

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LS9303102MED

FRANCOIS J. SACULLA, M.D.,

Respondent

FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Francois J. Saculla, M.D.
710 Melvin Avenue
Racine, WI 53402

State of Wisconsin
Medical Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing in this matter was conducted on November 15-18, 1993; December 10 and 13, 1993; and, January 6 and 7, 1994. The respondent, Francois J. Saculla, M.D., appeared personally and by his attorney, Mary L. Woehrer, Woehrer Law Office, 8145 West Wisconsin Avenue, Wauwatosa, Wisconsin 53213. The complainant appeared by attorney, John R. Zwieg, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, Madison, Wisconsin 53708. A transcript of each day of the hearing was prepared and filed, the last of which was received on February 1, 1994. The administrative law judge filed his Proposed Decision on August 25, 1994. Attorney Woehrer filed her objections to the Proposed Decision on October 24, 1994. Attorney Zwieg filed his response on November 7, 1994. The parties appeared before the board on November 17, 1994, to present oral arguments on the objections, and the board considered the matter on that date.

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Based upon the entire record in this matter, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Francois J. Saculla, M.D., (D.O.B. 9/24/30), is licensed and registered to practice medicine and surgery in the state of Wisconsin, pursuant to license number 15925 which was granted on March 22, 1967.

2. Dr. Saculla's latest address on file with the Department of Regulation and Licensing is 710 Melvin Avenue, Racine, Wisconsin 53402.

3. Dr. Saculla's area of specialty is psychiatry.

4. Dr. Saculla was employed as a psychiatrist at the Milwaukee County Mental Health Center in Milwaukee, Wisconsin from March 1989 through January 15, 1990.

5. A 30 year old female patient, referred to herein as "Kathy", was admitted to the Milwaukee County Mental Health Center on October 14, 1989 for psychiatric problems. Kathy was under the professional care of Dr. Saculla during her hospitalization. Kathy was discharged from that hospitalization on November 3, 1989.

6. On November 20, 1989, Kathy was readmitted to the Milwaukee County Mental Health Center and discharged from that inpatient psychiatric hospitalization on November 28, 1989. During that hospitalization she was under the professional care of Dr. Saculla.

7. The discharge note of November 28, 1989, written by Dr. Saculla, indicates that the continuing care plan was to follow Kathy in the outpatient mental health clinic and that her next appointment was scheduled for December 5, 1989.

8. On December 5, 1989, Dr. Saculla, in his professional capacity, saw Kathy on an outpatient basis at Milwaukee County Mental Health Center. Dr. Saculla's note of that date indicates that his plan was to continue to follow Kathy on an outpatient basis.

9. Between Kathy's inpatient discharge of November 28, 1989 and Christmas of 1989, Kathy met with Dr. Saculla at his home in Racine, Wisconsin on at least three occasions. On one of those occasions, Dr. Saculla and Kathy engaged in sexual conduct in which Kathy performed oral sex on Dr. Saculla.

10. On January 3, 1990, Dr. Saculla, in his professional capacity, saw Kathy on an outpatient basis at Milwaukee County Mental Health Center. Dr. Saculla's note of that date indicates that his plan was for the patient to return for another appointment in a month or as needed.

11. A psychiatrist who engages in sexual conduct with a psychiatric patient exposes the patient to unreasonable risk of harm.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this proceeding pursuant to ch. 448, Stats.

2. Because it exposes the patient to unreasonable risk of harm, it is below the minimal standards of the psychiatric profession for a psychiatrist to engage in sexual conduct with a psychiatric patient.

3. The act of Francois J. Saculla, M.D., in engaging in sexual conduct with his patient Kathy, constitutes unprofessional conduct as defined in sec. 448.02(3), Stats., and sec. Med 10.02(2)(h), by tending to constitute a danger to a patient.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license to practice medicine and surgery of Francois J. Saculla, M.D., be, and hereby is, limited to impose the following terms and conditions:

1. Respondent's practice shall not include the treatment of females of any age
2. Respondent's entire practice of medicine and surgery in Wisconsin shall be under the direct on-premises supervision of another physician satisfactory to the board.
3. Respondent shall be responsible for submission to the board of formal written quarterly reports prepared by his practice supervisor setting forth respondent's activities and progress in his practice of medicine, and evaluating his continuing ability to competently and safely practice medicine and surgery.
4. Respondent shall, within 90 days of the date of this order, arrange for a psychological evaluation relating to the issues raised by the board's Findings of Fact in this matter, to be conducted by John C. Gonsiorek, Ph.D., Minneapolis, Minnesota or, if Dr. Gonsiorek is unavailable, by another psychiatrist or psychologist, approved in advance by the board, who has assessed and treated health care professionals found to have engaged in sexual contact with patients. Dr. Gonsiorek's evaluation shall include recommendations for additional limitations to be placed upon respondent's practice of medicine and surgery, including recommendations relating to psychotherapy, and respondent shall submit to whatever such recommended terms, conditions or limitations as may be adopted by the board.
5. If as a result of Dr. Gonsiorek's recommendation, the board orders that respondent participate in a program of psychotherapy with a psychiatrist or psychologist approved in

advance by the board, respondent shall be responsible for submission to the board of quarterly formal written reports from his treating psychiatrist or psychologist setting forth respondent's progress in treatment and evaluating his continuing ability to safely practice medicine and surgery.

6. Respondent shall provide and keep on file with all treating health care professionals and facilities current releases which comply with all applicable state and federal laws authorizing release of all his medical and treatment records and reports to the Medical Examining Board and which permit his treating health care professionals to disclose the progress of his treatment and rehabilitation with the Medical Examining Board and its agents. Copies of said releases shall be filed simultaneously with the Medical Examining Board..

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon the respondent, Francois J. Saculla, M.D., pursuant to sec. 440.22, Stats.

EXPLANATION OF VARIANCE

The board has adopted the proposed Findings of Fact and Conclusions of law of the administrative law judge in their entirety. The board has not adopted that part of the proposed Order recommending revocation of Dr. Saculla's license, and instead orders that his license be limited.

Sec. 15.08(4), Stats., states as follows:

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the membership of the examining board.

Two-thirds of the voting members of the board present at the time this matter was considered voted to accept the recommended Order of the Administrative Law Judge revoking the license. That number did not, however, constitute two-thirds of the board's entire membership. Consequently, the board set about the task of fashioning a lesser discipline which nonetheless fulfills the accepted disciplinary objectives of protecting the public, deterring other licensees from engaging in similar misconduct, and promoting the rehabilitation of this respondent.

In terms of immediate protection of the public, the order prohibits respondent from treating female patients of any age, and requires that his entire practice be under the direct on-premises supervision of another physician satisfactory to the board. The board's past experience is that these limitations have been successful in ensuring that inappropriate physician-patient contact does not occur. Additionally, the order requires that respondent promptly submit to a psychological evaluation by Dr. John C. Gonsiorek, a recognized authority in the area of


assessment and treatment of health care professionals who have exceeded acceptable boundaries in their relationships with patients. Should Dr. Gonsiorek recommend that additional limitations on respondent's practice be imposed, the Order permits the board to adopt those recommendations in the interest of further ensuring the public's safety.

The requirement that respondent submit to a psychological evaluation is also designed to subserve the rehabilitation objective, by permitting the board to require that respondent submit to psychotherapy if recommended by Dr. Gonsiorek. Again, the board's experience has been that psychotherapy is effective in dealing with boundary issues.

Finally, it is the board's opinion that limitations, no matter how rigorous, are probably not as effective as revocation in terms of deterring other licensees. Nonetheless, the conditions imposed by this order are sufficiently rigorous to notify other licensees of the board of the seriousness with which the board views the misconduct found in this case.

Dated this 25 day of NOV, 1994.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by 
Clark O. Olsen, M.D.
Secretary

WRA:9411222

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

NOVEMBER 30, 1994 .

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FRANCOIS J. SACULLA, M.D.,
RESPONDENT.

NOTICE OF FILING
PROPOSED DECISION
LS9303102MED

TO: Mary L. Woehrer, Attorney
Woehrer Law Office
8145 West Wisconsin Avenue
Wauwatosa, WI 53213
Certified P 205 985 970

John R. Zwig, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

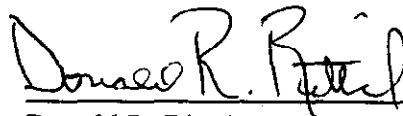
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, Donald R. Rittel. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Medical Examining Board, Room 178, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before September 16, 1994. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 25th day of August, 1994.



Donald R. Rittel
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	
FRANCOIS J. SACULLA, M.D.,	:	(Case No. LS9303102MED)
RESPONDENT.	:	

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Francois J. Saculla, M.D.
710 Melvin Avenue
Racine, WI 53402

State of Wisconsin
Medical Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing in this matter was conducted on November 15-18, 1993; December 10 and 13, 1993; and, January 6 and 7, 1994. The respondent, Francois J. Saculla, M.D., appeared personally and by his attorney, Mary L. Woehrer, Woehrer Law Office, 8145 West Wisconsin Avenue, Wauwatosa, Wisconsin 53213. The complainant appeared by attorney, John R. Zwieg, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, Madison, Wisconsin 53708. A transcript of each day of the hearing was prepared and filed, the last of which was received on February 1, 1994.

On the basis of the entire record, the administrative law judge recommends that the Medical Examining Board adopt as its final decision in this proceeding the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Francois J. Saculla, M.D., (D.O.B. 9/24/30), is licensed and registered to practice medicine and surgery in the state of Wisconsin, pursuant to license number 15925 which was granted on March 22, 1967.

2. Dr. Saculla's latest address on file with the Department of Regulation and Licensing is 710 Melvin Avenue, Racine, Wisconsin 53402.

3. Dr. Saculla's area of specialty is psychiatry.

4. Dr. Saculla was employed as a psychiatrist at the Milwaukee County Mental Health Center in Milwaukee, Wisconsin from March 1989 through January 15, 1990.

5. A 30 year old female patient, referred to herein as "Kathy", was admitted to the Milwaukee County Mental Health Center on October 14, 1989 for psychiatric problems. Kathy was under the professional care of Dr. Saculla during her hospitalization. Kathy was discharged from that hospitalization on November 3, 1989.

6. On November 20, 1989, Kathy was readmitted to the Milwaukee County Mental Health Center and discharged from that inpatient psychiatric hospitalization on November 28, 1989. During that hospitalization she was under the professional care of Dr. Saculla.

7. The discharge note of November 28, 1989, written by Dr. Saculla, indicates that the continuing care plan was to follow Kathy in the outpatient mental health clinic and that her next appointment was scheduled for December 5, 1989.

8. On December 5, 1989, Dr. Saculla, in his professional capacity, saw Kathy on an outpatient basis at Milwaukee County Mental Health Center. Dr. Saculla's note of that date indicates that his plan was to continue to follow Kathy on an outpatient basis.

9. Between Kathy's inpatient discharge of November 28, 1989 and Christmas of 1989, Kathy met with Dr. Saculla at his home in Racine, Wisconsin on at least three occasions. On one of those occasions, Dr. Saculla and Kathy engaged in sexual conduct in which Kathy performed oral sex on Dr. Saculla.

10. On January 3, 1990, Dr. Saculla, in his professional capacity, saw Kathy on an outpatient basis at Milwaukee County Mental Health Center. Dr. Saculla's note of that date indicates that his plan was for the patient to return for another appointment in a month or as needed.

11. A psychiatrist who engages in sexual conduct with a psychiatric patient exposes the patient to unreasonable risk of harm.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this proceeding pursuant to ch. 448, Stats.

2. Because it exposes the patient to unreasonable risk of harm, it is below the minimal standards of the psychiatric profession for a psychiatrist to engage in sexual conduct with a psychiatric patient.

3. The act of Francois J. Saculla, M.D., in engaging in sexual conduct with his patient Kathy, constitutes unprofessional conduct as defined in sec. 448.02(3), Stats., and sec. Med 10.02(2)(h), by tending to constitute a danger to a patient.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of the respondent, Francois J. Saculla, M.D., to practice medicine and surgery in the State of Wisconsin shall be, and hereby is revoked. The revocation shall be effective commencing thirty (30) days following the date of the Final Decision and Order of the Medical Examining Board.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed upon the respondent, Francois J. Saculla, M.D., pursuant to sec. 440.22, Stats.

OPINION

The respondent, Francois J. Saculla, M.D., is charged with having engaged in sexual conduct with a patient for whom he was providing psychiatric services. A psychiatrist who engages in sexual activity with a patient may be subjected to disciplinary action by the Medical Examining Board for unprofessional conduct under sec. 448.02(3), Stats., as it tends to constitute a danger to the health, welfare, or safety of the patient within the meaning of sec. Med 10.02(2)(h), Wis. Adm. Code. Neither party would seriously dispute this nearly universally established and professionally accepted principle. Furthermore, ample expert testimony was presented to establish the unreasonable risks of harm to a patient which inherently accompany such misconduct. (Transcript, pp. 440-442).

The issue to be determined here, however, is whether or not the state has met its burden of proof to establish through a preponderance of the evidence that Dr. Saculla did, in fact, engage in sexual conduct with a patient. See, sec. 440.20(3), Stats.

The primary factual allegation in the Complaint is that Dr. Saculla engaged in sexual conduct with one of his patients (referred to in this decision as "Kathy"), in his home between Thanksgiving and Christmas of 1989. A central question is whether Kathy is a credible witness in testifying that she performed oral sex upon Dr. Saculla, on one occasion in his home during that time span. As is not unusual in cases of this nature, the bulk of the testimony and exhibits submitted into the record were directed toward Kathy's psychological condition and history in an

attempt to ascertain whether she was at the time in issue delusional due to her psychological condition; or is simply lying for some reason.

In order to obtain an adequate prospective regarding the context within which the alleged sexual conduct occurred, it is necessary to provide a fairly detailed narrative of prior events.

Kathy has a history of hospitalizations resulting from engaging in inappropriate behavior. Her initial hospitalization appears to have taken place in 1977, while she was a student in college. The diagnosis at that time was schizophrenic reaction, acute, paranoid type, with a question of manic depressive illness. Subsequently, she was seen on an out-patient basis by Dr. Mark Biehl who placed her on Lithium, along with other medications. (Exhibit #2, p. 15).

The record indicates that she next was hospitalized at Waukesha Memorial Hospital on February 16, 1979, following a referral for admission from her parents and Dr. Biehl. On that day, Kathy had engaged in "some inappropriate and strange behavior". On admission to the hospital she exhibited:

"...marked thinking disorder manifesting loosening of association, circumstantially, and tangentiality. Thought content at times was delusional, specifically around her parents. Affect profoundly disturbed with marked lability varying in a matter of seconds from elation and euphoria to rather marked sadness and crying."

She was discharged after 17 days of hospitalization, and placed upon various medications including Lithium. The final diagnosis upon discharge was manic depressive illness, hypomanic phase. (Exhibit #2, pp. 15-16).

Three years later, on February 13, 1982, Kathy was again hospitalized at Waukesha Memorial Hospital. This hospitalization resulted from an incident where Kathy had threatened her mother with a knife and forced her out of the house. The hospital records indicate that she had been taking "inadequate" amounts of her medications at the time. Upon discharge on February 25, 1982, Dr. Biehl indicated a final diagnosis of "bipolar illness, manic". (Exhibit #2, pp. 87-88).

Subsequent to the February 25, 1982 discharge from Waukesha Memorial Hospital, Dr. Biehl continued to treat Kathy as an outpatient with Lithium. Kathy remained essentially asymptomatic for the next several years under Dr. Biehl's care. (Exhibit #2, p. 155).

Kathy and Dr. Saculla met for the first time subsequent to her admission to the Milwaukee County Mental Health Center (referred to as "MHC") on October 14, 1989. She had been transported to the facility by the Greendale police following an altercation during which Kathy testified that she had struck both her mother and father. (Transcript, pp. 273-274). Dr. Saculla noted in the medical records of her hospitalization as follows:

"There has been a past history of poor impulse control on previous hospitalization, last being in 1983 where patient experienced some uncontrolled, violent-type behavior. Patient had been previously diagnosed as to affective disorder although during this hospitalization it was apparent (the) precipitating spontaneous violent outburst was not directly connected with any affect-type disorder. . . . Precipitating stress in 1983 and in 1989 both pertained to stressors surrounding parents' possible power struggle, mother/daughter or inability to accept this patient as an adult and according responsibilities for same. There had been a recent break up with a boyfriend only other change in recent years."

(Exhibit #1A, p. 274).

Dr. Saculla's records noted that during Kathy's hospitalization she "was fairly cooperative, oriented, grossly nonpsychotic" and that there "is no sign of affective disorder." (Exhibit #1A, p. 275).

Dr. Saculla also noted an abnormal EEG. He indicated that the, "impression of an organic personality disorder with treatment of Tegretol 200 mg q.i.d. appears to have tempered any sudden outbursts that this patient experienced in previous years. At time of discharge, nonsuicidal, nonhomicidal, no audiovisual hallucinations or delusions. Patient will be discharged as of this dictation medically, emotionally and psychiatrically stable." His final diagnosis was "organic personality disorder". (Exhibit #1A, p. 276). The records indicate that follow up care was to be provided by her treating physician, Dr. Mark Biehl. Kathy was discharged from MHC on November 3, 1989.

The following day, November 4, 1989, Kathy informed her mother (referred to in this decision as "Mary"), that she had a "crush" on Dr. Saculla. (Transcript, p. 75). Mary noted Kathy's statement in a diary (Exhibit #8), which she had begun keeping when her husband was diagnosed as having cancer in August of 1988. (Transcript, p. 62). At that point, Mary believed that Dr. Saculla was a very kind person, and in fact sent a letter to MHC on November 5, 1989 expressing her satisfaction with him. That night, according to Mary, Kathy was on the telephone talking with Dr. Saculla "most" of the evening. (Transcript, p. 75). Mary testified that Dr. Saculla previously had told them that if there were ever any questions, he could be called either at the hospital or at home. (Transcript, pp. 75-76).

The next day, November 6, 1989, Dr. Saculla called Mary and told her that he believed Kathy was becoming infatuated with him. Mary testified regarding the conversation as follows:

"A. . . . Dr. Saculla called me about . . . Kathy's infatuation with him and her many calls to his house. And I discussed this transference with the doctor, and I haven't written it, but I said, isn't this a normal thing for a patient, a psychiatric patient, once they're in therapy and they go along, they transfer their feelings to the doctor? And I'm not worried, I know you can handle it.

"Q. (Mr. Zwieg) And that's what you said to Dr. Saculla?

"A. That's what I said to Dr. Saculla. It's not written here but I remember my mentioning that. You can handle it, you're the professional. You know. I had other things that I was concerned about.

"Q. Well, what did Dr. Saculla say about the -- the infatuation and the transference?"

"A. I don't -- he didn't -- I don't remember what he said. It was -- it seemed to me as if Dr. Saculla was kind of concerned that Kathy was infatuated with him and may not have known how to handle it, but I assured him, I mean, that I knew this transference takes place with psychiatric patients or obstetrical patients, and that he knew how to handle it. You know, this transference thing I've read -- I worked in the psychiatric ward at St. Luke's for several months, and we went through this."

(Transcript, pp. 76-77).

About a week later, on November 14, 1989, Dr. Saculla visited Mary's home and discussed the fact that Kathy seemed to be "backsliding" again, in that she was not taking her medications. The visit lasted approximately three hours. (Transcript, p. 78).

The following day, a co-worker of Kathy's called Mary to say that she had been "acting up at work", and he had taken her MHC. Kathy was not admitted at that time, and apparently did not go back to work; but rather, saw an Al Pacino movie instead. (Transcript, p. 82).

The next day, November 16, 1989, Kathy was admitted to Waukesha Memorial Hospital, agitated and upset. There was some question as to whether or not she was taking her medications. Kathy apparently requested that she be transferred to MHC as she was upset with Dr. Biehl's having prescribed Lithium for several years, which may have caused her some renal damage. (Transcript, pp. 149-151; Exhibit #1A, p. 250). Given that Dr. Saculla's diagnosis at the time of her previous discharge from MHC differed from that under which he had been providing treatment, Dr. Biehl stated in his diagnosis upon her transfer to MHC: "Rule out organic personality disorder, rule out bipolar disorder, rule out schizophrenia, schizo-affective type." (Exhibit #2, p. 157).

On November 20, 1989, Kathy was transferred to MHC. The "Intake Assessment" at MHC notes that Kathy indicated at that time: "I want to be admitted to Dr. Saculla's service." (Exhibit #1A, p. 216).

Kathy received a pass to go home on November 24, 1989. (Exhibit #1A, p. 229). Mary testified as follows regarding entries in her diary for the next two days:

"A. . . . November 25th, 1989, Saturday. 'Dr. Saculla and I talk. Transference. Kathy is infatuated with him. She's hard to handle. Duff (Kathy's brother) brings her home for two-day pass and she and I go to Southridge. She gets a haircut and she wants to buy Dr. Saculla a watch and gifts for the patients. I nix all ideas and we head home. She's on the phone often with (Dr. Saculla). . . ."

"A. . . . 'Someone will have to take her back (to MHC) tonight (November 26, 1989). She did get home and then back out to County. Counting on his (Dr. Saculla's) professionalism."

(Transcript, pp. 88-89).

Kathy was discharged from MHC on November 28, 1989. In his discharge summary Dr. Saculla noted that this hospitalization appeared to have stemmed from Kathy's failure to take her medication. In his assessment, Dr. Saculla noted:

"Reported from admission through Waukesha Memorial Hospital, this patient experienced blunt affect, spacey features, depressed and angry mood. The patient was somewhat detached from her surrounding, having a fixation of delusional psychosis, 'hate all women, like all men,' and close fixation to movie star Al Pacino. She expressed manifestations of paranoid persecutory, paranoid grandiose types. . . .The patient appeared to be involved in an organic mental disorder, including recent personality-type explosive activity, poor impulse control and presently delusional of both grandiose and persecutory nature, all secondary to Axis III complex seizure disorder with focus temporal-motor."

(Exhibit #1A, p. 211).

Dr. Saculla's "provisional" and "final" diagnoses of Kathy are set forth in his discharge summary as follows:

"PROVISIONAL DIAGNOSES: ORGANIC MENTAL DISORDER, NOT OTHERWISE SPECIFIED, MANIFEST BY ORGANIC DELUSIONAL DISORDER, PERSECUTORY, PSYCHOMOTOR TEMPORAL. CONVULSIVE ACTIVITIES, PARTIAL COMPLEX SEIZURES OF TEMPORAL LOBE, PSYCHOMOTOR CONVULSIVE ACTIVITY.

"FINAL DIAGNOSES: AXIS I -- ORGANIC MENTAL DISORDER, NOT OTHERWISE SPECIFIED, ASSOCIATED WITH AXIS III
(P) ORGANIC DELUSIONAL DISORDER ASSOCIATED WITH AXIS III
AXIS II -- PARANOID PERSONALITY DISORDER
AXIS III -- TEMPORAL LOBE PSYCHOMOTOR PARTIAL SEIZURE COMPLEX CONVULSIVE ACTIVITY
CHRONIC NEPHROSIS, MILD, POSSIBLY DUE TO LONGTERM LITHIUM USE AND TOXICITY"

(Exhibit #1A, p. 213).

However, there is nothing in the medical records for her hospitalization at MHC in which Dr. Saculla notes Kathy's infatuation with him, or that he discussed the situation and the concept of transference with her mother on two occasions.

It is with the foregoing background that Dr. Saculla permitted Kathy to visit him at his residence in Racine on at least three occasions between Thanksgiving and Christmas of 1989. (Exhibit #15).

Kathy's desire to have some type of ongoing contact with Dr. Saculla is manifested by her numerous telephone calls to his residence. Kathy testified that, at some point in November or December of 1989, Dr. Saculla provided her with his home telephone number, of which she took advantage. (Transcript, pp. 231-233). The telephone records from Kathy's residence, where she resided with her parents, indicate that on and between November 28, 1989 and December 20, 1989, (the approximate time period during which the alleged sexual conduct occurred) 15 telephone calls were made from Kathy's home to that of Dr. Saculla, 7 of which are listed upon the telephone records as lasting 1 minute indicating that the caller reached Dr. Saculla's answering machine on those occasions. (Exhibit #41, pp. B-2, C-2). For a prior period, running on and between November 3, 1989 and November 26, 1989, 20 such calls were placed, 14 lasting 1 minute. (Exhibit #41, pp. G-2, H-2). Although the record indicates that some of the calls were made by Mary or other family members, there is no question but that a substantial number were placed by Kathy. Kathy testified that at no time did Dr. Saculla attempt to discourage her telephone calls. (Transcript, p. 232).

During one of the telephone calls, Kathy asked Dr. Saculla whether she could visit him at his home. She stated that Dr. Saculla provided her with directions, and she went to his residence. (Transcript, p. 234). Kathy testified that when she arrived, Dr. Saculla invited her inside the house where they visited with one another. No improper conduct by Dr. Saculla is alleged to have occurred on the initial visit. (Transcript, p. 248). She testified that she visited Dr. Saculla at his residence on two more occasions, and that each time she would call Dr. Saculla to let him know she was coming. Kathy testified that Dr. Saculla never objected to her visits. (Transcript, pp. 235-236). During one visit Kathy stated Dr. Saculla invited her to accompany him to some friend's house, which she did. (Transcript, p. 243).

Kathy testified that she brought her VCR with her to Dr. Saculla's residence on the visit at which the alleged misconduct occurred. She stated that she brought the VCR because Dr. Saculla did not own one. The VCR was connected to the television in Dr. Saculla's bedroom, where they proceeded to watch at least one video tape, which Kathy believed to be of patients in Dr. Saculla's practice. She further testified that she gave the VCR to Dr. Saculla, who gave her a sweater in return. (Transcript, pp. 244-246).¹

It was during this visit that Kathy testified to having performed oral sex upon Dr. Saculla in his bedroom. (Transcript, pp. 246-247, 303-304). In part, she stated as follows:

¹ Corroborating Kathy's testimony that she gave Dr. Saculla a VCR and that he gave her a sweater in return is Dr. Saculla's statement on September 17, 1990 to an investigator (Exhibit #15).

"Q. (Mr. Zwieg) . . . (A) t any time when you were visiting with Dr. Saculla, was there any kind of sexual activity between the two of you?

"A. Yes.

"Q. And what kind of activity was that?

"A. Oral sex.

"Q. And what room of the house did that occur in?

"A. The bedroom.

"Q. Do you recall whether this happened on the first visit you were down there?

"A. No.

"Q. Again, a bad question for me. I'm not sure whether you're saying no, I don't recall or whether no, it didn't happen on the first time."

"Q. No, I don't recall, but I don't believe it happened the first time.

"Q. Okay. Was there any discussion between you and Dr. Saculla about whether it was inappropriate for you to perform oral sex on him?

"A. No."

(Transcript, pp. 246-247).

At the hearing Dr. Saculla chose not to testify regarding the allegations made by Kathy, pursuant to his Fifth Amendment constitutional right against self-incrimination. This decision and its implications upon the determination of this case, as well as other conduct of Dr. Saculla must be considered.

The quintessential question is whether it is more likely than not that Dr. Saculla engaged in sexual conduct with Kathy. Dr. Saculla's professional relationship with Kathy is most charitably characterized as questionable. Dr. Saculla was aware that Kathy desired to visit him at his residence and, in fact, provided her with his address to enable her to do so. She visited him on at least 3 occasions within the next month. He also knew, prior to the first visit, that Kathy had become infatuated with him, a matter Dr. Saculla discussed with Kathy's mother on at least two occasions immediately prior to Kathy's initial visit his home. It is interesting to note that although Dr. Saculla expressed concern to Kathy's mother with her infatuation before the alleged incident, he never did so after Kathy had actually visited his residence, nor does it appear that he expressed any serious concern to her mother about the visits. One would think he would want to continue his dialogue with Kathy's mother regarding the infatuation situation, especially after it had escalated to the point of her actually visiting his residence. And not only once, but three times within a month. However, it does not appear that he did.

Furthermore, Dr. Saculla knew that it was contrary to his employer's express written policy to permit Kathy into his home. Yet, he did so on three occasions; and at no time made any reference in her medical records documenting that the visits had occurred, let alone what supposedly legitimate medical purpose they were intended to serve, or advise his superiors at MHC of the contacts. The policy of MHC stated in pertinent part:

"2. MHC staff shall not be permitted to have planned social contacts with patients during either on-duty or off-duty hours (except relatives and prior friends). Social contacts are defined as those contacts which are not specifically intended to implement a treatment plan and further the patient's progress towards meeting treatment goals, or those contacts not scheduled as organized patient activities.

"3. Chance social contacts with patients either on-grounds or in the community should be kept brief and to the point. Should prolonged, or frequent, or disturbing contact occur, it is the responsibility of the staff to report such contact immediately to his or her supervisor and/or department head. The department head will report such incidents to the inpatient or day hospital treatment team and/or clinic manager or therapist who will determine the appropriate course of action to be taken and will make sure that such contact is documented in the patient's medical record if warranted."

(Exhibit #4).

Also, the record establishes that Dr. Saculla accepted Kathy's "gift" of a video cassette recorder during one visit to his home, and that he reciprocated with a sweater.² This act cannot be viewed as part of a proper physician/patient relationship; but rather, suggests one of a more personal nature, which reasonably would be perceived by Kathy as such. In any event, it appears that Kathy's infatuation with Dr. Saculla received a personal, rather than a professional response.

There is also a deep concern that Dr. Saculla attempted to deceive the state in this case by demanding in 1993 that Kathy provide a description of his private parts, subsequent to which he would subject himself to an examination to ostensibly determine whether her description was accurate.

On February 16, 1993, Dr. Saculla met in the office of the prosecuting attorney in this case. An investigator was also present during that meeting, as was Dr. Saculla's neighbor who had provided him transportation from Racine to Madison for the meeting. Dr. Saculla tape recorded the meeting. During the meeting Dr. Saculla became agitated and insistent that Kathy be deposed to see whether or not she could describe his genitalia. (Transcript, pp. 1491, 1549;

² Also corroborating Kathy's testimony that she gave Dr. Saculla a VCR and that he gave her a sweater in return (Transcript, pp. 245-246), is the August 6, 1990 police report concerning the search of Dr. Saculla's house by the Racine Police Department, where it is stated: "He (Dr. Saculla) was read the warrant and freely advised that there was only one VCR in the house and it was not his " Exhibit #7.

Exhibit #50). Dr. Saculla also offered to submit to a urological examination (Transcript, p. 1549).

The problem here is that surgery was performed upon Dr. Saculla after the alleged misconduct, resulting in the removal of the foreskin from his penis. That surgery obviously would have altered at least its flaccid appearance from that which possibly would have been observed in late 1989 by Kathy. Following up on Dr. Saculla's proffered method of inquiry, could have resulted in Kathy's providing a physical description of respondent's penis inconsistent with its actual condition in 1993. The question as skeptically, yet appropriately posed by the state's attorney in his closing argument, is:

"Golly, I wonder how he would have had an examination done in February of 1993 to show the state of his foreskin (in December, 1989), when it was already excised?"

(Transcript, p. 1678).

A circumcision was performed upon Dr. Saculla at Froedtert Memorial Lutheran Hospital on March 12, 1991. (Exhibit #45). An entry in the medical records prior to the operation dated February 14, 1991, states in part:

"It was difficult to obtain a clear and concise history from him but apparently his major complaint is a decrease in the force and caliber of his stream, urgency with daytime frequency of every one hour and nocturnia about every hour. He also complains of phimosis and occasional balanitis and he would like a circumcision. . . . I was able to partially retract the foreskin and the glans that I was able to observe appeared normal. Both testes were palpably normal and there are no inguinal hernias present. On rectal examination, the prostate is a firm, smooth, symmetrical 25 gram benign gland."

Testimony indicated that "phimosis" is a stricture of the foreskin which reduces its elasticity, making it difficult for it to roll freely; while "balanitis" constitutes an inflammation of the mucous membrane covering the glans penis and the covering portion of the foreskin. (Transcript, pp. 1371-1372). However, according to his medical records, neither of these conditions were readily apparent from observation, nor did there appear to be any anatomical condition which would have caused the problem Dr. Saculla reported regarding his urine stream. (Transcript, pp. 1391-1392). The surgeon also wrote in his "Description of the Operation" on March 12, 1991, as follows:

"Patient was placed on the operating table in the lithotomy position. The groin area was prepped and draped in a sterile fashion. A 20 French cystoscope was introduced in the urethra. On inspection of the urethra the mucosa appeared to be normal. There was no evidence of any strictures throughout the penile bulbous urethra. The prostatic urethra was approximately 2.5 cm in length and approximately 30 grams by cystoscopic

erythema or mucosal lesions. The trabeculation was graded at 1/2 plus. The ureteral orifices were in normal position with clear efflux. No evidence of any stones or diverticula noted."

(Exhibit #45).

From the medical records, then, there does not appear to have been any objective or observable confirmation of the presenting complaints of Dr. Saculla. This does not necessarily mean, although it could be reasonably inferred from this record, that Dr. Saculla simply desired to have the foreskin of his penis removed for some reason other than an existing legitimate medical cause.

However, it seems reasonable to infer that his demand to the state in 1993 that Kathy be required to describe his genitals, as she would have observed them in 1989, was deceitful given the surgical procedure which had been performed in the interim. To the extent she would be able to testify to his not having been circumcised, she would be seen as lying. Although, Dr. Saculla's attempt at deception was not successful, it is extremely damaging to his position.

Furthermore, although unlikely, perhaps Dr. Saculla could have provided an adequate explanation for the reasonable adverse inferences which are deducible from the above actions and conduct. However, he chose not to testify pursuant to his Fifth Amendment constitutional right against self-incrimination in response to each of the questions posed to him by complainant's attorney. In a proceeding of this nature, unlike a criminal one, an inference of guilt may be drawn against Dr. Saculla as a matter of law. As stated in *State v. Postorino*, 53 Wis. 2d 412, 417 (1972):

"Taking the fifth amendment does not foreclose a court in a civil action from drawing an inference from the invocation of the fifth amendment on an issue involving grounds for discipline. A disciplinary proceeding, such as this, is a civil proceeding . . . and this court has often said a disciplinary proceeding was a civil proceeding and not a criminal one. (Citations omitted)

"In *Grognet v. Fox Valley Trucking Service* (1969), 45 Wis. 2d 235, 172 N.W. 2d 812, we held that an inference of guilt or against interest of the witness may be drawn as a matter of law from the invocation of the fifth amendment in a civil suit. The inference which may be drawn depends upon the question asked and the weight to be given the inference depends upon the facts."

Accordingly, it may be inferred that Dr. Saculla chose to exercise his right not to testify in this matter pursuant to his Fifth Amendment right since, to do so, truthfully, would only have served to incriminate him. In fact, it is the only legitimate basis upon which he may exercise that right.

This factor, when combined with the conduct and attempted deception by Dr. Saculla, in my opinion, makes it more likely Kathy is telling the truth, than do the questions of Kathy's conduct, character or psychological condition suggest she is not.

There are, however, several challenges to Kathy's credibility that must be discussed in detail. Kathy continued to suffer psychological problems following her discharge from MHC on November 28, 1989.

Kathy moved out of her parents home and into an apartment in January of 1990. In order to assure that Kathy was taking her medications, one of her brothers went to Kathy's apartment on or about January 30, 1990. Kathy became upset with him. (Transcript, p. 161). Kathy testified that her brother grabbed her arm and took her to the hospital but she was not admitted. (Transcript, pp. 254-255). Due to that incident, Kathy sought, and obtained, a restraining order against her brother in February of 1990. (Transcript, pp. 163).

On March 7, 1990, Kathy struck a co-worker at her place of employment. According to the co-worker's testimony:

"While I was on the phone, she came in and -- and took a swing at me, you know, it was more like a shove. And at that point, you know, I notified my supervisor and I -- I told (him) that hey, you know, we need to do something because I felt that she'd really gone overboard that day. . . . (He) and myself went down to the police department and filed a police report and the police came and they took a statement and escorted her out of the building."

(Transcript, p. 867).

It was also in this approximate time frame that Kathy began leaving written notes at the door of one of her neighbors in the apartment building. The notes were extremely strange, cryptic and vague. Some examples include, "When I was in the hospital, I opened up a book and it said Al is God. Jodie Dagger."; "The world is yours. I just want to play"; "I love revenge"; and "Fuck me, baby, I love em short". (Exhibit #21).

Kathy's family reached the conclusion that she needed professional help, and decided to file a "three-party" petition in court to have Kathy committed. Ultimately Kathy agreed to enter MHC voluntarily, and she was hospitalized on March 21, 1990. (Exhibit #1A, p. 134). She remained hospitalized through April 6, 1990. The Discharge Summary noted that Kathy's provisional diagnosis had been: "Bipolar Disorder, Manic -- Rule Out Organic Mood Disorder -- Bulimia In Remission -- Mildly Abnormal (EEG)". The final diagnosis upon discharge was: "Axis I: Bipolar Affective Disorder Mixed -- Eating Disorder, Bulimia, In Remission." (Exhibit #1A, p. 135).

Subsequently, on April 25, 1990, police officers from the Greenfield police department responded to a complaint that Kathy was acting erratically, throwing medications and knives out

her apartment window and hollering and screaming. The officers found Kathy extremely agitated and appearing intoxicated. Kathy walked out of the apartment and the officers followed her outside the building. She was continually verbally abusive to the officers, including screaming "rape" on numerous occasions. Kathy jumped on the hood of the police car, snapping off the radio antenna. Upon observing Kathy's behavior, the officers determined that Kathy needed medical treatment, pursuant to which she was transported to MHC for admission. (Transcript, pp. 719-730; Exhibit #12).

Upon admission to MHC it was determined that Kathy had again not been taking her medications since her prior hospital discharge. She was discharged on May 30, 1990, with a final diagnosis of "Axis I: Bipolar Disorder, Mixed -- Bulimia In Remission". (Exhibit #1A, pp. 44-45).

One of the major questions which arises from Kathy's total medical history is the extent to which she suffered from a medical condition which would impact upon her ability to accurately perceive events as they occurred and to accurately report them subsequently. Expert testimony was presented by both parties on this issue. It was the opinion of complainant's expert, Dr. Robert M. Factor, a psychiatrist, that Kathy did not suffer from any condition which would place her out of touch with reality, noting that the predominant diagnosis in her medical records is of bipolar affective disorder, also called manic-depressive disorder. (Transcript, pp. 458-459).

Respondent's experts disagree. Dr. Burton J. Fredenthal, a psychologist, testified that he noted 103 instances in the medical records which described paranoid, delusional or other psychotic and thinking disorder references. (Transcript, pp. 1121, 1187-1188). Dr. Fredenthal's opinion was that during 1989 and 1990, Kathy was suffering from a long-term psychotic disorder which made a differential diagnosis difficult, but often did render her delusional and out of contact with reality. (Transcript, p. 1116). Respondent's second expert, Dr. George S. Lakner, a psychiatrist, testified that in his opinion Kathy was delusional during the last two months of 1989 and the first few months of 1990. (Transcript, p. 1376).

Again, the expert testimony, again, is directed toward ascertaining whether Kathy's claim to have performed oral sex upon Dr. Saculla at his residence between Thanksgiving and Christmas of 1989, was the result of a delusion due to her mental condition at that time. The likelihood of this being the case is essentially the crux of the difference of opinions among the expert witnesses. There is little question but that Kathy was delusional on occasion. There is also little question but that the medical records of Kathy reflect some uncertainty among the treating health care professionals as to a precise diagnosis, with the resultant lack of unanimity in treatment approach, as well as contradictory expert opinions at hearing among other qualified professional health care providers.

However, it is clear that the predominant diagnosis arrived at historically by the physicians who actually saw and treated Kathy was that of manic depression. Furthermore, that she visited Dr. Saculla's residence on three occasions is not a delusion; that Dr. Saculla accepted a VCR from her is not a delusion; that she had an infatuation with Dr. Saculla, of which he was aware, is not a delusion; that Dr. Saculla did not formally report or note these matters is not a delusion. Given

these factors among others, it is not likely, in my opinion, that her claim to have performed oral sex upon Dr. Saculla is solely the product of a delusionary episode.

Another challenge to Kathy's credibility flows from the fact it is abundantly clear she did not desire to participate in this proceeding and wanted the matter dropped by the complainant. The state is not required to accommodate such a request, and it chose not to do so.³

In fact, Kathy went so far as to prepare and sign a written statement prior to the hearing in which she stated that she did not recall whether any sexual conduct had ever occurred between her and Dr. Saculla. This statement was not obtained by the state; but rather, a private investigator for the respondent. Kathy prepared and signed the written statement at her place of employment on April 22, 1993. It reads as follows:

- "1. I do not wish to pursue a complaint against Dr. Saculla.
- "2. I told Mr. Zwieg that I did not want to pursue the matter officially about a month ago.
- "3. Due to my emotional state at the time I would be an unreliable witness at this time.
- "4. Due to my emotional state at the time I cannot state positively that any sexual incident ever occurred between Dr. Saculla & myself."

(Exhibit #10).

However, the circumstances of Kathy's having provided the above written statement strongly suggest that it was given for the purpose of attempting to avoid participation in this proceeding; rather than to provide a truthful retraction of the claim. On the day the statement was given, respondent's private investigator arrived at Kathy's workplace to serve a subpoena upon Kathy requiring her to give an oral deposition the following morning. According to the private investigator, Ira Robins, his contact with Kathy transpired as follows:

"A. I went to the office that I was advised that she worked . . . and I asked to speak to her and she came out and then I identified myself and told her what it was about. And then she asked me to step out in the hallway. The door still remained open and there were people that walked back and forth. And she talked to me very, very easily. The only time that she would be quiet for a second or two was when people would walk by and she didn't want anybody to know. And at that time when they'd walk by, we'd kind of stop talking for a couple of seconds. And then when they again -- it was again clear, then she'd talk to me some more.

³ *Sailer v. Wisconsin R. E. Brokers' Board*, 5 Wis. 2d 344, 351 (1958).

"Q. (Ms. Woehrer) According to statement number 4 there, she said, 'Due to my emotional state at the time I cannot state positively that any sexual incident ever occurred between Dr. Saculla and myself.' Where did that come from?

"A. She wrote it in her writing. What she did is, is she said that she was going to -- when we wrote the --when she wrote the affidavit, we were standing out in the hall. She'd say -- first of all, I explained to her that if she was going to write something, would she just number it, so that each one would have a number.

"So, she said well, you know -- she put down number 1 and then she says, she had told me already that she did not want to pursue the complaint against Dr. Saculla. And she said well, should I put that down. And I said however your words are, you put them down. I did not discuss what she was going to put down with her. She wrote down, 'I do not wish to pursue a complaint against Dr. Saculla.'

"And then she put down number 2, and that she asked me about the fact that did I know that she had told, and she referred to Mr. Zwieg as Jack, that in fact she did not want to complain about it. And I clarified the fact that Mr. Zwieg was in fact Jack. I did not know him by Jack. I didn't know his first name. And that the fact that she did not want to pursue it, and then she wrote that down in her own words.

"And I had given her -- I had like a little folder and some file folders, manila file folders, and she was holding them, standing up there and she was holding them in her arm and she was reading -- writing on it with the pen that I had given her. And she wrote -- wrote them all down and she then went and told me that because of her emotional state -- she had told me that previously. Then she wrote that down, and then on the fourth one she wrote this down.

"I was very pleased to get this statement. It was far more than I get on most of the cases. Most of the cases I get, you don't get anything like this. And then it was -- it seemed like she wanted to get back to work. And then I swore her into it. . . ."

(Transcript, pp. 1562-1564).

Accepting the above testimony as a factual account of what occurred between the private investigator and Kathy, the question remains whether Kathy was telling the truth when she stated in paragraph 4 of the statement that she "cannot state positively that any sexual incident ever occurred between Dr. Saculla & myself", or when she testified at the hearing in this matter that sexual conduct did take place. Her statement and testimony obviously are not consistent. One version is false. In my opinion, the testimony of Kathy at the hearing is truthful, and her contrary statement in the affidavit is not.⁴

⁴ The fact that Kathy has clearly made two inconsistent statements regarding whether sexual contact occurred does not prevent a finding that her testimony at the hearing was truthful, and that her written statement to respondent's private investigator was not. *Graves v. Travelers Ins. Co.*, 66 Wis. 2d. 124 (1974); *Fuller v. Riedel*, 159 Wis. 2d 323 (Ct. App. 1990).

The question is, then: Why would Kathy lie in the statement she gave to respondent's private investigator? The answer is that a "retraction" to the private investigator would likely result in her not having to testify in this matter and get him to leave her workplace. In this regard, Kathy testified as follows:

"Q. (Mr. Zwieg) Well . . . if Mr. Robins served you with a paper that said you were supposed to go somewhere and testify the next morning, how is it that you wrote page 1 (Exhibit #10) that day?

"A. I don't remember. I don't remember if it was suggested to me that if I didn't feel I could attend, that all I would have to do was indicate or write a statement and it would -- I don't know.

"Q. Okay. You kind of left off there in the middle.

"A. Well, you know, I knew that if I was to give a response, it would be helpful in my situation."

(Transcript, p. 265).

* * * * *

"A. . . . At the time I was very upset or I was nervous.

"Q. And what were you nervous about?

"A. Being at the office and having a private investigator there. And being serviced this deposition really was upsetting. Because I had no idea that I was going to have to go to a hearing the next day. And I'm at work. And it would have been having to ask off of work, and even where I work, I just -- you have to give them some -- a few days' notice if there is an appointment or something, so."

(Transcript, p. 266).

* * * * *

"Q. Okay. And was your purpose in writing this so you wouldn't have to be a witness?

"A. I guess. I -- it would be trying to relieve myself of that situation.

"Q. And the situation that you're --

"A. Would be as me being a witness."

(Transcript, p. 267).

* * * * *

"A. Did I mean to say it? If -- I -- I -- it wouldn't have been the truth, but I would have -- I could have -- I could have felt that upset and, you know, I was -- like Ira Robins was just to me somebody that, it's none of your business, you know, how I was -- what was going on. You know, he was a stranger, somebody that wasn't involved in the case from what I knew. So it's kind of like, it's none of your business as to what's going on with me. What are you doing here That's how I felt, so."

(Transcript, p. 269).

* * * * *

"Q. (Ms. Woehrer) . . . Exhibit Number 10. You state in here that, 'Due to my emotional state at the time, I would be an unreliable witness at this time.' Could you explain what you meant by that?

"A. Yes. I wasn't prepared as to what was going on after I made an indication to Mr. Zwieg about being a witness in this situation. Knowing for a fact that yes, I did have oral sex with the doctor. Nobody else is -- I felt responsible. I felt it was my fault. And I wasn't going to be a good witness.

"Q. Okay. And number 4 you said, 'Due to my emotional state at the time, I cannot state positively that any sexual incident ever occurred between Dr. Saculla and myself.'

"A. Correct.

"Q. And is that true?

"A. At the -- at the time Ira Robins was there, I didn't -- I -- I wrote that down just to -- as -- as I said, it was none of his business as to what happened and --

"Q. Is it true?

"A. No, it's not true --

"Q. This is --

"A. -- because I positively know that I did have oral sex with the doctor.

"Q. You positively know that?

"A. Yes.

"Q. Because if you're wrong about this, then you've done a great injustice to Dr. Saculla, haven't you?

"A. I wouldn't say so. I said that I had an injustice done to me.

"Q. I'm just saying, if you're wrong about this --

"A. I'm not wrong."

(Transcript, pp. 416-417).

Kathy's testimony at the hearing provides a reasonable and likely explanation for her having provided a false statement to respondent's private investigator. Simply stated, she believed that a "retraction" would end her having to participate in this proceeding -- a request already made, but denied by the state -- and it would get the private investigator out of her workplace and stop his "snooping" into matters which she felt were none of his business.

This written statement would be entitled to greater weight had it been made to the state whom she was attempting to have drop its Complaint, rather than to an investigator for the respondent who showed up at her work place with a subpoena for her to give a deposition the next morning.

She certainly had the opportunity to voluntarily make the same "retraction" to the state. She did not. During the last week in February or the first week in March of 1993, Kathy showed up unexpectedly at the offices of complainant's attorney and investigator. According to the testimony of the investigator, Kathy was upset that the complaint against Dr. Saculla was being pursued. However, that meeting ended with the "understanding" that the state intended to continue the matter and that it expected to call Kathy as a witness, if necessary. (Transcript, pp. 1475-1479). It appears that this determination was made, at least in part, because Kathy firmly held to her position that sexual conduct did occur between herself and Dr. Saculla. The investigator's testimony on this point, was as follows:

"Q. (Mr. Zwieg) And you testified that Kathy . . . during that meeting expressed her desire not to go forward with a prosecution in the matter, is that correct?

"A. That's correct.

"Q. Do you remember whether in that conversation or meeting Kathy . . . was ever asked whether her desire to -- that the matter not go forward was due to the fact that the events had not taken place?

"A. No, quite the contrary. She was -- I recall that she was emphatic that -- in -- in her statement that what took place actually did take place. Her hesitancy and her concern was that at that point in her life she didn't want to go through the ordeal of a hearing and having to testify. But she was emphatic that what she had told us and the investigators, was true.

"Q. All right. And what was it that she said had happened between she and Dr. Saculla?

"A. Well, in her words, she indicated that she was at Dr. Saculla's house and that during an interaction she had with him there, she gave him a blow job.

"Q. Did she say how many times?

"A. Just once.

"Q. And did she indicate any problem at all with remembering that?

"A. No."

(Transcript, pp. 1546-1547).

Subsequent to that meeting, Kathy faxed a letter to complainant's attorney dated March 5, 1993, indicating that she was not "going to continue with this matter", since it would not be in her "best interests", as she believed "the unfortunate situation I was involved in should not be misdirected and blown into a worse one." (Exhibit #16). The letter certainly expresses Kathy's strong desire not to participate in a disciplinary proceeding. But at no point does she refuse to go forward because the sexual conduct did not occur. The only instance in which she has stated to the contrary is within the written statement provided to respondent's private investigator. In assessing the statement's value, it must be viewed in the context in which it was given. That is not to say that there was any improper conduct in the manner in which the statement was obtained.

In my opinion, Kathy's conduct in providing the written statement to respondent's investigator should be viewed as a manifestation of her desire, from a personal standpoint, not to testify in this proceeding because of its impact upon her, and not as a truthful recantation of her claim that sexual conduct took place between herself and Dr. Saculla.

Another serious challenge to the credibility of Kathy arises in that she testified at the hearing that the sexual conduct between herself and Dr. Saculla occurred on only one occasion. Documentary exhibits indicate that she had previously told authorities that she had performed oral sex upon Dr. Saculla at his home on three separate occasions.⁵

One such document is the Racine Police Department's file on the investigation of Kathy's claims regarding Dr. Saculla. (Exhibit #7). The report of Jan Berndt, a Racine police officer, of her interview of Kathy at MHC in May, 1990, contains the following statement:

"... She explained that the three acts of fellatio occurred on unknown dates after her release from the hospital and Xmas of 1989 as that was when she stopped going to his home..."

Officer Berndt's report of a subsequent interview of Kathy at her home in June, 1990, further notes:

⁵ Paragraph 11 of the state's Complaint in this matter, in fact, alleges "3 separate occasions" on which sexual conduct took place between Kathy and Dr. Saculla.

"She stated (Dr. Saculla took her medications and gave her prescription orders for new ones) about three times, as did the sexual acts. . . .

"She was unsure if they were sexually active that first time (Kathy visited Dr. Saculla's home), and seemed to feel it was the second visit. Stated that she was the instigator each time and the acts occurred in the bedroom and she would be undressed as was he and she did oral sex on him. He did not stop these acts, and she stated that he did fondle her breasts and suck on them during the incidents. . . ."

The question becomes whether the inconsistency between Kathy's prior statements to the Racine Police Department and her sworn testimony in this proceeding is a product of her psychological condition, outright falsehoods, "embellishment", or a misunderstanding or misinterpretation of her remarks by Officer Berndt.⁶ This inconsistency was not pursued through questioning of Kathy at the hearing. Accordingly, it seems just as likely that a statement by her that she had *visited* Dr. Saculla's residence on three occasions could have been confused in the report with *engaging in sexual conduct* on three occasions, as it could be a product of one of the other possibilities. In any event, it does not detract from the other evidence and testimony in this record that sexual conduct occurred at least once.

Respondent also argued that Kathy has a history of making false accusations against others, as demonstrated by those made by her against co-workers in her workplace. Respondent subpoenaed several of her co-workers to provide testimony at the hearing. Without question, that testimony indicates that Kathy was, and remains, a difficult person with whom to get along. The anecdotal incidents which were presented establish that Kathy tends to verbally abuse others in the workplace. It does not establish that she is prone to making false accusations against others.

The individual for whom Kathy provides secretarial services provided his perspective regarding most of the "disagreements" between Kathy and her coworkers. His conclusions were as follows:

"Some of it seems to be personality conflicts that when you dig down to the bottom of it, you kind of wonder if it isn't like two kids fighting in a sandbox, and it's pretty -- it's pretty tough to figure out who shot John, if anybody did. Some of it, I think that -- that Kathy is -- a little bit worried about her personal space, and if someone get too close to it, that bothers her and she may react a little more loudly than -- than we would prefer. . . . She may have an outburst that later she would, you know, basically apologize for or something like that. . . . I would say that the -- the -- Kathy's coworkers are very careful in how they approach Kathy. . . . I'm not sure why. It -- it -- the reasons that I've been given would have to do with perhaps some mood swings or not knowing for sure if -- if there was something that might cause Kathy to become a little upset. . . . There are indications that she's felt that there were pressures that I don't (know) were there or not. I hesitate using the word paranoid. She -- she's touchy or, you know, she doesn't like persons invading her space."

(Transcript, pp. 760-761).

⁶ Officer Berndt passed away prior to the hearing in this case.

One of Kathy's co-workers has worked next to her for the last eight and a half years. His observations tend to confirm those made above:

"There have been changes in the eight and a half years. In the earlier years, she was more at ease, more outgoing, friendlier. More what would be considered a normal-type person. In the latter years, she started exhibiting what I would consider abnormal or aberrant behavior. . . . Sudden outbursts. Accusations. Aggressive behavior. More withdrawn. I observed her on any number of occasions sitting in front of her -- her computer by herself doing nothing. Less social. That's about it."

(Transcript, p. 885).

This employee also testified as follows:

"Q. (Ms. Woehrer) Has Kathryn ever told you some of the allegations she has made against other people.

"A. No.

"Q. In your opinion, is Kathryn believable?

"A. Yes.

"Q. All the time?

"A. No.

"Q. How can you tell the difference?

"A. I've sat next to Kathy for eight and a half years. I can tell when Kathy is talking from a -- her nor -- what I would consider her normal frame of mind, and when she's off on a tangent, when she's going through one of her what -- what I would consider a periodic episode.

"Q. When she goes through these periodic episodes . . . that you've observed, is she believable?

"A. Yes. Strange but believable. . . . When I'm talking -- yeah, when I talk to Kathy, what she tells me is believable. I mean, it's Kathy. All right? I mean, I'm not -- I'm not dealing, in my mind anyway, with fantasies, okay, with things she created. It's her perception of something. You know, it's a -- she may be talking in -- in a strange way or a bizarre way, but she -- she's dealing with a real event. Okay? So that -- that's Kathy talking. Now, how she talks is determined by her frame of mind at the time. Did I lose you?

"Q. Yeah.

"MR. ZWIEG: Not at all.

"A. Okay. Well, Kathy saying that I looked at her ass. That's a true statement. Okay? But if she went bizarre over that, okay, she took it out of context. Okay? So it's what she did that was bizarre, not what she observed. Okay? The letter that she typed was real, okay? And it dealt with something that she assumed was my responsibility, and therefore Kathy came to conclusions, okay, on her own. The conclusions may have been faulty, but they were her conclusions and they were believable."

(Transcript, pp. 895-896).

"Q. . . . All right, so she took everything out of context --

"A. She took it out of context.

"Q. -- and made an allegation against you, and that occurred on December 10th of 1991?

"A. --Mm-hmm, yeah. Well, no, she didn't make an allegation. She came to my office, okay, and she verbally assaulted me. . . . She didn't go to my supervisor with an allegation. There's a difference there, in my mind anyway.

"Q. Okay. Is Kathryn paranoid?

"A. At times, I think so.

"Q. And why do you think that?

"A. Because I have seen what I consider to be that kind of behavior on her part at certain points in time. Not all the time, but -- in conjunction with an episode where -- where Kathy would have a propensity to launch on someone, you would see behavior that -- that appeared paranoid, behavior and talking."

(Transcript, pp. 898-899).

The above testimony is representative of that presented by other co-workers. Kathy obviously has a history of periodic verbal abuse toward others. This has served to alienate her from others in the work place. It appears that many simply avoid her because, as one stated: "I just don't want her blowing up at me anymore." (Transcript, p. 875). However, it has not been established that Kathy has a penchant for approaching an individual and making false accusations against third persons.

The foregoing discussion has addressed the major areas of Kathy's, and Dr. Saculla's, conduct which was presented in this case. It does not address every factual or legal issue advanced. However, it does provide the material basis upon which it is concluded that it is more likely than not that Dr. Saculla engaged in sexual activity with his patient, Kathy. In my opinion, Dr. Saculla's conduct and his subsequent taking of the Fifth Amendment make it likely that the

encounter occurred, and serve to outweigh the difficulties in proof presented by Kathy's psychological problems, history and attempts to have this case dismissed.

The final issue to be considered is the appropriate discipline, if any, to be imposed against Dr. Saculla. In this regard, it must be recognized that the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d. 481, 485 (1969).

This case involves extremely egregious conduct. Dr. Saculla utilized his position of trust and authority as a mental health care provider to obtain sexual gratification from a patient. The fact that he may not have instigated the sexual conduct does not detract from his responsibility to react in a professionally appropriate manner.

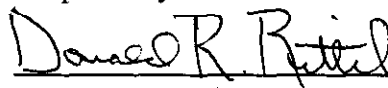
In this case, specifically, the record is clear that Dr. Saculla was aware of a patient's infatuation with him, and nevertheless permitted her access to his residence on three separate occasions. This despite his employer's policy to the contrary. He further failed to document these matters in her medical records. He exchanged gifts with the patient, which under the circumstances presented would only serve to reinforce her feelings toward him, and not in any manner serve to treat her serious underlying problems. Subsequently, he responded to the complainant's investigation by engaging in deceptive tactics, whereby he sought to manipulate a scenario whereby it would be perceived that since the patient had inaccurately described characteristics of his genitals, the encounter could not have occurred.

It is my opinion that Dr. Saculla's license to practice medicine and surgery must be revoked in order to protect the public from future unprofessional conduct, while at the same time sending a clear message to other licensees that such conduct will be dealt with strongly in order to deter others from following respondent's course of practice. Neither a reprimand nor suspension would be adequate to serve those purposes. Given that the misconduct took place at respondent's residence, it is difficult to fashion appropriate limitations upon his license. His conduct did not occur in an office setting; but rather, at a location and under circumstances which essentially render the monitoring of respondent's contacts with patients nearly impossible.

It is recommended that any reinstatement of Dr. Saculla's right to practice should place the burden upon him to demonstrate fitness to practice. The order of revocation serves that purpose.

Dated this 25th day of August, 1994.

Respectfully submitted



Donald R. Rittel

Administrative Law Judge

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