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 
Michelle Mikelberg
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cc: Peter V. Driscoll, M.D.