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STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
YOGESH N. GANDHI, M.D., RESPONDENT.	:	

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW,THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 23 day of May, 1990.

Michael P. Rehbein

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
YOGESH N. GANDHI, M.D., RESPONDENT.	:	

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

Yogesh N. Gandhi, M.D.
125 Morningwood Drive
Racine, WI 53402

Medical Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

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

A hearing was held in this matter October 30 - November 2, 1989. Attorney John R. Zwieg appeared for the complainant, Division of Enforcement, Department of Regulation and Licensing. Attorneys Stephen M. Glynn and James A. Walrath of the firm Shellow, Shellow & Glynn, S.C., 222 East Mason Street, Milwaukee, WI 53202-3668 appeared with the respondent, Dr. Yogesh N. Gandhi.

Based on the entire record in this case, the hearing examiner recommends that the Medical Examining Board adopt the following Proposed Decision, consisting of Findings of Fact, Conclusions of Law, Order, and Opinion as its Final Decision.

FINDINGS OF FACT

1. Yogesh N. Gandhi, M.D., is duly licensed and registered to practice medicine and surgery in the state of Wisconsin, and has been so licensed since February 24, 1988.

2. Respondent specializes in the area of neurology and neurosurgery.

AS TO COUNT I

3. In September, 1988, Patient 1 (hereinafter D.S.) was referred to respondent for severe pain in her neck, shoulders, and arms. Respondent examined D.S. on September 15, 1988.

4. Respondent took a medical history from D.S., and instructed her to disrobe to her underpants. He left the room while she disrobed and put on an examination gown, and then he returned.

5. Respondent conducted a neurological examination of D.S., which included pricking her with a safety pin and asking her to report the sensation. In the course of this portion of the examination, respondent moved the front of the bikini underpants D.S. was wearing to expose her pubic area and held the underpants in that position with the fingers of one hand curled inside the underwear and touching the area of the vaginal labia. Respondent drew the fingers of his other hand through the patient's pubic hair while holding the safety pin with which he had been conducting the sensory examination.

6. Respondent released the front of D.S.'s underwear and continued the pin-prick test up D.S.'s body. Respondent held and pressed each breast in turn, and used the safety pin to prick the skin in the immediate vicinity of each breast.

7. Respondent instructed D.S. to get off of the examining table and stood behind D.S. as she was standing on the floor wearing only the examination gown and her underpants. Respondent pressed himself against D.S. and grabbed each of her buttocks. At the time he did this, respondent had an erection.

8. There was no medical reason for a pin prick sensory examination of D.S. to include the area of her pubic region covered by her bikini underpants, nor for the pin prick sensory examination of the area immediately surrounding her breasts, or for any contact with her breasts or her pubic area, or for respondent to press himself against her buttocks.

AS TO COUNT II

9. Patient 2 (hereinafter K.G.) went to respondent on a referral for treatment of headaches, and was examined by respondent on October 17, 1988. At the time, K.G. was 15 years old.

10. K.G. was instructed by a nurse to strip to her underwear and put on a hospital gown. K.G. was wearing bikini style underpants.

11. Respondent took a short medical history from K.G. and her mother, which included mention of K.G.'s treatment for alcohol abuse and depression. Respondent asked the patient's mother to leave the room while he did the examination.

12. While respondent was adjusting the lighting in the room for the fundascope examination, he asked K.G. if she had "bizarre sexual fantasies" and repeated the question when K.G. asked him to repeat so she could be sure she understood him.

13. Respondent did a pin-prick sensory examination of K.G. In the course of this portion of the examination, he pricked the inside of her thighs to her crotch, and he moved her bikini underwear down to expose an area which would normally be covered by the underwear.

14. Respondent continued the pin prick sensory examination up K.G.'s body until he reached her breasts. He pressed on each breast until K.G. stated that there was pain in her right breast. Respondent directed K.G. to stand, and, standing behind her, reached around under her arms and took one of her breasts in each of his hand. Respondent manipulated her bare breasts in his cupped hands.

15. Respondent left the room briefly. When he returned, he sat next to K.G. and put his arm around her, and asked her how she had liked the breast massage, and would she like him to do it again. K.G. refused.

16. There was no medical reason to do a sensory examination in the area normally covered by K.G.'s bikini underwear, nor to manipulate her breasts, nor to ask her about sexual fantasies.

AS TO COUNT III

17. Patient 3 (hereinafter L.B.) was examined by respondent on October 22, 1988, while she was an in-patient at the psychiatric ward at St. Luke's Hospital in Racine, on an admission for treatment of depression.

18. L.B. had suffered a seizure on the ward, and respondent was called to examine her afterward. The examination took place in L.B.'s room, where she had been told by the nursing staff to remain in bed. There was no one else in the room with respondent and L.B.

19. L.B. told respondent that she did not want to be examined, but respondent proceeded with a partial neurological examination and medical history.

20. In addition to the examination respondent performed, respondent rubbed L.B.'s thighs adjacent to her crotch.

21. When L.B. attempted to leave her room, respondent grabbed her arms, hugging her and preventing her from leaving. While respondent was holding L.B. in this position, he told her that her body felt good close to him, that he did not want to let her go, and that he had not felt that good in awhile.

22. L.B. broke away from respondent, left her room, and went to the dayroom.

23. There was no medical reason for respondent's contact with L.B.'s thighs adjacent to her crotch, nor for the intimate contact of the hug he initiated with her.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to Wis. Stat. sec. 448.02(3).

2. Respondent's conduct in touching the intimate body parts of Patient D.S. without medical purpose as described in paragraphs 3 through 8 constitutes unprofessional conduct as defined by sec. 448.02(3), Wis. Stats., and Wis. Adm. Code sec. MED 10.02(2)(h).

3. Respondent's conduct in touching the intimate body parts of Patient K.G. without medical purpose as described in paragraphs 9 thorugh 16 constitutes unprofessional conduct as defined by sec. 448.02(3), Wis. Stats., and Wis. Adm. Code sec. MED 10.02(2)(h).

4. Respondent's conduct in touching the intimate body parts of Patient L.B. without medical purpose as described in paragraphs 17 through 23 constitutes unprofessional conduct as defined by sec. 448.02(3), Wis. Stats., and Wis. Adm. Code sec. MED 10.02(2)(h).

ORDER

Now, therefore, it is hereby ORDERED that the license previously granted to Yogesh N. Gandhi, M.D., to practice medicine and surgery in the State of Wisconsin be and hereby is REVOKED.

OPINION

Respondent has framed the decisive issue in this case not as the honesty of the complaining witnesses, but rather the accuracy of their perceptions of the

examinations respondent conducted. Throughout the hearing, respondent disavowed any intention to challenge the honesty of the complaining witnesses, and claimed only the desire to challenge the accuracy of the details they presented. I am convinced that the complaining witnesses had the capacity to and did accurately perceive and recall the major details of the examinations, and I find that respondent did, in fact, engage in the activities charged in the complaint in this case in each instance.

Respondent's challenges to the perceptions of the witnesses in this case are based upon the witnesses' medical conditions, and their reactions to those conditions. Complainant has successfully carried its burden of showing its witnesses to be sufficiently stable to accurately perceive and recall the events to which they testified to meet its burden of proving that respondent did engage in the conduct alleged.

The clearest case is that of Patient 2, K.G. K.G. is a teenager who saw respondent for headaches, and who had had an earlier history of substance abuse, for which she had received treatment. K.G. testified that she had been free of substance abuse for a substantial period of time before seeing respondent. There is no indication that she was under the influence of any chemical at the time of the examination here. K.G. had also been under the care of a physician for depression for some time; there is likewise no evidence to indicate that the condition had any effect on her ability to accurately perceive sensations of sight, sound, or touch, or to accurately recall her perceptions. Since respondent has conceded her veracity, she is an entirely credible witness.

The second clearest case is that of Patient 3, L.B. L.B. is a young woman with a history of depression, and of seizures. In fact, the reason respondent saw her is that L.B. was a voluntary inpatient at the psychiatric ward of a hospital at which respondent had staff privileges, and she had a seizure. Respondent was summoned to perform a neurological check following that seizure. Respondent's argument in this case is that L.B. was not capable of an accurate perception of that examination because of halluncinatory effects of the seizure (L.B. admits to some visual phenomena connected with the seizure) and her depression, and her fear and distrust of males in general, and male physicians in particular. L.B. was in fact very upset by respondent's conduct, and fled from her room and respondent. Respondent points out that she ran away from the nurses' station and down the hall to the day room, where she was seen later, still very upset, by her psychiatrist and a friend. Respondent would conclude that because L.B. did not immediately go to the nurses' station and report, but rather fled to the day room, that she is so irrational that her reported perceptions are not credible. I make a distinction between not immediately reporting a physician's misconduct to the physician's subordinates and not accurately perceiving sight, sound, and touch.

The last case, Patient 1, D.S., is more difficult. D.S. is a young woman who underwent treatment for drug abuse (successfully, by all accounts) some time previous to her visit to respondent. D.S. was in severe pain, and had been

unsuccessful in obtaining relief from that pain despite numerous examinations by several physicians over a significant period of time. By all accounts, her anxiety and frustration with the pain of the condition caused her to be somewhat less than stable emotionally when seeing physicians.

D.S. is the most emotionally volatile of the three complaining witnesses. Of the three, she is the one whose perception of the examination is most suspect. I believe that there are details she reports inaccurately, such as her exact position on the examination table, the width of the examination table, and the type and placement of the fasteners on the examination gown she wore. None of those details are material, and, otherwise, I am satisfied that what she says she saw, heard, and felt is an accurate report of what happened.

Respondent's argument that the complaining witnesses are just mistaken in their perception of the examinations they participated in does not resolve the differences between the patients' testimony and his own description of the examinations. Having conceded that the witnesses are truthful, the respondent leaves the State to prove only that the witnesses were able to accurately perceive and recall what they saw, felt, and heard. The State proved clearly that each witness was competent in that regard.

Respondent does not assume honesty on the part of D.S. At the beginning of the hearing, he carefully distinguished her from the other two patients, and implied motive for her to lie about the examination. He challenged her character in several ways, each of them leading to a strongly implied attack on her veracity which he never made explicit. He developed several attacks on the accuracy of her perceptions (the width of the examination table and her position on it, the type and placement of the fasteners on the examination gown she wore) and proved that she was wrong on those details. The point was to cast doubt on the State's proof of the material parts of her testimony. The State proved clearly that D.S. was in a position to observe and accurately perceive what she heard and felt.

At the end of the hearing, respondent withdrew the implication that D.S. was willfully untruthful, and relies on a theory of mistake. I am convinced that D.S. was not mistaken about feeling respondent's fingers around her vaginal labia, or his fingers in her pubic hair. I am convinced that D.S. felt respondent press his erection against her, and that she had good reason to know what was happening.

I have no doubt that K.G. accurately perceived respondent standing behind her and manipulating her bare breasts in his cupped hands, or asking her if she wanted him to do it again, or sitting down next to her with his arm around her, or asking her if she had bizarre sexual fantasies. Respondent's accent is not so thick that he cannot establish communication with his patients. There is no evidence whatsoever that K.G. was in any way under the influence of any medication or condition which would interfere with her senses at the time of the examination. Respondent was willing to do a sensory examination of her at the time, as he was with each patient, which seems to contradict any

concern that K.G. was not competent to accurately report what she felt. Respondent says she is truthful, but challenges the State to prove she is not mistaken. The State has clearly proven that she is not mistaken. Respondent, for his part, testified that there would be no medical reason for him to do what K.G. describes he did.

L.B. is not challenged as a liar, nor is her character assailed by respondent. The evidence shows that she is a woman with a history of depression, that she has been hospitalized for treatment of depression, that she has been regularly abused by men, that part of her pyschological difficulty is an acute distrust of men and that respondent saw her shortly after she had suffered a seizure. Respondent's position is that none of the contact L.B. complains of ever happened. There is no evidence that L.B. was in a hallucinatory state when respondent examined her, and there is no reason to think she is lying. There is nothing to support a conclusion that her memory is faulty, or that she makes up stories, or that her distrust of men in general would lead her to falsely accuse a person and invite upon herself the resulting stress.

Respondent argues that he has no motive to engage in the activity these witnesses complain about. The State is not required to prove motive, but only conduct. In these cases, respondent denies that the conduct happened, or he denies that it happened as his patients describe. He says the patients are honest, but mistaken. By the clear weight of the credible evidence in each instance, I am convinced that the patients are both honest and accurate in the material details of their descriptions of the examinations performed by respondent.

These violations of the standards of professional conduct require the strongest possible sanctions. Sexual contact with a minor patient and with patients already obviously suffering some emotional distress under the guise of providing medical treatment is something which cannot be tolerated. It is not enough to limit the license to prevent contact with any female patient because the violation indicates more than exploitation of these patients. The violations indicate an affirmative disregard of their welfare. It is inconceivable to me that a physician would be able to place such a low value on the health and welfare of his female patients, and yet jealously guard the health and welfare of his male patients when his desires conflict with their good.

It may be that respondent will be able to show that he is a fit person to hold a license to practice medicine and surgery in Wisconsin at some future time, but it is not possible for me to predict what length of license suspension or course of education, counseling, or motivation would be required to reach that goal. Nor do I believe that it would be appropriate to place any limit on the Board's authority to require respondent to affirmatively prove his fitness for a license to practice medicine and surgery. A defined period of suspension would limit the Board's authority in this regard.

Dated this ~~20th~~ 21st day of March, 1990.

James E. Polewski

James E. Polewski, Examiner