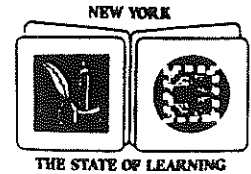


RECEIVED

JAN 25 1988

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12230

ASSISTANT COMMISSIONER, OFFICE OF THE PROFESSIONS
EXECUTIVE DIRECTOR, OFFICE OF PROFESSIONAL DISCIPLINE, 622 THIRD AVENUE, NEW YORK, NEW YORK 10017

December 23, 1987

Jose L. Lizardi, Physician
[REDACTED]

Re: License No. 151356

Dear Dr. Lizardi:

Enclosed please find Commissioner's Order No. 7906. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

[REDACTED]
MOIRA A. DORAN
Supervisor

DJK/MAD/sn
Enclosures

CERTIFIED MAIL - RRR

cc: Bruce E. Hansen, Esq.
Harter, Secrest and Emery
700 Midtown Tower
Rochester, NY 14604

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JAN 26 1988

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

JOSE L. LIZARDI, M.D.

APPLICATION

FOR

CONSENT

ORDER

State of New York)

ss.:

County of Albany)

JOSE L. LIZARDI, M.D., being duly sworn, deposes and says:

That on or about the August 20, 1982, I was licensed to practice as a physician in the State of New York, having been issued license number 151356 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 from [REDACTED].

I understand that the New York State Board for Professional Medical Conduct has charged me with fourteen specifications of professional misconduct, as set forth in the Statement of Charges, a copy of which is annexed hereto, made a part hereof, and marked as "Exhibit A".

I do not contest the specifications set forth in the Statement of Charges.

JOSE L. LIZARDI, M.D.

I hereby agree to the disciplinary penalty that my license to practice as a physician in the State of New York be suspended for six years, that the first year shall be an actual suspension, that the execution of the last five years of this suspension shall be stayed, and that I shall be placed on probation for this five year period under the terms set forth in Exhibit "B" which is annexed hereto and made a part hereof.

I make this application to the Board of Regents and request that it be granted.

I understand that, in the event that this application is not granted by the Board of Regents, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me. Such application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding. Such denial by the Board of Regents shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board of Regents pursuant to the provisions of the Education Law.

I agree that, in the event the Board of Regents grants my application, as set forth herein, an order of the Commissioner of Education may be issued in accordance with the terms of this application.

JOSE L. LIZARDI, M.D.

No promises of any kind were made to me. I am making this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.


JOSE L. LIZARDI, M.D.
Respondent

Sworn to before me this 10th
day of AUGUST, 1987


NOTARY PUBLIC

DEBORAH A. COLE
Notary Public, State of New York
Residing in Albany County
My Commission Expires 9/30/89

NEW YORK STATE : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JOSE L. LIZARDI, M.D.

STATEMENT
OF
CHARGES

The State Board for Professional Medical Conduct, upon information and belief, charges and alleges as follows:

1. JOSE L. LIZARDI, M.D., hereinafter referred to as the Respondent, was authorized to engage in the practice of medicine in the State of New York on August 20, 1982 by the issuance of License Number 151356 by the State Education Department.

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 from [REDACTED].

3. The Respondent is charged with professional misconduct within the purview of N.Y. Educ. Law §6509 (McKinney 1985) as set forth in the Specifications attached.

EXHIBIT A

FIRST THROUGH FIFTH SPECIFICATIONS

4. The Respondent is charged with professional misconduct by reason of committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and N.Y. Admin. Code tit. 8, §29.1(b)(5) (1984) by having engaged in conduct in the practice of medicine which evidences moral unfitness to practice in that, among other things and incidents:

(a) On or about February 2, 1983, while the Respondent was employed at Planned Parenthood of Rochester and Monroe County, Inc. (Planned Parenthood), the Respondent performed a gynecological examination on Patient A (Patient A and all other patients referred to herein are identified in Appendix A). During this examination, the Respondent without medical purpose:

- (i) Stimulated Patient A's clitoris;
- (ii) Questioned Patient A about her sexual activities; and
- (iii) Told Patient A that she had a pretty face and beautiful eyes, while touching Patient A's breasts.

(b) In or about July 1983, while the Respondent was employed at Planned Parenthood, the Respondent performed a gynecological examination on Patient B. During this examination, the Respondent without medical purpose:

- (i) Suggested to Patient B that she call him anytime she wanted;

(ii) The Respondent subsequently telephoned Patient B at her home in or about August, 1983 and had sexual relations with her; and

(iii) Patient B returned to Planned Parenthood in or about September 1983, because of a vaginal infection. During Patient B's examination, the Respondent spoke to Patient B in an obscene, threatening and disparaging manner.

(c) The Respondent falsified the findings from a physical examination which he purportedly performed on Patient C at Strong Memorial Hospital in Rochester, New York at 2:00 p.m. on October 24, 1984. The Respondent did not, in fact, perform a physical examination at the time he documented the results of such an examination in Patient C's hospital record.

(d) The Respondent was the chief resident on call for the OB/GYN department at the Genesee Hospital in Rochester, New York during the night shift which spanned March 24-25, 1985. At this same time, the Respondent was moonlighting as the on-call physician at the Rochester Psychiatric Center. When the Respondent was confronted with the fact that he had professional responsibilities as an on-call physician to two separate hospitals at the same time, the Respondent denied that he was on-call at both hospitals. The Respondent falsely stated that he was at home.

(e) The Respondent was absent without approval while he was the chief resident in the OB/GYN department at the Genesee Hospital in November 1984 and April 1985.

SIXTH SPECIFICATION

5. The Respondent is charged with professional misconduct by reason of committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and N.Y. Admin. Code tit. 8, §29.2(a)(3) (1981) by failing to maintain an accurate record reflecting the evaluation and treatment of a patient in that, among other things and incidents:

The State Board for Professional Medical Conduct repeats and realleges allegations set forth in the Third Specification.

SEVENTH AND EIGHTH SPECIFICATIONS

6. The Respondent is charged with professional misconduct by reason of committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and N.Y. Admin. Code tit. 8, §29.2(a)(2) (1981) by willfully harassing, abusing or intimidating a patient either physically or verbally in that, among other things and incidents:

The State Board for Professional Medical Conduct repeats and realleges the allegations set forth in the First and Second Specifications.

NINTH THROUGH TWELFTH SPECIFICATIONS

7. The Respondent is charged with practicing the profession of medicine fraudulently within the meaning of N.Y. Educ. Law §6509(2) (McKinney 1985) in that, among other things and incidents:

The State Board for Professional Medical Conduct repeats and realleges the allegations set forth in the First through Fourth Specifications.

THIRTEENTH AND FOURTEENTH SPECIFICATIONS

8. The Respondent is charged with professional misconduct by reason of committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and N.Y. Admin. Code tit. 8, §29.2(a)(1) (1981) by abandoning professional employment with a hospital without reasonable notice and under circumstances which seriously impaired the delivery of professional care to patients in that, among other things and incidents:

The State Board for Professional Medical Conduct repeats and realleges the allegations set forth in the Fourth and Fifth Specifications.

DATED: Albany, New York

Aug. 26 , 1987



KATHLEEN M. TANNER
Director
Office of Professional Medical
Conduct

EXHIBIT B

TERMS OF PROBATION

JOSE L. LIZARDI, M.D.

1. Dr. Lizardi shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Dr. Lizardi shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Lizardi shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 2538, Albany, New York 12237 of any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Dr. Lizardi leaves New York to reside or practice outside the State, Dr. Lizardi shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Lizardi shall make annual visits with an employee of the Office of Professional Medical Conduct.
6. All physical examinations of female patients by Dr. Lizardi, shall be performed in the presence of a female attendant.
7. Dr. Lizardi shall undergo psychiatric or psychological therapy for a period of six years, unless Dr. Lizardi's therapist determines that he should be discharged from therapy at an earlier date. Dr. Lizardi shall select the therapist, which shall be subject to the approval of the Director of the Office of Professional Medical Conduct. Dr. Lizardi's therapist shall provide quarterly reports to the Director of the Office of Professional Medical Conduct as to Dr. Lizardi's progress in therapy. Dr. Lizardi hereby waives all confidentiality constraints which might otherwise prevent his therapist from fully reporting to the Director of OPMC.

8. Dr. Lizardi shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of non-compliance. These declarations shall include the name, title and address of female attendants who have observed his physical examinations of female patients. These declarations should be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.
9. Dr. Lizardi shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Lizardi elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.
10. If there is full compliance with every term set forth herein, Dr. Lizardi may practice as a physician in New York in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Lizardi pursuant to the N.Y. Public Health Law §230(19) or any other applicable laws.

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JOSE L. LIZARDI, M.D.

APPLICATION
FOR
CONSENT
ORDER

The undersigned agree to the forgoing application and to the proposed penalty based on the terms and conditions thereof.

Date:

8/10/87


JOSE L. LIZARDI, M.D.
Respondent

Date:

8/12/87


BRUCE E. HANSEN, ESQ.
Attorney for Dr. Lizardi

Date:

8/18/87


MEMBER, State Board for
Professional Medical Conduct

Date:

8/21/87


KATHLEEN M. TANNER, Director
Office of Professional Medical
Conduct

VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:

JOSE L. LIZARDI, being duly sworn, deposes and says that deponent is the Respondent in the within action; that deponent has fully read the foregoing PETITION and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.



José L. Lizardi

Sworn to before me this
25th day of January, 1988.



Notary Public

ROBERT W. JOHNSON
Notary Public, State of N.Y., Monroe Co.
My Commission Expires November 30, 1988



The University of the State of New York

IN THE MATTER

OF

JOSE L. LIZARDI
(Physician)

DUPLICATE
ORIGINAL ORDER
NO. 7906

Upon the application of JOSE L. LIZARDI, under Calendar No. 7906, and the vote of the Board of Regents on November 20, 1987, which application and vote are incorporated herein and made a part hereof, it is

ORDERED that, pursuant to the vote of the Board of Regents, the application is hereby granted in accordance with the provisions of the application and the vote of the Board of Regents, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 14th day of December, 1987.


Commissioner of Education



Approved November 20, 1987

No. 7906

Upon the application of JOSE L. LIZARDI, under Calendar No. 7906, and in accordance with the provisions of Title VIII of the Education Law, it was

Voted: That the application of JOSE L. LIZARDI, respondent, for a consent order be granted; that respondent's license and registration to practice as a physician in the State of New York be suspended for six years; that the first year shall be an actual suspension; that execution of the last five years of this suspension shall be stayed at which time respondent be placed on probation for said five year period under the terms set forth in the application; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote.

ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK

JOSE L. LIZARDI

CALENDAR NO. 7906

THE UNIVERSITY OF THE STATE OF NEW YORK

IN THE MATTER

OF

JOSE L. LIZARDI
(Physician)

PETITION
CALENDAR NO. 7906

The Petition of Jose L. Lizardi respectfully shows:

I am the Respondent in this proceeding brought by the State Board for Professional Medical Conduct, which resulted in an Order suspending my license and registration to practice as a physician in the State of New York in accordance with the provision of my application for Consent Order and the vote of the Board of Regents. True copies of the said Order and of the vote of the Board of Regents are annexed hereto.

At the time I made application for the Consent Order and agreed to the disciplinary penalty imposed by the Board of Regents, I was in my final year of residency in the Obstetrics and Gynecology Department of Albany Medical Center Hospital, Albany, New York. On the date the said Order was served upon me, I was within six months of completing my residency.

At the time I made application for the Consent Order, I was totally unaware that a suspension of my license would interrupt my training. I was under the impression that since a resident did not need a license to practice under the supervision of licensed physicians at a hospital, I would be in no different position insofar as completing my residency is concerned in possessing a license under

suspension than I would have been had I not been licensed at all.

Unfortunately, I find that my understanding of the law was incorrect. I now understand that although a resident is an exempt person under §6526 of the Education Law and need not be licensed to practice medicine in a hospital under the supervision of a licensed physician, if he in fact be licensed and that license is suspended, he would be guilty of a Class E felony should he continue to practice medicine as a resident. In view of this, I am no longer in the residency program and cannot resume my residency training until the year of my actual suspension has expired, unless the Board of Regents would grant this application for a modification of the aforesaid Order pursuant to 8 NYCRR §3.3(f).

8 NYCRR 3.3(f) provides that the Board of Regents may grant an application for reconsideration of a determination in a disciplinary proceeding on a showing that its determination was based on an error of law, or that there is new and material evidence which was not previously available, or that circumstances have occurred subsequent to the original determination which warrant a reconsideration of the measure of discipline.

I sincerely believe that this case falls within the third of the above-mentioned grounds for reconsideration because as a practical matter, the discipline to which I freely consented has turned out to be far in excess of that which was intended by me, and I would think by the State Board for Professional Medical Conduct, and I would hope even by the Board itself. Actually, I am not asking that the measure of discipline be changed in any way but only that it

be postponed temporarily for the reasons set forth below.

At the time the charges which resulted in the Order of Suspension were leveled against me in the Spring of 1985, in the form of complaints to the University of Rochester - Strong Memorial Hospital, Rochester, New York, where I was a resident in the Obstetrics and Gynecology Department, I was within three weeks of completing my residency at that Hospital. Because of the charges, I was suspended and not permitted to complete my residency at that institution.

On October 29, 1985, I was involved in a serious accident wherein I suffered severe head and leg injuries. Because of these injuries, I was unable to resume my residency training until July, 1986 at Albany Medical Center Hospital. Although I lacked only three weeks of completing my training at Strong Memorial Hospital, I received no credit for this and I was required to repeat the whole two years. As stated above, on the effective date of the Order of Suspension herein, I was approximately six months away from completing this second two-year residency program.

If I am not permitted to complete my residency without further undue delay, the likelihood is that I will lose credit for the year and one-half residency training at Albany Medical Center Hospital as occurred with the almost two years of residency training at Strong Memorial Hospital. The net effect of having to start a third two-year residency program all over again, I submit, increases the penalty imposed far beyond that which anyone to this proceeding intended, and is a circumstance warranting the granting of this application.

In view of the foregoing, I respectfully request that the Order of Suspension be modified so as to provide that it is not to take effect until the completion of my residency at Albany Medical Center Hospital. I believe the Obstetrics and Gynecology Department at Albany Medical Center Hospital would support this application, and although I would not expect the State Board for Professional Medical Conduct to join in this application, I would hope it would not oppose it.

A solid black rectangular box redacting the signature of the author.

Jose L. Lizardi

JOSE L. LIZARDI, M.D.

The undersigned has reviewed and agrees to the foregoing Application for Consent Order.

Date: 8/21/87


DAVID AXELROD, M.D.
Commissioner of Health

The undersigned, a member of the Board of Regents who has been designated by the Chairman of the Regents Committee on Professional Discipline to review this Application for a Consent Order, has reviewed said application and recommends to the Board of Regents that the application be granted.

Date: 9/30/87


MEMBER OF THE BOARD OF REGENTS