



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

PUBLIC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frank J. Ilardi, M.D.
c/o Debra J. Young, Esq.
Thuillez, Ford, Gold, Butler & Young
20 Corporate Woods Boulevard
Albany, New York 12211

Debra J. Young, Esq.
Thuillez, Ford, Gold, Butler & Young
20 Corporate Woods Boulevard
Albany, New York 12211

Robert Bogan, Esq.
NYS Department of Health
Hedley Building
433 River Street - 4th Floor
Troy, New York 12180

RE: In the Matter of Frank J. Ilardi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.07-132) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

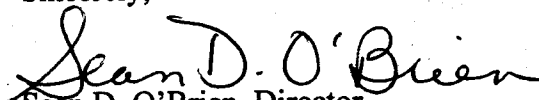
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,


Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

**IN THE MATTER
OF
FRANK J. ILARDI, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #07-132

A hearing was held on June 20, 2007, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated March 8, 2007, were served upon the Respondent, **Frank J. Ilardi, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chairperson, **Edmund A. Egan II, M.D.**, and **Ms. Virginia R. Marty**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by **Thuillez, Ford, Gold, Butler & Young, Debra J. Young, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Frank J. Ilardi, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Frank J. Ilardi, M.D., the Respondent; was authorized to practice medicine in New York State on September 30, 1988, by the issuance of license number 176394 by the New York State Education Department (Petitioner's Ex. 4).

2. On October 13, 2006, the Alaska Department of Commerce Community and Economic Development, Division of Corporations, Business and Professional Licensing, State Medical Board ("Alaska Board"), accepted the voluntary surrender of the

Respondent's license to practice medicine, based on harassing, disruptive or abusive behavior; engaging in unprofessional, sexual, lewd or immoral conduct in connection with the delivery of professional services to patients; and violating the code of ethics. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(17) - "Exercising undue influence on the patient...;"
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"
- New York Education Law Section 6530(31) - "Willfully harassing, abusing, or intimidating a patient either physically or verbally;" and
- New York Education Law Section 6530(44) - "In the practice of psychiatry, (a) any physical contact of a sexual nature between licensee and patient except the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction..."

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct

resulting in the surrender would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The case against the Respondent in this New York State professional medical conduct proceeding is based on a disciplinary proceeding against the Respondent in Alaska. The Alaska Board accepted the Respondent's voluntary surrender to resolve that proceeding. The charges in the Alaska proceeding appear in an Accusation (Petitioner Ex. 5). The Alaska Accusation alleged that the Appellant engaged in grossly unacceptable sexual conduct with two women, L.H. and D.B. These charges are summarized in the following two paragraphs.

The Respondent, a psychiatrist, was a staff member at Charter North Star Hospital ("the Hospital") in Anchorage, Alaska. L.H. was a nurse at the Hospital. In November of 2002, the Respondent noticed that L.H. was upset and she told him that she was depressed and missed her family. The Respondent told L.H. that he would like to help and offered his services. A week or two later, L.H. went to the Respondent's office and said that she wanted to talk to him. She stated again that she was depressed and missed her family. She also stated that she missed her ex-husband and having someone with whom she could share intimacies. On later dates, the Respondent gave L.H. samples of Paxil and a prescription for Wellbutrin. In January of 2003, the Respondent summoned L.H. to his office. He told her that what she needed was a "good old-fashioned roll in the hay." He backed L.H. into a corner, exposed his erect penis and demanded that she get down on her knees. L.H. refused. The Respondent pushed down on her shoulders in an attempt to cause L.H. to perform fellatio. L.H. fled the office. About one month later, the Respondent called L.H. into a conference room at the Hospital. When L.H. entered the

room, the Respondent grabbed her arm with his left hand and masturbated with his right hand. His erect penis was exposed. The Respondent asked her to touch his penis, but she refused. He said that if he put his penis inside her, she would fall in love. L.H. demanded that the Respondent release her arm, but he refused. The Respondent ejaculated on the floor and then released L.H.'s arm. She immediately left the room.

D.B. was a mental health specialist at the Hospital. In June of 2003, the Respondent asked D.B. to come to his office. Shortly after she entered the office, the Respondent placed his hands on D.B.'s breasts and squeezed them. D.B. attempted to leave the room, but the Respondent locked the door. The Respondent grabbed D.B.'s wrist and placed her hand on his erection outside his pants. The Respondent took his hands off D.B. and she again tried to leave the room. The Respondent put his hands on her buttocks and rubbed his erection on her. He turned her around, refused to let her leave and put his hand down the front of her jeans. D.B. pushed him away, unlocked the door and escaped.

The Respondent argued that most of the allegations of professional misconduct in the New York State Statement of Charges are inapplicable to the charges in the Alaska Accusation. The Respondent contended that allegations that his conduct, had it occurred in New York State, would have constituted negligence in the practice of medicine on more than one occasion (Education Law Section 6530[3]), exercising undue influence on a patient (Education Law Section 6530[17]), willfully harassing, abusing or intimidating a patient (Education Law Section 6530[31]), and sexual contact between a psychiatrist and a patient (Education Law Section 6530[44]), do not apply to this case because L.H. and D.B. were the Respondent's coworkers, not his patients. This argument is rejected regarding L.H. She was the Respondent's coworker, but she was also his patient. The Respondent provided L.H. with counseling on subjects that are normally addressed by a

psychiatrist. L.H. sought his counsel to deal with her depression, a problem obviously within the realm of a psychiatrist's practice. He provided her with a medication and a prescription for another medication. It is concluded that there was a physician-patient relationship between the Respondent and L.H. and that all the allegations in the New York State Statement of Charges are applicable to the facts stated in the Alaska Accusation.

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Respondent requested that a lesser penalty be imposed, but did not specify any particular penalty. The Respondent, however, provided this Hearing Committee with no reason to conclude that if he is allowed to keep his New York State license, he can be trusted to refrain from a repetition of the egregious conduct described in the Alaska Accusation.

In his testimony, the Respondent repeatedly denied that the charges in the Alaska Accusation were true. This argument must be rejected. Pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(d), if a physician surrenders his license in another state after a professional disciplinary proceeding has commenced in that state, and if the other state's disciplinary agency has made no findings regarding the charges in its disciplinary proceeding, the physician is not allowed to challenge the accuracy of the other state's charges against him in a New York State professional medical conduct proceeding. Pursuant to these statutes, only the penalty to be imposed is at issue at the hearing.

When the Respondent was asked whether there were any mitigating circumstances regarding the charges, he testified that L.H. had initiated the sexual relationship between them at a time that he was ill and emotionally troubled and vulnerable, that it was a consensual relationship, and that he terminated it shortly after it began. This is a denial of

the Alaska charges masquerading as testimony about mitigating circumstances. The Alaska Accusation does not describe a consensual sexual relationship between the Respondent and L.H. It describes the Respondent as a sexual predator who forced sexual contact on L.H. against her will.

Regarding D.B., the Respondent did not even mention her individually in his testimony. He provided this Hearing Committee with absolutely nothing about his encounters with her upon which we can base a conclusion that he will not repeat such behavior if he is allowed to keep his license to practice medicine.

The Respondent testified that he had no other disciplinary problems in his career and that there had been no lawsuits against him. When the charges against a physician are considerably less serious than the charges in this case, such evidence of a clean record can influence the decision on the penalty to be imposed. The misconduct in this case is too serious for the Respondent's otherwise clean record to have any influence.

Respondent's Exhibit B is a collection of letters from colleagues. The letters describe the Respondent as a skilled and dedicated psychiatrist and an admirable person. None of the letters, however, contain any indication that the writer was aware of the Respondent's conduct toward L.H. and D.B. It is questionable whether any letter writer would have been willing to write a letter of endorsement had he or she known of this conduct.

The Respondent has not taken responsibility for his conduct against L.H. and D.B. He has not even admitted that this conduct happened. He has shown no remorse for what he did to them and has presented no evidence of rehabilitation. There is only one penalty that can be imposed that will not leave the people of New York State vulnerable to an unacceptable risk. The Respondent's license to practice medicine must be revoked.

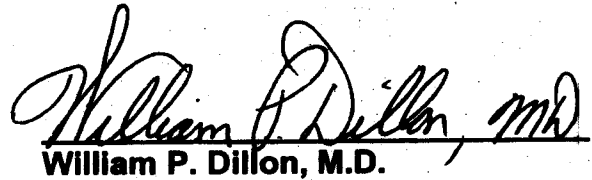
ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Buffalo, New York

JUNE 25th, 2007

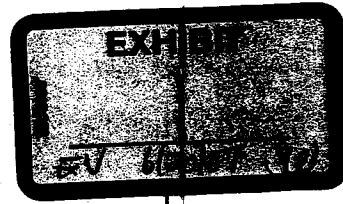

William P. Dillon, M.D.

Chairperson

**Edmund A. Egan II, M.D.
Virginia R. Marty**

APPENDIX I

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



IN THE MATTER
OF
FRANK J. ILARDI, M.D.
CO-06-11-6116-A

NOTICE OF
REFERRAL
PROCEEDING

TO: FRANK J. ILARDI, M.D.
28 Distillery Road
Warwick, NY 10990

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19th day of April, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

March 8, 2007



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
FRANK J. ILARDI, M.D.
CO-06-11-6116-A

STATEMENT
OF
CHARGES

FRANK J. ILARDI, M.D., Respondent, was authorized to practice medicine in New York state on September 30, 1988, by the issuance of license number 176394 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 13, 2006, the State of Alaska, Department of Commerce and Economic Development, Division of Professional Business and Occupational Licensing, Division of Occupational Licensing, State Medical Board (hereinafter "Alaska Board"), accepted the Voluntary Surrender of Respondent's license to practice medicine, based on harassing, disruptive, or abusive behavior; engaging in unprofessional conduct, in sexual conduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; and violating code of ethics.

B. The conduct resulting in the Alaska Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:


1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(17) (exercising undue influence on the patient);
3. New York Education Law §6530(20) (moral unfitness);
4. New York Education Law §6530(31) (willfully harassing, abusing, or intimidating a patient); and/or
5. New York Education Law §6530(44) (in the practice of psychiatry any physical contact of a sexual nature between licensee and patient).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender would, if committed in New York State, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *March 8*, 2007
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct