

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

YOGESH N. GANDHI, M.D., (II)
RESPONDENT.

:
:
:
:
:
:
:

ORDER OF DISMISSAL
WITHOUT
PREJUDICE

TO: James A. Walrath
Shellow, Shellow & Glynn, S.C.
Attorneys for Respondent
222 East Mason Street
Milwaukee, WI 53202-8535

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

On August 22, 1991, Complainant's Motion for Dismissal Without Prejudice, to which the parties have stipulated, came on for hearing before the Board. The Board having heard the argument of counsel and having reviewed the stipulation of the parties:

NOW THEREFORE, IT IS HEREBY ORDERED that the disciplinary complaint in this matter (Gandhi II), is hereby DISMISSED, without prejudice, upon the terms and conditions set out in the stipulation of the parties.

Dated at Madison, Wisconsin this 22nd day of August, 1991.

Michael P. Mehr, M.D.

Michael P. Mehr, M.D.
Secretary
Wisconsin Medical Examining Board

ATTY2 873

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

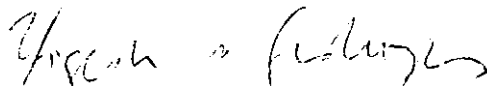
IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION IN SUPPORT
YOGESH N. GANDHI, M.D., (II)	:	OF MOTION FOR DISMISSAL
RESPONDENT.	:	WITHOUT PREJUDICE

It is hereby stipulated and agreed, by and between, Yogesh N. Gandhi, M.D., Respondent; James A. Walrath of Shellow, Shellow & Glynn, S.C., attorneys for Respondent; John R. Zwieg, attorney for Complainant, Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Medical Examining Board, as follows:

1. The present disciplinary proceeding shall be dismissed without prejudice.
2. On May 23, 1990 the Wisconsin Medical Examining Board, in a disciplinary proceeding (Gandhi I), issued a Final Decision and Order revoking the license of Yogesh N. Gandhi to practice medicine and surgery in the state of Wisconsin.
3. That Final Decision and Order was based on findings that Respondent engaged in unprofessional conduct in touching the intimate body parts of three female patients for no medical purpose while examining them.
4. Respondent sought judicial review of the Board's Decision in the Circuit Court for Racine County, Wisconsin.
5. The circuit court issued an order staying the revocation during the pendency of the judicial review, with the condition that if Respondent practiced medicine in Wisconsin that he must: obtain the statutorily required medical malpractice liability insurance, make any required payments into the patients' compensation fund, and have a female health care provider present during any examination or treatment of female patients.
6. Despite the existence of the stay on the revocation, Respondent has elected not to practice in the state of Wisconsin through this time, and has not practiced medicine in the state of Wisconsin since the effective date of the Board's Order of Revocation.
7. By Memorandum Decision dated July 9, 1991, Wayne J. Marik, Circuit Court Judge in Racine County, Wisconsin, affirmed the Board's Final Decision and Order and directed counsel for the Board to prepare a judgment consistent with his decision.
8. Respondent and his counsel have determined to appeal the circuit court judgment when it is entered.
9. On February 12, 1990, while awaiting a proposed decision in Gandhi I, the present disciplinary proceeding, Gandhi II, was commenced with the filing of a notice of hearing and the issuance of a second disciplinary complaint. A copy of the disciplinary complaint is attached as Exhibit A.

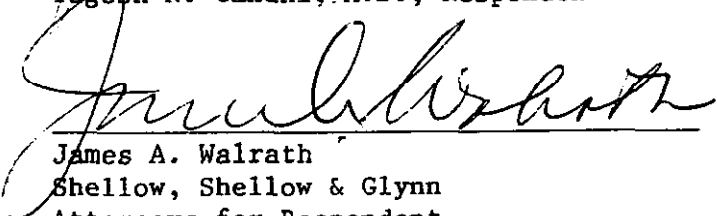
10. The second disciplinary complaint alleges that Respondent engaged in unprofessional conduct in touching the intimate body parts of two other female patients for no medical purpose while examining them.
11. If Gandhi II is to go through the hearing process, depositions and trial testimony will be required of the two patients, the Respondent, and others. Depositions and testimony in matters of this kind are inevitably stressful to all parties. The hearing process will also require the expenditure of great amounts of time and expense on behalf of the Complainant and the Respondent
12. In the event that this motion to dismiss without prejudice is granted and if the Revocation in Gandhi I were to be overturned on further appeal, the Complainant will be allowed to request the Board to reissue the disciplinary complaint in this matter.
13. In the event that this motion to dismiss without prejudice is granted and the Revocation in Gandhi I is upheld on any further appeal and Respondent applies to the Board for reinstatement of his license to practice medicine and surgery in the state of Wisconsin, the Board, and any person performing any evaluation of Respondent at the request of the Board, may consider the allegations in this matter in determining whether it is appropriate to grant Respondent any license or whether to grant Respondent a license with limitations.
14. If Respondent applies for reinstatement and the Board denies Respondent a license or agrees to issue a license with limitations which Respondent does not believe are appropriate, and any part of the allegations in this matter have been offered for the Board's consideration, then the allegations of those two patients must be determined at the denial hearing, if the Respondent demands a Wis. Stats sec. 227.01(3)(a) hearing on the denial of license, in whole or part.

Dated August 4, 1991.



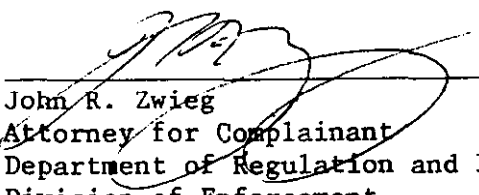
 Yogesh N. Gandhi, M.D., Respondent

Dated August 1, 1991.




 James A. Walrath
 Shellow, Shellow & Glynn
 Attorneys for Respondent

Dated August 8, 1991.



 John R. Zwieg
 Attorney for Complainant
 Department of Regulation and Licensing
 Division of Enforcement

Dated August 22, 1991.



 Michael P. Mehr, M.D., Secretary
 Wisconsin Medical Examining Board

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

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

Pamela E. Ellefson, an investigator with the Wisconsin Department of Regulation and Licensing, Division of Enforcement, 1400 E. Washington Avenue, Madison, Wisconsin 53702, upon information and belief, complains and alleges as follows:

1. That Yogesh N. Gandhi, M.D., Respondent herein, is duly licensed and registered to practice medicine and surgery in the State of Wisconsin pursuant to license #29087, which was granted February 4, 1988. That his last address reported to the Wisconsin Department of Regulation and Licensing is 125 Morningwood Drive, Racine, Wisconsin 53402.
2. That Respondent specializes in the area of neurology and neurosurgery.

COUNT I

3. That on August 22, 1988, Patient A saw her general practitioner in Cudahy, Wisconsin for the purpose of having a pap smear, a breast examination and for complaints of left arm pain. The results of the pap smear and breast examination were normal. The family practitioner determined that an electromyogram and nerve conduction study should be performed to determine the cause of the arm pain.
4. That on August 31, 1988, a neurologist in the group with which Respondent then practiced performed an electromyogram and nerve conduction study on Patient A and reported that it was a normal electrophysiologic study.
5. That on September 20, 1988, Patient A reported to her family practitioner's office that she continued to have pain in the left upper arm and neck and also had pain in the right arm. Her family practitioner then referred her to Respondent, a neurosurgeon, for evaluation.
6. That on September 26, 1988, Respondent performed a neurological examination of Patient A at Trinity Memorial Hospital in Cudahy, Wisconsin. Prior to the commencement of the examination, Patient A was instructed to remove her clothing and to put on an examination gown. Patient A disrobed to her bra and underpants and put on the examination gown. The only people present in the examination room were Patient A and Respondent.

Exhibit A

7. That while Patient A was in the room for the neurological examination and while Patient A was dressed only in her bra, underpants, and examination gown, Respondent had Patient A kneel on a chair facing a wall. While Patient A was in that position, Respondent pressed the back of Patient A's head and neck with Respondent's hands and asked her how it felt. Respondent then put both of his arms under Patient A's robe and lifted her bra up and placed his hands on Patient A's bare breasts and asked her how that felt. While Patient A was still kneeling on the chair facing the wall, Respondent moved his hands from her breasts, along her sides, and over her thighs.

8. That there was no medical reason or purpose for Respondent to be touching Patient A's breasts or thighs with his hands, as set out in paragraph 7 above.

9. Respondent performed a sensory examination of Patient A by having Patient A lay on her back on an examination table and by Respondent then pricking Patient A in various parts of her body with a pin and asking her to respond if she could feel the pin. The sensory examination of Patient A was normal, which Respondent noted in his letter report to Patient A's family practitioner.

10. That while Patient A was lying on the examination table on her back, Respondent lifted Patient A's examination gown up to her neck, lifted her bra up and pin pricked directly on her breasts. Respondent also pulled Patient A's underpants down so that her vaginal area was fully exposed and pin pricked in her pubic area including directly on her vaginal lips.

11. That there was no medical reason or purpose for Respondent to be pin pricking Patient A's breasts or pubic area as described in paragraph 10 above.

12. That Patient A did not ask Respondent to touch or examine her breasts, thighs or pubic area.

13. That because Patient A was upset by the nature of Respondent's touching of her, Patient A consulted with her family practitioner later on September 26, 1988 to question the appropriateness of the touching done by Respondent during the examination.

14. That until after Patient A advised an investigator for the Wisconsin Department of Regulation and Licensing, Division of Enforcement of the inappropriate touching done of Patient A by Respondent, Patient A was unaware that any other patient had ever complained about Respondent touching a patient inappropriately.

15. That Respondent's conduct in touching Patient A's intimate body parts for no medical purpose or reason constitutes unprofessional conduct as defined by sec. 448.02(3), Wis. Stats. and Wis. Adm. Code sec. MED 10.02(2)(h).

COUNT II

16. Realleges paragraphs 1 and 2 of this Complaint.

17. That in April of 1988, Patient B was referred to Respondent by her family practitioner for a neurological examination because of complaints of headaches. An appointment was scheduled and on April 15, 1988, Patient B went to Respondent's office in Racine, Wisconsin for the examination.

18. That when Patient B arrived for the appointment, she was instructed to disrobe and put on an examination gown. She disrobed to her underpants and put on the gown. The only people present in the examination room during the examination were Patient B and Respondent.

19. That prior to performing the examination, Respondent took a medical history from Patient B at which time Patient B probably told Respondent that her mother had died of breast cancer.

20. That because of the history of breast cancer in her family, Patient B had been having regular breast examinations by her family practitioner, and Patient B did not ask Respondent to perform a breast examination at any time.

21. That Respondent examined Patient B's bare breasts with his hands on April 15, 1988.

22. That Respondent prepared and sent a letter report to the referring physician regarding the examination he performed on Patient B on April 15, 1988. That letter report makes no mention of a breast examination.

23. That Patient B saw Respondent because of her complaints of headaches on: 5/6/88, 6/1/88, 7/1/88, 7/29/88, and 9/30/88. At each of the appointments, Patient B was asked to disrobe and put on an examination gown which she did.

24. That on at least one of the occasions that Patient B saw Respondent for her headaches after the initial examination of April 15, 1988, Respondent examined Patient B's bare breasts with his hands.

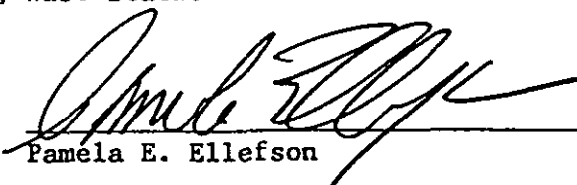
25. That Respondent did not note anywhere in Patient B's medical records or in reports made of the consultation that Respondent examined Patient B's breasts on any occasion or that Respondent had any reason to examine Patient B's breasts on any occasion.

26. That there was no medical reason or purpose for Respondent to be touching Patient B's breasts on any of the occasions he saw her.

27. That Respondent's conduct in touching Patient B's intimate body parts for no medical purpose or reason constitutes unprofessional conduct as defined by sec. 448.02(3), Wis. Stats. and Wis. Admin. Code sec. MED 10.02(2)(h).

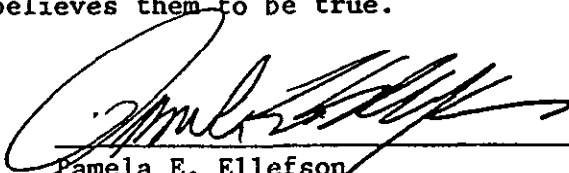
WHEREFORE, the Complainant demands that the Board hear evidence relevant to matters recited herein, determine, and impose the discipline warranted.

Complainant further demands that the Board assess against the Respondent all costs of the proceeding and order them paid to the Department of Regulation and Licensing pursuant to sec. 440.22, Wis. Stats.

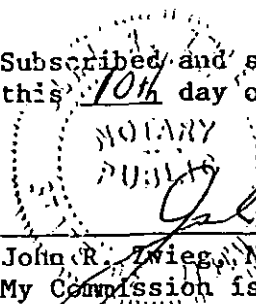
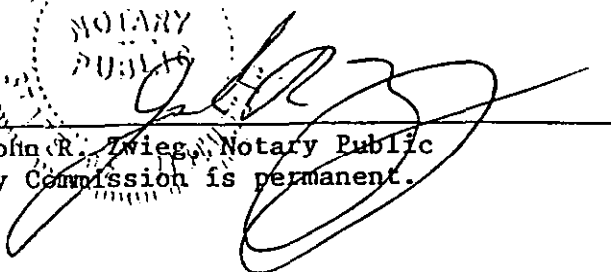

Pamela E. Ellefson

STATE OF WISCONSIN)
)
COUNTY OF DANE)

Pamela E. Ellefson, being first duly sworn on oath deposes and says that she is an investigator for the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, and that she has read the foregoing Complaint and knows the contents thereof and that the same is true to her own knowledge, except as to those matters therein stated on the information and belief and as to such matters, she believes them to be true.


Pamela E. Ellefson
State of Wisconsin
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Subscribed and sworn to before me
this 10th day of January, 1990.



John R. Zwieg, Notary Public
My Commission is permanent.

John R. Zwieg
Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
(608) 266-9932

JRZ:vec
ATY-929